



**Asia/Pacific Group  
on Money Laundering**

ASIA/PACIFIC GROUP ON MONEY  
LAUNDERING

BANGLADESH ME2

# Mutual Evaluation Report

Anti-Money Laundering and Combating  
the Financing of Terrorism

# Bangladesh

8 July 2009

Bangladesh is a member of the Asia/Pacific Group on Money Laundering. This 2<sup>nd</sup> evaluation was conducted by that body and adopted by its Plenary on 8 July 2009.

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## **PREFACE**

### **Information and methodology used for the evaluation of Bangladesh**

The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Bangladesh was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004. The evaluation was based on the laws, regulations and other materials supplied by Bangladesh, and information obtained by the evaluation team during its on-site visit to Bangladesh from 18 – 29 August 2008, and subsequently. During the on-site the evaluation team met with officials and representatives of all relevant Bangladesh government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the mutual evaluation report.

The evaluation was conducted by a team of assessors composed of APG experts in criminal law, law enforcement and regulatory issues. The Evaluation Team consisted of:

#### ***Legal Expert***

Ms Elizabeth Ryan, Senior Assistant Director, Commonwealth Director of Public Prosecutions, Australia

#### ***Financial/Regulatory Experts***

Mr Syahril Ramadhan, Pusat Pelaporan dan Analisis Transaksi Keuangan (PPATK), Indonesia; and

Mr Sisira Kumara Ranasinghe, Deputy Director, Financial Intelligence Unit, Central Bank of Sri Lanka

#### ***Law Enforcement Expert***

Mr Steven Barker, Sergeant, Royal Canadian Mounted Police

#### ***Secretariat***

Mr David Shannon, Principal Executive Officer, APG Secretariat

The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and terrorist financing (TF) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems.

This report provides a summary of the AML/CFT measures in place in Bangladesh as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, sets out the levels of compliance in Bangladesh with the FATF 40+9 Recommendations (see Table 1), and provides recommendations on how certain aspects of the system could be strengthened (see Table 2).

## EXECUTIVE SUMMARY

1. This report provides a summary of the AML/CFT measures in place in Bangladesh as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, and provides recommendations on how certain aspects of the system could be strengthened. It also sets out Bangladesh's levels of compliance with the FATF 40+9 Recommendations (see the attached table on the Ratings of Compliance with the FATF Recommendations).

2. Bangladesh faces significant risks of money laundering (ML) and some risks of terrorism financing (TF). The authorities readily acknowledge the prevalence of corruption, narcotics trafficking and human trafficking. While Bangladesh has focused on these particular crimes it has not yet taken into account the ML risks associated with these and other predicate crimes, as well as TF.

3. In this context, ML took place in the formal banking sector, investment in real estate, through cash couriers and through informal channels. Funds for terrorism came from foreign remittance in the name of charities, misuse of charities and the use of cash couriers is another area of vulnerability for terrorist financing.

4. Despite some good results to forfeit assets directly linked to corruption, the authorities lack focus on the concept of 'follow the money.' The authorities have little information on the volume and laundering techniques of the proceeds of crime, and on the volume and channels of terrorism financing.

### Key Findings

5. Bangladesh has criminalised ML. There are, however, some gaps in the scope of the offence, the coverage of predicate offences and the types of property covered by the ML offence. There is also an absence of financial penalties available to effectively sanction legal persons.

6. A wide range of TF acts is criminalized. There is, however, no criminalization of the financing of individual terrorists or terrorist organizations and the law does not cover financing terrorist acts intended to threaten the security of States other than Bangladesh.

7. Since June 2008 Bangladesh has had a clear legal basis to freeze terrorist assets under UNSCR 1267. To implement UNSCR 1373 Bangladesh will be able to use a domestic proscription mechanism under ATO 2008, although no steps have been taken to freeze assets of the listed domestic terrorist groups. The scope of the related freezing provision is too narrow in coverage and depth. Law enforcement and prosecution authorities have the powers to prosecute ML and TF. They are currently not using these tools.

8. Bangladesh has set up its Financial Intelligence Unit (FIU) and the FIU is performing its core functions, although greater capacity is required and a much higher inflow of STRs.

9. Bangladesh has required its banking sector to adopt anti-money laundering/combating the financing of terrorism (AML/CFT) preventive measures for several years, however there are significant gaps in coverage with securities and remittance sectors not yet included in the regime. While progress has been made, the scope and depth of preventive measures needs to be expanded in scope (activities and obligations). More stringent enforcement is needed. Some progress on transparency has been achieved. Access to beneficial ownership of natural and legal persons is not ensured and effective measures to protect NPOs from abuse for terrorism financing purposes are not yet in place.

10. Capacity to engage in Mutual Legal Assistance and administrative cooperation is severely impaired for legal and procedural reasons. Money laundering is not an extraditable offence.

11. As a result, the AML/CFT regime is not yet effective. To ensure effectiveness, Bangladesh should prepare as soon as possible a ML/TF risk-analysis, adopt at the highest level a national AML/CFT strategy to widen and implement effective measures to address national risks.

### **Legal Systems and Related Institutional Measures**

12. ML was first criminalised in the 2002 Money Laundering Prevention Act (MLPA). The current ML and TF offences are derived from ordinances issued in 2008 by the caretaker government (2006-2008). A constitutional challenge to those statutes in the Supreme Court of Bangladesh in mid 2008 was stayed by the Appellate Division of the Supreme Court. In February 2009 the newly constituted government reissued the Money Laundering Prevention Ordinance (MLPO) 2008 and Anti-Terrorism Ordinance (ATO) 2008 as Acts of parliament with retrospective effect from the day of their issuance as ordinances. Based on this the assessment team is satisfied that the ordinances was in force at the time of the onsite visit and subsequently.

13. The MLPO contains detailed definitions of money laundering and property and a list of predicate offences and sanctions for the offence. There are some gaps in the physical elements of the offence. The range of predicate offences under MLPO remains too narrow. While corporate criminal liability is established, cancellation of license or registration is the only sanction available in such cases.

14. Effective use of the ML offence is undermined by the MLPO conferring sole investigation authority upon the Anti-Corruption Commission [the ACC] for the ML offence. This is a significant departure from the earlier arrangements under the MLPA 2002 under which the Police and the ACC could investigate ML offences. Under the MLPO, the ACC is limited in its legal power to delegate investigation responsibility, for example to the Bangladesh Police.

15. Bangladesh criminalized terrorism financing in the Anti-Terrorism Ordinance (ATO), 2008 and has ratified the UN Terrorist Financing Convention. A wide range of acts is covered, which includes provision of funds and appears to cover collection of funds. A significant gap is that TF does not extend to financing terrorism acts against foreign governments or populations and the financing of individual terrorists and un-proscribed terrorist organizations is not criminalized. Corporate criminal liability is not clear for TF.

16. The MLPO and the ATO 2008 contain forfeiture and freezing provisions which are specific to money laundering and terrorist financing and cover a wide range of proceeds of crime. The ACC Act also provides for forfeiture and freezing of proceeds of corruption offences. The Criminal Procedure Code (CPC) also contains a general provision for forfeiture of property upon conviction. Neither the MLPO, the ACC Act nor the CPC contains any provisions to take steps to prevent or avoid actions.

17. The AML/CFT criminal regime has yet to become effective, particularly given the ML and TF risks facing Bangladesh. Although MLPO and ATO are recent statutes, the ML offence has been available since 2002. The level of prosecutions and convictions under the earlier regime is not commensurate with the prevalence of laundering in Bangladesh. Some good results have been achieved on asset freezing related to proceeds of corruption. The implementation of the MLPO will require close coordination to overcome the structural problem of ACC being the sole investigation agency for all ML investigations, but this represents an opportunity to take systematic action against ML. The passage of the ATO provides a key opportunity for Bangladesh to take more definitive and systematic action against TF.

18. Prior to the enactment of the ATO 2008, Bangladesh had no specific measures to take action to implement UNSCRs 1267 and 1373. Despite this Bangladesh did take action to distribute the 1267 Sanctions Committee Consolidated List with instructions to banks to check accounts and freeze in cases of any matches. Bangladesh had relied upon the MLPA 2002 to issue instructions to banks to

check for matches with the Consolidated List. This provision was unlikely to have provided a proper legal basis for such action. Banks have frozen funds in four cases where a match was identified with the 1267 list. The ATO 2008 now provides a basis for limited compliance with the requirements of UNSCR 1267, however not in relation to assets held by insurance and securities companies. Bangladesh Bank issues instructions under the ATO to freeze assets in case of a match.

19. Bangladesh would rely upon powers in the ATO 2008 to implement UNSCR 1373. ATO provides for proscribing a terrorist organisation and freezing its bank accounts and, in certain circumstances, to confiscate its assets. However the scheme is limited to organisations which threaten Bangladesh and the ATO does not authorise proscription and freezing action in respect of organisations which threaten the security of States other than Bangladesh. The ATO does not extend to freezing of property held by securities and insurance entities and does not extend to funds of entities owned or controlled, directly or indirectly, by proscribed organisations; and funds of entities acting on behalf of or at the direction of proscribed organisations. Bangladesh has proscribed four organisations but has not sought to freeze their funds.

20. The ATO 2008 provides Bangladesh with a basis for compliance with some of its obligations under SR III. However the measures contained within the ATO 2008 do not permit Bangladesh to fully implement those obligations. In addition the ATO 2008 does not fully provide for freezing and confiscation of terrorist-related funds in other contexts. These are deficiencies which can only be remedied by careful amendment.

21. In 2002 the MLPA bestowed a number of core FIU functions on Bangladesh Bank, which were performed by its Anti-Money Laundering Department (AMLDD), including powers of receipt and analysis of STRs, dissemination to investigation agencies, but also powers of criminal investigation and AML supervision.

22. The FIU was formally established in May 2007 as a unit within the AMLDD. The passage of the MLPO in 2008 provided a clear legal basis for the FIU and its core functions in relation to AML and the FIU is designated as the competent authority to receive STRs and CTRs from the reporting agencies. The ATO (2008) does not refer to the FIU, but section 15 outlines the powers of Bangladesh Bank to take necessary measures to prevent and detect transactions through banking channels that relate to TF offences.

23. Overall the Bangladesh FIU has taken significant strides to develop its capacity to receive, analyse and disseminate STRs, CTRs and other data. However due to the prevailing political conditions and the change in legislation in the period leading up to the evaluation, there has been a sharp decline in STRs received and impediments to dissemination, which has undermined effectiveness over the past two years. The overall quality and depth of analysis should be enhanced through greater understanding of ML and TF risks/typologies in Bangladesh, improved analytical tools, further staff training, and timely access to all available government and open source information. The FIU is actively pursuing opportunities for international cooperation.

24. Under the MLPO 2008, the ACC is the sole law enforcement agency responsible for ML investigations. Under the ATO the police (CID) is the sole agency responsible for investigating TF. Predicate offences are investigated by the police, ACC, NBR (Customs), Border Rifles, etc. Designation of the ACC as the sole investigation agency for ML is a considerable departure from previous practice, which saw the police lead most ML investigations. A major issue is the capacity of the ACC to take on its new investigative role, given it has little spare capacity. In practice, there will be a need for a high level of cooperation between Bangladesh Police and the ACC to ensure that the ACC has the information and evidence it needs to properly investigate and prosecute ML offences which are not corruption-related. Bangladesh has not assigned sufficient resources to investigate ML offence under the MLPO and the ACC has not applied sufficient resource to fulfil its responsibility to investigate all ML offences. The MLPO 2008's designation of the ACC as the sole investigation



agency for ML has created confusion and caused a serious gap in the coverage of ML investigations and the parallel investigation of predicate offences and related money laundering.

25. Despite significant ML and TF risks from cross-border movement of funds, cross border reporting measures are designed as currency controls and are not being effectively implemented to detect cross border movement of cash and bearer negotiable instruments for ML and TF. There is a need for Bangladesh to implement a comprehensive declaration or disclosure system designed to address ML and TF risks in keeping with the FATF standards. There is a need for increased capacity and procedural support to effectively implement measures related to Special Recommendation IX.

### **Preventive Measures – Financial Institutions**

26. AML preventative measures were initially set out in the MLPA 2002, which was replaced by the MLPO 2008, and various Bangladesh Bank AML Circulars, and in enforceable AML Guidance Notes. For CFT, limited preventative measures are set out in the ATO 2008. Section 21 the MLPA 2002 gave the power to make rules to implement the Act. Section 29 of the MLPO 2008 provides the power to make rules to implement the Ordinance. Section 43 of the ATO 2008 provides the power to make rules to implement the Ordinance. Bangladesh relies on its prudential rule-making powers to issue further instructions and guidance by way of circulars and enforceable guidelines.

27. Bangladesh Bank has issued a number of Anti Money Laundering Circulars to instruct banks and financial institutions on detailed AML/CFT preventative measures. Circulars were only issued to insurance companies and money changers in August 2008.

28. Capital market intermediaries and non-bank remittance entities are not included in the MLPO or ATO.

29. While progress has been made to implement CDD measures, in particular in the banking sector, there are number of significant effectiveness issues with implementing CDD measures. Key problems include the gaps in coverage of securities companies and weak implementation by sectors beyond banks. The very long timeframe given to financial institutions to check legacy accounts is a weakness. Bangladesh has taken some significant steps to require financial institutions to obtain beneficial ownership information, but the over-reliance on the KYC Profile form may undermine effectiveness. Implementation of the overlapping requirements for identifying beneficial owners that are legal persons appears to be very weak. Available company data and beneficial ownership information is generally of poor quality.

30. Bangladesh has introduced requirements for banks to apply enhanced due diligence requirements for foreign Politically Exposed Persons, however the instructing circular is still issued based on MLPA 2002 and had not been updated to reflect the obligations in the MLPO 2008. There are no requirements in place for securities companies, insurance companies or money changers to identify customers who are PEPs or to take any enhanced measures related to customers who are PEPs.

31. AMLD Circular No 7 (2005) sets out the obligations for correspondent banking relationships which broadly track the FATF standard. The extent of compliance was not clearly demonstrated by the bank supervision department.

32. Limited instructions are given to banks to controls risks posed when identifying customers in non face to face transactions. In practice in Bangladesh, banks and financial institutions rarely open customer accounts without face to face contact.

33. There are no clear provisions governing procedures for the use of third parties for services that involve CDD.

34. The MLPO provides an indirect override to all existing bank secrecy provisions. There is not a clear power given to Bangladesh Bank to share information obtained under the MLPO with local authorities and foreign counterparts.

35. Record keeping requirements have long been embodied in sector-specific regulations before the MLPO came into effect and compliance seems to reflect the long-standing nature of the obligations. The MLPO created a new obligation to keep records of transactions by financial institutions, however the requirement that the records maintained should be sufficient to reconstruct the individual transactions has not been specifically provided for and securities companies are not covered.

36. In relation to wire transfer rules, there are gaps in the depth and breadth of coverage.

37. Implementation of obligations to monitor unusual transactions is weak and obligations on the insurance sector are new.

38. There is no obligation on securities companies, insurance companies, money changers and money remitters to give special attention to transactions with natural or legal persons from or in countries which do not or insufficiently apply the FATF Recommendations.

39. MLPO 2008 includes concepts of both unusual transactions and suspicious transactions in the definition of STRs and provides a further definition which ties the definition to a reasonable belief that the transaction is related to any proceeds of crime. The scope of proceeds of crime subject to STR reporting falls short of the FATF standard, with a number of areas of predicate criminal activity not covered (including TF). Attempted transactions for ML are not covered. STR obligations have not been extended to securities companies and no STRs have been received from non-bank financial institutions, insurance companies or money changers.

40. STR obligations related to TF are limited in their scope. Further, the direct obligation on banks and financial institutions are not laid out in law or regulation, as is required by the FATF Recommendations.

41. The rates of STR reporting are very low and have diminished since 2006. The reduction reflects a poor understanding of what is suspicion amongst reporting parties.

42. Securities Companies are not included in AML regime for safe harbour protections and broader safe harbour provisions do not extend to directors, other related officers and employees of financial institutions.

43. Financial institutions are required to establish effective internal controls, including compliance officers, staff training and the like. There are no mandatory requirements for an independent AML audit function, nor for on-going training for employees. The securities and insurance sectors were not subject to requirements for an internal AML/CFT controls and staff training. Implementation of existing obligations is weak overall and AML/CFT obligations are very new outside of the banking sector.

44. Bangladesh Bank Circulars effectively prohibit shell banks from being established or continuing correspondent banking relationships with a bank in Bangladesh. There does however, appear to be a problem with implementing the obligation to ensure that correspondent banks do not permit their accounts to be used by shell banks.

45. Bangladesh Bank regulates banks, non-bank financial institutions, money remitters and money changers. The SEC regulates capital market intermediaries including stock exchanges and securities companies (stock brokers). The Controller General of Insurance regulates insurance companies. The MLPO 2008 and ATO 2008 have empowered Bangladesh Bank to monitor and

ensure compliance by banks, financial institutions, insurance brokers and money changers, with requirements to combat ML and TF consistent with the FATF Recommendations.

46. With the exception of the lack of coverage of the securities sector, regulators generally appear to have adequate powers of supervision. Capacity and expertise with AML/CFT issues remains a challenge for all supervisors. Clearer information on ML/TF risks is required to allow supervisors to understand Bangladesh-specific risks.

47. Market entry in the banking sector appears to be relatively sound, however outside that sector, due to weak controls, there are significant vulnerabilities from criminals owning or controlling financial institutions.

48. The depth and scope of AML supervision is still to be effectively implemented. AML supervision commenced in the banking sector in 2004 and only commenced in the non-bank sector in 2006. Bangladesh Bank supervisors have found breaches of compliance, but the supervisory actions, including sanctions, have not resulted in significant improvements in rates of compliance.

49. There appears to be a lack of awareness of AML/CFT issues amongst prudential supervisors outside of the banking sector and there is a need for greater cooperation between the Bangladesh Bank AMLD, as supervisor, and other sector-level supervisors.

50. Discussions with the regulators and the relevant sectors indicate, for example, that few banks have taken steps to update CDD records of customers which existed prior to the MLPA (2002). This represents a gap of millions of accounts that have yet to be subject to adequate CDD.

51. Remittance business in Bangladesh is limited to banking and post office channels. Hundi/hawala, though very common, is strictly illegal in Bangladesh. Revenue from Bangladeshi nationals working in foreign countries represents a significant contribution to the Bangladesh economy.

52. It is apparent that remittance to/from Bangladesh includes a significant portion of informal money value transfer activity that is not subject to applicable AML/CFT controls. The size of the informal remittance sector poses risks for ML and TF. The nature of the economy, the existing controls on export of currency and the small number of licensed non-bank remittance channels contributes to challenges for comprehensive AML/CFT regulation of money or value transfer services operating in Bangladesh.

53. Bangladesh Bank has made some efforts to raise awareness of the need to use formal channels and has taken steps to support this by licensing exchange houses to operate in countries with significant populations of migrant workers. So far 229 exchange houses have opened abroad and remittance providers such Western Union have been granted permission to operate in Bangladesh.

### **Preventive Measures – Designated Non-Financial Businesses and Professions**

54. At present DNFBP sectors are not included under Bangladesh's AML/CFT requirements. The MLPO does not include DNFBPs as reporting entities, although powers are available to expand the coverage of the MLPO to include DNFBPs Bangladesh is actively considering including DNFBPs under AML/CFT measures. The Ministry of Finance, Ministry of Law and Bangladesh Bank have held a meeting to discuss the expansion of covered reporting organisations to include DNFBPs.

### **Legal Persons and Arrangements & Non-Profit Organisations**

55. Bangladesh's national system for making information available on companies is greatly inhibited by the low rate of compliance with regulatory obligation. There is an acute lack of capacity to enforce compliance with the company law obligations and the lack of a requirement on the RFJSC

to maintain information as to whether shares of registered entities are held beneficially and if so, details of the beneficial owner.

56. Available information as to beneficial ownership is greatly inhibited by the lack of a requirement on legal persons themselves to maintain information as to whether their shares are held beneficially and if so, details of the beneficial owner.

57. Bangladesh has a decentralized system for the registration of trusts under the Registration Act, which is carried out by various Registrars at district and city levels. The obligation to register trust deeds is mandatory for immovable property, but is discretionary for movable property. The information is not centralized, no statistics or estimates were available on the extent of registration of trusts formed in Bangladesh. There is an apparent lack of awareness as to which agency registers trusts and how to access trust information. The information required to be included in the trust agreement on trustees, settlors and beneficiaries does not cover the concept of beneficial ownership, which undermines effectiveness. As registered trust information is held only in manual form, law enforcement would have difficulty accessing such material, which undermines effectiveness.

58. Bangladesh lacks a consolidated legal/regulatory framework for NPOs and has an acute lack of capacity to regulate and oversee NPOs. There is a lack of understanding of risks of terrorist financing in the sector. In addition there is a lack of coordinated national strategy aimed at further protecting NPOs from abuse for terrorist financing.

59. A certain amount of information is available on the purposes and objectives of registered NPOs, and the identity of their managers and governing committees. However regulators acknowledge that many NPOs remain unregistered and only some types of NPOs are required to provide regulators with updated details of purpose and personnel, and with information on their financial affairs. Further, with the possible exception of NGOAB-regulated entities, there is a low rate of compliance, and little activity on the part of the regulators to monitor and enforce compliance. Regulators lack adequate systems to promote effective supervision and monitoring of the NPOs.

### **National and International Co-operation**

60. A National Committee on AML has been formed to coordinate AML policy formation and implementation. A significant gap in interagency coordination is the absence of the ACC from the high-level National Committee on AML. The ACC is an independent statutory body which is outside of the executive branch and answers directly to the parliament. As such, there is little interaction at a policy level within inter-departmental committees and this lack of coordination undermines effective AML/CFT implementation.

61. There is a lack of policy level coordination to give effect to CFT provision in the ATO.

62. There is a lack of supporting agreements / MOUs / terms of reference to support enhanced information sharing between domestic agencies. Such agreements would assist with regular cooperation and sharing of information and resources when conducting ML and TF investigations, prosecutions and regulatory actions.

63. Bangladesh is not yet a party to the Palermo Convention on Transnational Organised Crime.

64. Bangladesh has no comprehensive legislation to provide for the giving and receiving of mutual legal assistance (MLA). Some offence-creating statutes, such as the MLPO and the ATO 2008, include MLA provision but their coverage is not comprehensive.

65. Despite the absence of effective legislation, Bangladesh appears willing to consider and give effect to requests for MLA on a case-by-case basis. Bangladesh appears to rely upon the direct application of international conventions it is party to, notably the UN Convention Against Corruption

[UNCAC]. For the execution of such requests Bangladesh relies upon domestic investigative provisions including the ACC Act, the MLPO, and the Code of Criminal Procedure 1898.

66. Extradition matters in Bangladesh are governed by the Extradition Act 1974. The Schedule to the Extradition Act contains a number of serious offences such as homicide, people trafficking, bribery, fraud and drug trafficking. However the offences of ML and TF are not included. Despite this Bangladesh authorities were of the view that they would be able to surrender a person for a ML offence, by means of the UNCAC Article 44(5). Extradition is provided for in the ATO and would appear to apply to TF offences, although practicality is an issue as Section 38(2) contemplates an individual agreement or exchange of letters in respect of each request and this has not been tested in practice. Bangladesh has ratified the TF Convention and may be able to use Articles 11 and 12 as a legal basis for extradition in TF cases.

67. There is not yet a well developed culture of international cooperation outside of formal mutual legal assistance channels, but the FIU and other relevant agencies are taking significant steps to support enhanced cooperation.

68. There are a number of structural impediments to information sharing, including a lack of resources and capacity and a lack of experience in making and responding to international requests for assistance.

69. Exchange of information between the Bangladesh FIU and other FIUs is not subject to disproportionate or unduly restrictive conditions in relation to AML. The ATO 2008 is silent on a role for the FIU in sharing intelligence and information outside of mutual legal assistance channels. It is not clear that the FIU to FIU information exchange solely for the purpose of TF is clearly supported in the absence of an MLA request.

## **Other Issues**

70. Bangladesh lacks capacity and resources across a number of areas of government which are responsible for developing and implementing AML/CFT policy. There is a significant need for international cooperation, including possible technical assistance and training to work with Bangladesh authorities to identify and respond to ML and TF risks.

71. Bangladesh does not maintain comprehensive statistics to review the effective operation of the AML/CFT system. There is no framework for data collection and analysis, and institutional fragmentation hinders the review of the effectiveness of the regime.

72. Bangladesh presents several features that constitute both a ML/TF risk and important challenges in the design and implementation of an effective AML/CFT regime, notably the importance of the informal sector and the cash-based economy. The significance of hundi / hawalla is a key issue and there is a need for authorities to ensure incentive structures properly balance the need for formalization with the risk of further driving customers to the informal sector.

73. Bangladesh continues to face pervasive corruption. In addition to constituting a very significant ML risk, this situation creates structural weaknesses which may significantly impede the effectiveness of the AML/CFT regime.

74. Bangladesh authorities and the financial sector lack credible information on ML and TF risks facing the country. There is a need to undertake as soon as possible, a ML/TF risk-assessment in Bangladesh, involving all Bangladeshi stakeholders. This would include any typology identified in ML/TF cases in Bangladesh. This risk-assessment should also seek inputs from Bangladesh's main international partners to integrate Bangladesh-related typologies that they may have developed.

# MUTUAL EVALUATION REPORT

## BANGLADESH

### **1 GENERAL**

#### ***1.1. GENERAL INFORMATION ON BANGLADESH***

76. Bangladesh is located on the Bay of Bengal and has an area of 147,570 square kilometres and shares borders with India (4,053 km) and Myanmar (193km). Bangladesh is divided into six Administrative Divisions, with the capital in Dhaka. As of 2006, the estimated population was 141 million people. The official language is Bangla and second language is English. The literacy rate is 53.5% (as of 2007).

77. Bangladesh is a developing, agricultural country with a free-market economy. In 2007 the GDP of Bangladesh was equivalent to approximately USD 75 billion, with per capita income of USD520 per annum. The service sector contributes almost of the country's GDP, while the industrial sector makes up 29.8% and agriculture 21.1%. The industrial sector's contribution to GDP is increasing while the agricultural sector's contribution to GDP is decreasing. Workers' remittances account for a significant portion of the Bangladesh economy.

78. Real GDP grew at 6.2% in FY08, slightly lower than 6.4% of FY07. In May 2008, the annual average inflation rate was 9.8%. The overall revenue earning as a share of GDP is estimated at 11.3% in FY08 which is about one percentage point higher than that of the previous fiscal year. Bangladesh has been subject to two consecutive floods in 2007 and 2008 and a devastating cyclone (Sidr) in 2008 which has affected economic growth.

79. The currency of Bangladesh is the Bangladesh Taka (BDT). Bangladesh adopted a floating exchange rate system in April 2003.

80. Bangladesh is amongst the world's top 10 recipients of remittances. Approximately 5 million Bangladeshis are working abroad and remitting funds back to Bangladesh. Total remittances in FY08 increased from almost USD 6 billion to almost USD 7 billion and workers remittance received by the end of 2008 totalled USD 8.9 billion. The main sources of remittance come from Bangladeshi foreign workers in Saudi Arabia, USA, UAE, Kuwait, and Qatar.

81. Micro-credit institutions are a significant feature of the Bangladesh economy and their operation is encouraged by the government and civil society as a key tool in bringing finance to the least-developed parts of the economy. There are four large micro-finance institutions (MFIs) which account for more than 80% of micro-credit disbursement and 70% of outstanding loans. During FY08, total disbursement increased by 26.5% over the same period of FY07.

82. Bangladesh is a democratic, constitution-based republic. Its government is divided into the executive, legislative and judicial branches. The executive branch is comprised of a selected President and an elected Prime Minister, and an appointed Cabinet. The Cabinet members are mostly elected parliament members. The federal legislative branch, known as Jatiya Sangshad (National Parliament) consists of 300 elected parliamentarians and an additional 45 women members selected by the elected parliamentarians.

83. Following a period of extreme corruption, growing political violence and, in 2005, a series of coordinated terrorist bombings, the elected government was suspended in late 2006 by the Bangladesh military. Elements of the constitution were suspended and a Caretaker Government was established

with the aims of rooting out corruption and preparing an accurate voter list to support fair elections. Parts of the constitution were suspended at that time. The President remained in office, and at the time of the onsite visit the regime had pledged new democratic elections by the end of 2008<sup>1</sup>. The caretaker government was headed by the President with all Cabinet portfolios held by Caretaker Advisers (CAs). The Chief CA headed the government of the day, in a way that is equivalent to a Prime Minister in other systems.

### *Court systems*

84. Bangladesh has a three tiered court system that is comprised of 64 District Courts, one High Court and one Supreme Court, which is the country's highest court.

85. The legal system combines civil and common law principles. Laws may be codified or contained in separate, stand-alone statutes. Appeals are available both to the accused and the prosecutor from the District Court to the High Court Division of the Supreme Court, and from the High Court to the Supreme Court. Special Courts have been established under some Acts by the Government to serve essentially as 'fast-track' courts. Money laundering cases are prosecuted in Special Courts established for that purpose.

86. The Supreme Court of Bangladesh is comprised of the Appellate Division and the High Court Division. The Appellate Division has jurisdiction to hear and determine appeals from judgments, decrees, orders or sentences of the High Court Division. It has rule making power for regulating the practice and procedure of each division and of any Court subordinate to it.

87. The High Court Division, though a Division of the Supreme Court, is, for all practical purposes, an independent court with its own powers, functions and jurisdiction well defined and determined under the Constitution and different laws. It has both appellate as well as original jurisdiction. It hears appeals from orders, decrees and judgments of subordinate courts and tribunals. It has original jurisdiction to hear Writ Applications under article 102 of the Constitution, which is known as extraordinary constitutional jurisdiction. It has further original jurisdiction, inter alia, in respect of company and admiralty matters under statutes. The High Court Division, in special circumstances, can also hear and dispose of cases as the court of first instance under article 110 of the Constitution. The High Court Division has superintendence and control over all Court's and tribunals subordinate to it.

88. During 2007 and 2008 Bangladesh has pursued large scale reforms to the judiciary. Key issues to be addressed include corruption, judicial independence and resourcing of the judicial system. In late 2007 there were 4.85 million cases pending in magistrates' courts across Bangladesh. Prior to November 2007, the judiciary was not wholly independent of the Executive in Bangladesh. In the past many members of the judiciary were replaced each time one of the two main competing political parties had come to power. Bangladesh has two sets of magistrates, judicial and executive. Amendments to the Code of Criminal Procedure in late 2007 ensure that judicial magistrates run the courts and will be appointed and supervised by the Supreme Court. Executive magistrates will not have judicial powers and will exercise only executive power. In November 2007 the government created 4,300 new judicial magistracy posts to help to address the backlog of cases.

89. A Supreme Judicial Commission has been formed to make the appointment of judges more transparent. The commission suggests a set of names to the president and the president appoints judges from the list.

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<sup>1</sup> In December 2008 peaceful elections were held and a new government was formed and the constitution restored.

## **Corruption issues**

### ***Structural Elements***

90. Bangladesh has been beset by very serious corruption problems. International observers and the government continue to highlight serious problems flowing from a systematic lack of respect for principles such as transparency and good governance.

91. Corruption is recognized by the Bangladesh Government as one of its biggest problems. Transparency International (TI) Bangladesh reported in July 2006 that there were a total of 2128 reports/incidents on corruption in thirty-eight sectors in Bangladesh. In late 2007, TI noted improvements in Bangladesh as a result of the interim government's efforts to tackle corruption. This was reflected in TI's corruption perception index for 2007, which ranked Bangladesh 162nd among 180 countries. This was an improvement as Bangladesh had been placed at the bottom of the list for five consecutive years from 2001 – 2005.

### ***Executive Branch***

92. Various reports by reputable non-partisan international anti-corruption bodies have highlighted very significant corruption problems across government in Bangladesh. There are no regulations governing conflicts of interest by the executive branch. No requirements for heads of government, ministerial-level officials or other senior officials to file a regular asset disclosure forms or to declare gifts and hospitality.

93. Police corruption continues to be a very significant challenge for Bangladesh. Transparency International reports highlight endemic petty corruption with police. A number of reports (global Integrity, etc) identify a history of frequent political interference during investigations, which has encouraged corruption in the police force. .

94. Corruption with land administration is endemic. Transparency International reports highlight endemic petty corruption with Land administration.

### ***Legislature***

95. While there are requirements on members of the legislature to file regular asset disclosure forms, they are not subject to audit. There are no requirements to declare gifts and hospitality.

### ***Judiciary***

96. Transparency International and other sources highlight endemic corruption in the lower courts. The Chief Justice spoke publicly on the corruption of his sector, estimating it would take 20 years to clean-up corruption in the judicial branch.

97. Bangladesh lacks a reasonably efficient court system that ensures that judicial decisions are properly enforced. There are significant problems with ethical and professional requirements and standards for police officers, prosecutors, judges, etc and measures and mechanisms to ensure these are observed. Independent commentators have consistently highlighted cases of abuse and corruption within the executive and judicial branches of government, including police, prosecutors and judges.

### ***Private sector***

98. Bangladesh has an emerging culture of AML/CFT compliance, but it is not yet shared and reinforced by government, financial institutions, designated non-financial businesses and professions; industry trade groups, and self-regulatory organisations (SROs.).

99. The professions in Bangladesh have sought to organise themselves through SROs to work to try to ensure the ethical and professional behaviour on the part of professionals such as accountants



and auditors, and lawyers. SROs have put in place codes of conduct and good practices, as well as methods to ensure compliance such as registration, licensing, and supervision or oversight.

### **Measures to combat corruption**

100. Historically, Bangladesh has had severe problems with corruption, particularly at the political level. Corruption and associated unrest and political upheaval contributed to the suspension of parliament and the constitution in 2007.

101. The interim government in place at the time of the onsite visit publicly expressed its commitment to address corruption issues.

102. Reflecting the nature of the period of constitutional crisis in Bangladesh, the National Coordinating Committee (NCC) was formed to combat corruption and comprised of senior army generals and top officials. The NCC exercised authority over all other institutions regarding corruption cases. Special Tribunals have been set up to prosecute persons.

103. Since 2007, the government has aggressively pursued corruption cases with some success. An independent Anti-Corruption Commission (ACC) was established in 2004 and Truth and Accountability Commissions in July 2008.

104. Truth and Accountability Commissions were set up under the Voluntary Disclosure Ordinance 2008, to give amnesty to corruption suspects. Suspects are called on to disclose information to the Commission about any corruption they have committed and declare the amount of assets and money earned through illegal means. These assets are then handed over to the State and the Commission issues a certificate which acts as an exemption from any future criminal prosecution or punishment for these acts. Such persons are barred from contesting elections and holding public or corporate offices for five years. The process is confidential. The establishment of a Truth and Accountability Commission allows citizens to report abuses of police power and return illegal gifts in order to avoid prosecution.

105. An Ombudsman has been established, but its role appears to be generally limited to tax related matters.

### ***Anti-Corruption Commission***

106. The ACC was established pursuant to the Anti-Corruption Commission Act 2004 to replace the Bureau of Anti-Corruption (BAC). The anti-corruption agency is protected from political interference by law, but commentators highlight that it was subject to political interference prior to the caretaker government. The ACC was significantly restructured and better resourced during the caretaker government period and has been working independently.

107. Since 2007 there have been a significant number of convictions for bribery and misappropriation of public funds that ranged from mid-level officials up to six cases of high-level ministers being convicted.

108. On 28 February, 2007 Bangladesh signed the UN Convention against Corruption (UNCAC). The caretaker government has taken several steps to repatriate stolen assets sent abroad by corrupt officials and businessmen with the help of international bodies.

### ***Stolen Asset Recovery (StAR) Initiative***

109. The Bangladesh Government has been working closely with the UNODC/World Bank Stolen Assets Recovery (StAR) Initiative to cooperate with regional partners to pursue stolen assets and other proceeds of corruption.

## 1.2. GENERAL SITUATION OF MONEY LAUNDERING AND FINANCING OF TERRORISM

### ML & TF vulnerabilities

110. Bangladesh faces a range of serious ML and TF threats. Authorities indicate the following offences as the most common offences generating substantial criminal proceeds:

- bribery;
- abuse of public office;
- securities fraud;
- embezzlement;
- human trafficking;
- extortion; and
- drug trafficking.

111. Bangladesh authorities highlight corruption, drug trafficking and human trafficking as the most serious amongst these sources of proceeds of crime.

112. Corruption is endemic across the Bangladeshi economy and ranges from petty corruption to grand corruption. The World Bank had estimated national proceeds of corruption to be worth more than 3% of GDP. Aggregated statistics of the value of corruption cases were not made available to the evaluation team.

### *Drug Trafficking*

113. Bangladesh is as a trans-shipment point for illegal drugs with particular vulnerabilities noted from long porous borders with India and Myanmar and transshipment at sea via fishing trawlers. Bangladesh is used as a transshipment point for drugs produced in both the ‘golden triangle’ and ‘golden crescent’ regions, with drugs ultimately bound for markets in Europe, the United States and Canada. Bangladesh has been increasingly used as a ‘transit country’ for heroin shipments using Dhaka Airport and the seaport of Chittagong as exit-points.

114. Domestic narcotics markets in Bangladesh include heroin, phensidyl (Codeine based cough syrup) and cannabis.

**Table: Statistics provided by the Department of Narcotics Control**

Year□	2003	2004	2005	2006	2007	2008
Number of drug investigations	5613	5972	7191	7355	7589	7842

Type of Drug	Unit	2006	2007	2008
Heroin	Kg.	16.2	20.8	29
Popy Plant	No.	-	60038	-
Cannabis	Kg.	1344.9	1768.2	1556.
Codeine (Phensidyl)	Bottle	46995	28241	53239
	Litre	302	145	128
Yaba Tablets	No.	-	8184	5763
Touline	Litres		1611	

**Number of narcotics/drug-related (includes alcohol related) cases disposed in the court**

Year	No. of Cases			No. of Accused		
	Total	Convicted	Acquittal	Total	Convicted	Acquittal
<b>2004</b>	3059	1420 (51%)	1639 (49%)	2982	1513 (51%)	1469 (49%)
<b>2005</b>	3029	1507 (50%)	1522 (50%)	3365	1653 (49%)	1712 (51%)
<b>2006</b>	2904	1552 (53%)	1352 (47%)	3341	1760 (53%)	1581 (47%)
<b>2007</b>	2868	1600 (56%)	1268 (44%)	3208	1728 (54%)	1480 (46%)
<b>2008</b>	4905	2111(43%)	2794(57%)	5217	2295(44%)	2922(56%)

***Human Trafficking***

115. Bangladesh is noted as a source and transit country for trafficking of men, women and children for purposes of forced labour and commercial sexual exploitation. Estimates from UNICEF and other sources since 2004 suggest that up to 29,000 children are exploited in prostitution in Bangladesh and significant numbers are trafficked to India and other destinations. In the last five years the government has opened 123 investigations, made 106 arrests, and initiated 101 prosecutions for sex trafficking offences, with 20 convictions. Life imprisonment sentences were imposed on eighteen of the convicted traffickers and the remaining two convicted traffickers received sentences of 10 – 14 years imprisonment.

***Methods, techniques and trends of money laundering***

116. Bangladesh has a cash based economy. The most common methods of laundering proceeds are structuring transactions through the banking sector and bulk cash smuggling. Alternative Remittance System (Hundi) is a common phenomenon in Bangladesh for sending illegal money abroad.

117. Proceeds from corruption were noted to be laundered through investment in real estate, investment in the banking system, remittance to foreign jurisdictions and a range of other typologies.

***Methods, techniques and trends of terrorist financing***

118. A review of open source information including information from the website of Janes Terrorism and Insurgency Center ([www.janes.com](http://www.janes.com)) indicates that most terrorism in Bangladesh can be classified as domestic, home-grown groups operating within its boundaries which do not require large amounts of money to conduct violent acts as their equipment/ explosives are reported to be unsophisticated and crude. The financing of such groups can be classified as micro-financing.

119. JTIC also noted terrorist activity in Bangladesh associated with the following groups:

Group Name	No. of terrorist events
Purbo Banglar Communist Party (PBCP)	35
Jamaat ul-Mujahideen Bangladesh (JMB)	31
Harakat-ul-Jihad-ul-Islami (HUJI)	20
Biplobi Communist Party (BCP)	4
Gono Mukti Fouz	3
Allahr Dal	2
Kamtapur Liberation Organisation (KLO)	1
Borok National Council of Tripura (BNCT)	1

120. Members of JMB have publicly claimed to receive funding from Saudi Arabia. A number of bank accounts linked to JMB were identified by Bangladesh Bank in 2006.

121. Terrorist financing vulnerabilities were noted as including remittance, use of wire transfers, cash couriers and abuse of non-profit organisations including religious schools.

### 1.3. OVERVIEW OF THE FINANCIAL SECTOR AND DNFBP

122. The following table outlines the categories of financial institutions operating in Bangladesh:

Type of financial activity (see 40 Recs Glossary)	Type of financial institutions authorised to perform this activity in Bangladesh
Acceptance of deposits and other repayable funds from the public	Banks and non-bank financial institutions.
Lending (including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting))	Banks, non-bank financial institutions and micro credit organizations.
Financial leasing	Banks and non-bank financial institutions (leasing companies).
The transfer of money or value	Banks, money remitter and post office.
Issuing and managing means of payment	Banks and non-bank financial institutions
Financial guarantees and commitments	Banks and non-bank financial institutions
Trading in: (a) Money market instruments (cheques, bills, CDs, derivatives etc.); (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities; (e) commodity futures trading.	(a) Banks (b) Banks (Authorized Dealers) and money changer. (c) Banks (d) Banks, merchant banks and brokerage house
Participation in securities issues and the provision of financial services related to such issues.	Asset management Companies and merchant banks
Individual and collective portfolio management (covers mgt. of collective investment schemes such as unit trusts, mutual funds, pension funds)	Mutual Fund Managers
Safekeeping and administration of cash or liquid securities on behalf of other persons	Banks
Otherwise investing, administering or managing funds or money on behalf of other persons.	Merchant Banks
Underwriting and placement of life insurance and other investment related insurance	Merchant Banks
Money and currency changing	Banks (Authorized Dealers) and money changer.

### Financial Sector

123. Bangladesh's financial sector is dominated by the banking sector. The securities market in Bangladesh is very small in comparison. In fiscal year 2008, the banking sector disbursed 201 billion taka as industrial term loans, whereas new capital accumulation through the securities market was only 8 billion taka, of which 2.5 billion is invested by Investment Corporation of Bangladesh (Government owned institution). Capital accumulation through the securities market is only 2.4% of banking sector loan disbursement. In addition, market capitalization of the securities market is only 29.26% of GDP.

### ***Banking sector***

124. As at June 2008, there were 48 banks (with 6717 branches) operating in Bangladesh. Nine of them are Foreign Commercial Banks (FCBs), four are Nationalized Commercial Banks (NCBs), five are Development Financial Institutions (DFIs) and thirty are Private Commercial Banks (PCBs).

<b>Banking system and structure – June 2007</b>				
<b>Bank type</b>	<b>No. of banks</b>	<b>No. of branches</b>	<b>Total assets (Billion Tk)</b>	<b>% of sector assets</b>
Nationalised commercial Banks	4	3383	918	33%
Development FIs	5	1359	202	7%
Commercial Banks	30	1922	1426	51%
Foreign commercial	9	53	227	9%
<b>Total</b>	<b>48</b>	<b>6717</b>	<b>2774</b>	

125. Bangladesh has a system of Islamic banking (profit-loss sharing). Out of 48 banks in Bangladesh, 6 private commercial banks are operating as full-fledged Islamic banks and 21 branches of 10 conventional banks are involved in Islamic banking. At the end of June 2008, the total investment of the Islamic banking sector was 26.8 % of all private banks and 19.3% of the total banking system.

### ***Financial Institutions - investment and finance companies, leasing companies***

126. 29 investment and finance companies, leasing companies were licensed by Bangladesh Bank under Financial Institutions Act (1993) as of December 2008. Of these one is government owned, 15 are local (private) and the other 13 are established under joint venture with foreign participation. The total amount of loan & lease of these institutions was approximately Tk1 billion as of 31 December, 2007.

### ***Insurance sector***

127. The insurance sector in Bangladesh is relatively small. There is one general insurance company and one life insurance company owned by government, 42 public owned general insurance companies and 18 life insurance companies operating in Bangladesh.

### ***Capital Market***

128. Two stock exchanges are operating in Bangladesh under license and supervision from the SEC, namely the Dhaka Stock Exchange (DSE) and Chittagong Stock Exchange (CSE). The total number of listed securities in DSE is 268 with a market capitalization of USD 11.79 billion and in CSE there are 212 listed securities with a market capitalization of USD 11.69 billion.

### ***Money Changers***

129. Two hundred and forty one Money Changers provide money exchange services to travellers within prescribed limits.

130. Money changing business is conducted by banks through 781 Authorized Dealer (AD) branches of 48 commercial banks.

### ***Micro finance Institutions***

131. Member-based micro-finance institutions (MFIs) constitute a rapidly growing segment in Bangladesh. Micro-credit programs are implemented by nationalized commercial banks, specialized banks, specialized government organizations and Non-Government Organizations (NGOs). The sector has grown rapidly, in terms of both the number of MFI and total membership. The total coverage of MFIs is approximately 18 million borrowers, with over 11 million of these borrowers classified as 'very poor', living below the poverty line. NGO micro-finance programs, in particular BRAC, and Grameen Bank dominate the sector, serving more than 60% of the total borrowers. Nearly 90% of MFI clients are female. Loan recovery rate is generally very high compared to the banking sector. Average loan size of NGO-MFIs was found around Taka 4,000 (approximately USD70).

### ***Remittance Sector***

132. Bangladesh's economy relies heavily on the very large numbers of migrant workers overseas. Legal remittance is only available through banking channels and the post office. Bangladesh's economy includes a sizable portion of inflows through informal channels, with estimates just over 50% (2005) of total remittance conducted through informal channels. There are no definitive statistics on informal inflows of remittance. Bangladesh Bank has licensed exchange houses to operate in countries with significant populations of migrant workers. So far there are 229 drawing arrangements with those exchange houses and remittance providers such western union have been granted permission to operate in Bangladesh.

133. Inward flows of remittance through formal channels are increasing. In 2002 the value of inward remittance through formal channels was approximately US\$ 2.5 billion. In 2007 the number increased to US\$ 6 billion and reached US\$ 7.9 billion in 2008.

### ***Foreign Exchange Controls***

134. Bangladesh has stringent foreign exchange controls in place for transactions with non-resident. Non-resident accounts may be opened only with prior approval of the Bangladesh Bank. Non-residents, including non-resident nationals, may buy Bangladeshi shares and securities in Bangladesh against freely convertible foreign currency remitted from abroad through the banking channel. Transactions relating to such investments including repatriation of dividend/ interest earnings and sale proceeds shall be made through a non-resident investor's Taka Account.

135. Life insurance policies of residents of Bangladesh may be issued only in Taka. Life insurance policies for non-residents may be accepted in Taka if made by cheques drawn on a non-resident Taka account with authorized dealers, or if made from funds remitted from abroad by the policy holder through authorized dealers.

136. For foreign tourists, money changers can release foreign exchange up to US \$5000 and more than US\$ 5000 with declaration in FMJ form in the airport. Money changers can release foreign exchange up to US\$500 that was encashed in local currency at their end. In case of incoming passengers holding more than 5000 USD, there is an obligation of declaration in FMJ form to the Customs Authority.

### ***Designated Non-Financial Businesses and Professions (DNFBPs)***

137. Gambling is strictly illegal, and as such there are no casinos in Bangladesh.

138. There are approximately 1000 real estate companies operating in Bangladesh, and approximately 400 of these are members of the industry body the Real Estate Association of Bangladesh (REHAB).

139. Several hundred retail jewellery stores are engaged in selling precious metals and stones in Bangladesh. Jewellers are required to register with local government authorities and provide trade certificate, tax registration certificate and development etc to engage in business. The jewellery trade in Bangladesh is not well developed and generally does not extend to large value transactions. The maximum transaction of Jewellery store is approximately only Tk 1 Million (approx \$US20,000).

140. The Bangladesh Bar Association was unable to provide any estimate on the numbers of legal professional engaged in commercial activities on behalf of clients including buying and selling of real estate, managing client money, management of bank, organization of contribution for the creation, operation or management of companies and creation, operation or management of legal person or arrangements.

141. Notaries in Bangladesh generally have limited roles in relation to the activities envisaged in the FATF standards. The Notaries ordinance, 1961 and the Notaries Rules, 1964 regulate the profession. Generally, notaries are also practicing lawyers. Notaries may have a limited role in the creation of legal persons as one of the primary roles of notaries is to verify, authenticate, certify or attest the execution of any instrument.

#### ***1.4. OVERVIEW OF COMMERCIAL LAWS AND MECHANISMS GOVERNING LEGAL PERSONS AND ARRANGEMENTS***

142. There are three basic forms available for enterprises doing business in Bangladesh: sole proprietorships, partnerships and companies. A sole proprietorship is an unincorporated business that is owned by one individual and has to obtain a trade license from a local authority. A partnership business may be incorporated or unincorporated and must obtain a Trade License form a local authority. A company (corporation) is an incorporated business that has a legal existence apart from its owners.

143. The memoranda and articles of association must be submitted to Register of Joint Stock Companies (RJSC). The work of the RJSC is governed primarily by the following acts :

- Companies Act, 1994;
- Society Registration Act, 1860;
- Partnership Act, 1932;
- Unwanted Companies Act, 1958.

144. The RJSC also has responsibilities under the following acts :

- Trade Organization Ordinance, 1961;
- Foreign Exchange Regulation Act, 1947;
- Industrial Enterprises Nationalization Order, 1972 (P.O. 27 of 1972).

145. The RJSC reviews each filed memoranda and articles of association to ensure that they contain all of the required information. The RJSC issues a certificate of incorporation to registered businesses.

146. Trusts can be formed in Bangladesh under the Trusts Act 1882. The services of a lawyer are generally required to prepare the trust deed. The trust deed must contain the names, dates of birth and addresses of the settlor, trustees and beneficiaries of the trust. The trust deed must also specify the purpose of the trust, its assets and any instructions relating to the management of those assets.

## **1.5. OVERVIEW OF STRATEGY TO PREVENT MONEY LAUNDERING AND TERRORIST FINANCING**

### **a. AML/CFT Strategies and Priorities**

147. Bangladesh has been actively pursuing AML/CFT since 2000. Bangladesh joined the APG in 2000 and commenced work to prepare and pass an AML statute. Bangladesh was the first jurisdiction in the SAARC region to pass stand-alone AML legislation with passage of the Money Laundering Prevention Act (MLPA) in 2002.

148. A priority of the Bangladesh government is to focus on implementing effective AML measures, particularly in the banking, non-bank financial institutions, money exchange house and insurance sectors. The strategy has not yet included the securities market under the AML/CFT umbrella. Accountants, lawyers, the real estate sector and dealers in precious metals and stones are also not yet subject to any AML/CFT obligations.

149. Bangladesh is taking steps to improve its CFT measures. In particular, Bangladesh has criminalized terrorist financing under the ATO (2008) and has acceded to the UN International Convention for the Suppression of the Financing of Terrorism (1999) and 11 of the 13 UN Counter Terrorism Conventions.

150. The government of Bangladesh is taking steps to update its approach to AML/CFT. In 2008 the MLPO was passed and the MLPA 2002 was repealed.

151. The AML/CFT strategy is linked to the government's efforts to address corruption, particularly in the public sector. Priority is being given to ensuring that the employees of financial institutions are subject to proper background and security checks, and are properly trained to identify customers, keep proper records and report suspicious transactions.

### **b. The institutional framework for combating money laundering and terrorist financing**

#### ***Ministry of Finance***

152. The Finance Division of Ministry of Finance is responsible for developing and coordinating AML/CFT policy in Bangladesh. The Finance Division coordinates with the Ministry of Law, Justice and Parliamentary Affairs concerning AML/CFT laws including drafting regulations to the MLPO.

#### ***Bangladesh Bank*** (Central Bank of Bangladesh)

153. Bangladesh Bank is the government entity that is responsible for administering the MLPO 2008 and is responsible for implementing a number of TF provisions contained in the ATO 2008.

#### ***Financial Intelligence Unit***

154. Bangladesh has formed an FIU within the Bangladesh Bank through establishment of the Anti-money laundering department (AMLDD) of the Bangladesh Bank as the competent authority for AML/CFT. The AMLDD is responsible for receiving and analysing STRs, including preparing STR case files to be disseminated to law enforcement authorities. The AMLDD also has a role in supervising AML/CFT preventative measures.

#### ***Ministry of Home***

155. The Ministry of Home is the government entity that is responsible for administering the Anti Terrorism Ordinance, 2008. The Ministry of Home also handles incoming and outgoing requests for extradition.



### ***Ministry of Commerce***

156. The Department of Insurance is established under the Ministry of Commerce.

### ***Registrar of Joint Stock Companies and Firms (RJSC)***

157. The Registrar of Joint Stock Companies and Firms accords registration of companies, associations and partnership firms under the Companies Act, other related acts, rules and orders.

### ***Ministry of Foreign Affairs***

158. The Ministry of Foreign Affairs is responsible for handling requests for international cooperation.

### ***Ministry of Law, Justice and Parliamentary Affairs***

159. Ministry of Law is the administrative ministry for the Sub-ordinate Judiciary, Administrative Tribunals, various other special courts and tribunals, Department of Registration, Office of the Attorney-General, the Bar Council, Law Commission, Judicial Administration Training Institute, Office of the Administrator General and Official Trustee (AGOT), Marriage Registration, Government Pleaders, Public Prosecutors, Notary Public, etc. All legislative matters, including drafting of AML/CFT related statutes are dealt with by the Ministry of Law.

### ***Office of the Attorney General***

160. The Attorney-General for Bangladesh is appointed by the President under article 64(1) of the Constitution. The office of the Attorney General deals with legal matters and is entrusted with the responsibility of giving legal advice to the Government and to plead Government cases before the Court. The Attorney General is not a permanent incumbent of the government with appointment being made on ad-hoc basis. For mutual legal assistance Ministry of Home and Attorney General's Office are designated as the central authorities for Bangladesh. The Attorney General's Office represents the government in matters on appeal, including ML and TF prosecutions that are subject to appeal.

### ***Microcredit Regulatory Authority (MRA)***

161. Microcredit Regulatory Authority was established under the 'Microcredit Regulatory Authority Act 2006 to establish an integrated regulatory framework for micro-finance institutions (MFIs). By February 2007, 4236 NGO-MFIs had applied to MRA for a licence. Only MFIs with more than 1000 borrowers will be licensed. At the time of the onsite visit the MRA was instituting its program of prudential supervision for MFIs.

### ***Law enforcement agencies***

162. The following law enforcement agencies are directly involved in AML/CFT issues:

#### ***Bangladesh Police***

163. The Bangladesh Police is the national police force of Bangladesh, serving as the primary law enforcement agency responsible for investigating all Penal Code and special criminal offences, including TF. Bangladesh Police consists of approximately 125,000 officers. It is administered by the central Interior Ministry. Major units within the police include the Criminal Investigation Departments (CID) consisting of approximately 1430 officers, Special Branch (Intelligence), training institutes and a number of metropolitan and regional police forces. The Bangladesh Police does not have a role to investigate ML offences.

### ***Anti Corruption Commission (ACC)***

164. The ACC is formed under the ACC Act 2004 and commenced operation in November 2004, replacing the Bureau of Anti Corruption (BAC). ACC is the primary anti-corruption agency in Bangladesh and is an independent commission which answers directly to the parliament. ACC functions are to combat corruption through investigation & prosecution, deterrence, preventive education and advocacy.

165. In April 2008 the ACC was designated as the sole agency responsible for investigation and prosecution of ML cases under the MLPO.

### ***National Board of Revenue (NBR) – Taxation and Customs***

166. The NBR is the taxation and customs authority of Bangladesh formed under The National Board of Revenue Order, 1972- President's Order No. 76 of 1972. NBR is under the Internal Resources Division (IRD) of the Ministry of Finance (MoF).

167. Bangladesh Customs is an administrative wing of National Board of Revenue (NBR), the body for the collection of all direct and indirect taxes, under the Ministry of Finance. The major laws enforced implemented by Customs include:

- Customs Act;
- Import and Export Control Act;
- Foreign exchange Regulation Act;
- Copyright Act;
- Patent and Design Act;
- Trademarks Act;
- Drugs Control Act;
- Special Power Act.

168. The functions of Customs include the clearance of import and export cargos, passengers and their baggage and at the seaports, airports and land boarder stations, collection of import taxes, control of smuggling, supervision of bonded warehouses, and control of exports processing zones.

### ***Rapid Action Battalion (RAB)***

169. The RAB is a joint agency paramilitary unit involved in combating crime and terrorism in Bangladesh. The RAB commenced operations in April 2004 under the Ministry of Home Affairs and consists of members of the Bangladesh Army, Navy, Air Force and Police.

170. RAB's mission includes recovering illegal arms, apprehending criminal gangs and investigating any offences as per the direction of the government. Given that the RAB has a role in counter terrorism, it may be involved in investigating TF offences.

### ***Bangladesh Rifles***

171. BDR is a paramilitary force whose principle role is border security, and includes investigating smuggling across Bangladesh's borders. The BDR's total manpower is 67,000.

### ***Supervisory authorities -with AML/CFT compliance responsibilities***

#### ***Bangladesh Bank***

172. Bangladesh Bank is responsible for licensing and supervising banks, non-bank financial institutions and money changers. Insurance companies have been supervised by Controller of Insurance, but a new regulatory regime has been proposed, which will include the creation of the

Insurance Regulatory Authority. While The Insurance Regulatory Authority Ordinance 2008 was issued under the interim government, it was not carried over as legislation following the resumption of the constitution in early 2009. A new Insurance Regulatory Authority Act 2009 and Insurance Act 2009 were at the vetting stage at the time of publication of this report.

### ***Securities and Exchange Commission (SEC)***

173. The Securities and Exchange Commission (SEC) is a statutory organisation formed under the Securities and Exchange Commission Act, 1993. Responsibilities of SEC include:

- regulating business in stock exchange and any other securities markets;
- registering and regulating the work of stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustee of trust deeds, registers to an issue, merchant bankers, underwriters, portfolio managers, investment advisors and any other intermediaries;
- registering, controlling and regulating the work of collective investment schemes;
- promoting, regulating and controlling self-regulatory organisations;
- prohibiting fraudulent and unfair trade practices relating to securities markets;
- promoting investors' education and training of intermediaries of securities market;
- prohibiting insider trading in securities;
- regulating substantial shares acquisition and company take-overs; and.
- undertaking inspection, conducting inquiries and auditing the stock exchanges, intermediaries and self-regulatory organisations in the securities market

174. The SEC operates under the regulatory framework set out by the following statutes:

- Capital Issues (Continuance of Control) Act 1947;
- Securities and Exchange Ordinance 1969;
- Securities and Exchange Commission Act 1993;
- Securities and Exchange Commission (Stock Broker, Stock Dealer and Authorised Representative) Regulation 1994;
- Securities and Exchange Commission (Merchant Banker and Portfolio Manager) Regulation 1996;
- Securities and Exchange Commission (Mutual Fund) Regulation 1997;
- Credit Rating Rules 1996;
- Securities and Exchange Commission (Control of Insider Trading) Regulation 1995;
- Securities and Exchange Rules 1987;
- Public Issue Rules 1998; and
- Right Issue Rules 1998;

175. All securities of the listed companies are handled by the stock exchange clearing houses. There is a central securities depository in Bangladesh, the Central Depository of Bangladesh Limited.

### ***Self Regulatory Organisations (SROs)***

#### ***The Institute of Chartered Accountants of Bangladesh (ICAB)***

176. The Institute of Chartered Accountants of Bangladesh (ICAB) is the National Professional Accounting Body of Bangladesh established under the Bangladesh Chartered Accountants Order 1973 (Presidential Order No. 2 of 1973). The Ministry of Commerce administers ICAB.

177. ICAB's role is to regulate the accountancy profession; ensure professional ethics and code of conduct and provide specialized training. As on 01 July 2007, the Institute had 868 members of whom 730 were resident in Bangladesh. 288 are practising as public accountants, with the balance serving in public and private sector organizations.

178. The ICAB has an Investigation and Disciplinary Committee to discipline errant public practitioners, however the 2002 World Bank ROSC on accounting indicated a lack of effectiveness of

the Disciplinary Committee and no effective measures to ensure that its members maintain current professional standards.

179. The ICAB has not yet issued any rules related to AML/CFT.

### ***The Institute of Cost and Management Accountants of Bangladesh***

180. The Institute of Cost and Management Accountants of Bangladesh is an autonomous professional body under the Ministry of Commerce. As of 30th June, 2006 membership was 745, excluding 42 members whose names have been removed from the register.

- Cost & Management Accountants Ordinance 1977; and
- Cost & Management Accountants Regulations 1980

### ***Bangladesh Bar Council***

181. The Bangladesh Bar Council is constituted under the President's Order No. 46/1972. The Council consists of fifteen members, of whom the Attorney General for Bangladesh is the ex-officio chairman. The Council includes seven representatives of each of the seven local Bar Associations. The Bar Council enrolls advocates.

182. The Bar Council constitutes tribunals to hear complaints of misconduct against advocates, and to recommend action to be taken against them if found guilty of misconduct.

183. The Bar Council publishes a monthly law journal to disseminate legal knowledge. This mainly relates to important decisions of the Supreme Court of Bangladesh.

184. The Bar Council Rules, 1972 make detailed provisions for disciplinary proceedings, enrolment of advocates, etc. The Bangladesh Bar Council has framed rules of professional conduct to be followed by advocates with regard to other advocates, clients and the public in general, and their duty to the court. The Bar Council has not yet issued any rules related to AML/CFT.

### ***Dhaka Stock Exchange***

185. The Dhaka stock exchange is a self-regulatory organisation under the supervision of the SEC.

### ***Chittagong Stock Exchange***

186. The Chittagong Stock Exchange is a self-regulatory organisation under the supervision of the SEC.

### ***c. Approach concerning risk***

187. Bangladesh does not, in general, adopt a risk-based approach to the regulatory framework or to AML/CFT in particular. Bangladesh has recognised the specific risks and levels of available regulatory capacity and has decided to focus its efforts and resources on AML controls in the largest parts of its financial sector, particularly in the banking, non-bank financial institutions, money exchange house and insurance sectors.

### ***d. Progress since the last mutual evaluation***

188. The first Mutual Evaluation of Bangladesh was conducted by a joint World Bank-IMF team in October, 2002 and adopted by the APG in September 2003. The 2002/03 assessment was undertaken prior to the revisions of the FATF 40 Recommendations and utilized the 2002 FATF Assessment methodology. The first ME took place just after the enactment of the MLPA, 2002 which, came into force on 30 April 2002, and few provisions had been implemented.

189. The MLPO 2008, which was adopted as the Money Laundering Prevention Act (2009), consolidated AML statutory provisions to reflect a number of the recommendations in the 20003 APG Mutual Evaluation Report and the revision of the FATF 40 + 9 Recommendations. The MLPO adopted a new definition of the criminal offence of ML and expanded the list of predicate offences to 16 offences. The MLPO increased the number of reporting agencies, clearly provided for the establishment of the FIU and designated Anti-Corruption Commission as the investigative authority. The MLPO provided powers for Bangladesh Bank to freeze any bank account up to 60 days, empowered Bangladesh Bank to enter into MOUs to share information, and established tipping off and safe harbor provisions.

190. The ATO 2008, which was adopted as the Anti-Terrorism Act (2009), created a statutory regime for CFT. The ATO defined and criminalized TF; empowered Bangladesh Bank to monitor the banking industries to prevent TF; empowered Bangladesh Bank to freeze any bank account up to 60 days; required banks to implement CFT internal controls; and support CFT-related international cooperation comply with the international standards.

191. Bangladesh established an FIU in the Anti Money Laundering Department (AMLD) of Bangladesh Bank in 2007 under the provision of MLP Act, 2002. The FIU is collecting STRs from commercial banks, non-banking financial institutions, money changers, insurance companies and money remitters as per the MLPO (2008) and from banks as per ATO (2008). A cash transaction reporting system was introduced from April, 2006. Bangladesh FIU has taken steps to apply to become a member of the Egmont group.

192. Bangladesh FIU has signed MOUs with Philippines, Malaysia, Nepal and Indonesia and is working towards signing MOUs with 20 other countries.

193. AMLD has conducted AML training programs for 1400 officials from 48 commercial banks. The AMLD commended on-site inspections of commercial banks in 2005.

194. The AMLD is serving as the AML/CFT regulator and supervisor and has taken measures to issue binding instructions for preventative measures, including internal controls. AMLD has commenced on-site and off-site supervision of the reporting organizations to ensure compliance of rules/regulations/directives issued by the department.

195. Bangladesh has pursued agency to agency international cooperation and has recently entered into four MOUs with foreign FIUs pursuant to the MLPO. Mutual Legal Assistance (MLA) lacks effective statutory frameworks, but despite this Bangladesh has made progress in providing MLA when requested.

## 2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

### Laws and Regulations

#### **Background issue – status of ordinances under the caretaker government**

196. Both the key AML and CFT statutes were issued as ordinances during the period of caretaker government (2006-2008). The caretaker government issued a large number (over 120) of ordinances during the period that parliament was suspended. The constitutional status of those ordinances was challenged during the caretaker period. On 13 July 2008 the High Court Division of the Supreme Court of Bangladesh ruled that the President of an un-elected government does not have the constitutional power to promulgate ordinances, unless such ordinances regard the general election concerning which the government was brought to power to organise. The same court also declared all ordinances made by the present military-controlled government to be ultra vires and unconstitutional. However, on 21 July 2008 the Appellate Division of the Supreme Court stayed the order and set aside the finding.

197. In February 2009 the newly constituted government submitted 54 ordinances to the parliament for ratification and reissuing as acts of parliament. The Money Laundering Prevention Ordinance 2008 and Anti-Terrorism Ordinance 2008 were submitted to the newly elected parliament in February 2009 and passed as Acts of parliament, namely Money Laundering Prevention Act 2009 and Anti-Terrorism Act 2009. The acts were passed with retrospective effect from the day of their issuance as ordinances.

### **2.1 CRIMINALISATION OF MONEY LAUNDERING (R.1 & 2)**

#### **2.1.1 DESCRIPTION AND ANALYSIS**

198. Bangladesh criminalises ML pursuant to the *Money Laundering Prevention Ordinance 2008* [the MLPO], which came into effect on 15 April 2008. The MLPO repealed the *Money Laundering Prevention Act 2002* [the MLPA]. See Annex 3 for a full copy of the MLPO.

199. The MLPO adopts some of the key recommendations made in the first Mutual Evaluation of Bangladesh undertaken by the World Bank in late 2002 and adopted in 2003. The MLPO contains detailed definitions of money laundering and property, a list of predicate offences, and measures for the confiscation of laundered property. In addition it expands the list of organisations that are subject to AML requirements, and provides a mechanism for Bangladesh to enter agreements with foreign governments and foreign agencies for the exchange of information.

#### Key definitions

200. Money laundering is defined at section 2(k) of the MLPO as follows:-

- (i) transfer, conversion, remitting abroad or remit or bring from abroad to Bangladesh the proceeds or properties acquired through commission of a predicate offence for the purpose of concealing or disguising the illicit origin of the property or illegal transfer of properties acquired or earned through legal or illegal means.
- (ii) to conduct, or attempt to conduct a financial transaction with an intent to avoid a reporting requirement under this ordinance.
- (iii) to do or attempt to do such activities so that the illegitimate source of the fund or property can be concealed or disguised or knowingly assist to perform or conspire to perform such activities.

201. The term 'proceeds' is clearly not defined in the MLPO. Authorities claim that they would rely on Section 2(k) which seems to incorporate an implied definition, referring to 'the proceeds or properties acquired through commission of a predicate offence'.

202. Property is defined at section 2(o) to mean:-

- (i) any kind of assets, whether tangible or intangible, movable or immovable, however acquired;  
or
- (ii) cash, legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets.

203. Section 2(q) provides that 'predicate offence' means:

"...the offences, the proceeds derived from committing those offences are laundered or attempt to be laundered and will include the following offences:

- i. corruption and bribery
- ii. counterfeiting currency
- iii. counterfeiting documents
- iv. extortion
- v. fraud
- vi. forgery
- vii. illicit arms trafficking
- viii. illicit dealing in narcotic drugs and psychotropic substances
- ix. illicit dealing in stolen or other goods
- x. kidnapping, illegal restraint, hostage-taking
- xi. murder, grievous bodily injury
- xii. woman and child trafficking
- xiii. smuggling and unauthorised cross-border transfer of domestic and foreign currency
- xiv. robbery or theft; trafficking in human beings and migrant smuggling
- xv. dowry; and
- xvi. any other offence which Bangladesh Bank with the approval of the Government and by notification in the Official Gazette declares as predicate offence for the purpose of this Ordinance."

204. Section 27 of the MLPO provides that if any offence under the MLPO is committed by a company, then every proprietor, director, manager, secretary, or other officer or representative who is directly involved in the offence shall be deemed to be guilty of the offence, unless they can show that the offence was committed without their knowledge or that they used due diligence to prevent it. Company is defined as:

any statutory body, partnership concern, association, commercial organisation, or organisation formed with one or more than one person.

205. Director is defined as ..."any partner or member of the Board of Directors, by whatever name it is called."

206. Section 27 further provides that if a company is found to be engaged directly or indirectly in money laundering, its registration shall be liable to be cancelled.

### **Criminalisation on the of the Vienna and Palermo Conventions**

207. The money laundering offence is drafted in a manner which is broadly compliant with the terms of Article 3 of the Vienna Convention, namely:

the conversion or transfer of property, knowing that such property is derived from serious offences; or from an act of participation in such offences, for the purpose of concealing or disguising the illicit origin of the property, or of assisting persons involved in the commission of such an offence to evade the legal consequences of their actions; 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 offences.

208. It is also largely compliant with the terms of Article 6 of the Palermo Convention, although there are gaps in its coverage of predicate offences and property as described below.

209. The wide provision under section 2(k)(iii) of the MLPO, “to do or attempt to do such activities so that the illegitimate source of the fund or property can be concealed or disguised or knowingly assist to perform or conspire to perform such activities”, falls short of the element of “the concealment or disguise or the true nature, source, location, disposition, movement, rights with respect to, or ownership of property...” provided in the Conventions.

210. The element of the acquisition, possession or use of property is also missing.

### **Property**

211. The definition of 'property' under the MLPO is able to cover most types of property. However it does not specifically include property situated outside Bangladesh. Certain types of laundering activity in relation to property which is situated outside Bangladesh is able to be covered by the prohibition in section 2(k) of the conduct ‘remit or bring from abroad to Bangladesh’ the proceeds of crime.

212. As noted, the MLPO does not define ‘proceeds’ or ‘proceeds of crime’. Section 2(k) incorporates an implied definition, referring to ‘the proceeds or properties acquired through commission of a predicate offence’.

213. A concern is the fact that such proceeds are not stated to include proceeds which have been indirectly acquired through the commission of crimes. The ML offence clearly prohibits conduct of converting proceeds of crime. But it does not prohibit the laundering of proceeds which have already been converted into another form and are thus the indirect proceeds of crime.

214. This deficiency can be rectified by amendment of the relevant part of section 2(k), so that it refers to ‘the proceeds or properties directly or indirectly acquired through commission of a predicate offence’.

### **Autonomy of the offence**

215. The MLPO does not contain any provision requiring that a person be charged or convicted of a predicate offence in order to prove that property is proceeds of crime. As the MLPO had not been used at the time of the onsite visit, there were some doubts amongst police and prosecutors as to whether it would be necessary to convict a person of a predicate offence. The team noted that for a prosecution using the second limb of 2(k)(i) of the MLPO for illegally transferring money acquired or earned through illegal means, there is no need for a predicate offence to be proven.

216. For the avoidance of doubt, Bangladesh might consider the inclusion of a provision making it clear that this is not a prerequisite to proof of proceeds of crime.

### **Predicate offences**

217. The MLPO adopts a list-based approach to the range of predicate offences covered by the money laundering offence. The list of predicate offences is set out at section 2(q). While the list



contains a number of the designated categories of offences there are some significant omissions, these being:

- terrorism and terrorist financing;
- sexual exploitation;
- counterfeiting and piracy of products;
- environmental crime;
- smuggling (apart from smuggling of money);
- piracy; and
- insider trading and market manipulation.

218. Section 2(q)(xvi) provides a streamlined procedure for the inclusion of further predicate offences. This is by means of a declaration of Bangladesh Bank, with the approval of the Government and by notification in the Official Gazette.

219. The MLPO does not expressly extend the money laundering offence to the proceeds of predicate offences which have occurred outside Bangladesh. As noted, 'predicate' offence is defined at section 2(q) and the predicate offences are listed therein. However the predicate offence definition has not been extended to include such conduct where it occurs in another country.

220. It was asserted by Bangladesh authorities that this requirement had been satisfied, because the money laundering offence includes bringing proceeds of crime to Bangladesh from abroad. However it does not follow from this that the crime which generated the proceeds also occurred abroad.

221. The Assessment Team considered whether this criterion might be indirectly satisfied. Most of the offences which make up the categories of predicate offences listed in section 2(q) are criminalised within the *Penal Code 1860*. Section 4 of the *Penal Code* provides that:

The provisions of this Code apply also to any offence committed by... (1) any citizen of Bangladesh in any place without and beyond Bangladesh.

222. It is explained in section 4 that the word 'offence' includes every act committed outside Bangladesh which if committed in Bangladesh, would be punishable under the *Penal Code*.

223. It appears therefore that the money laundering offence can apply to predicate offences occurring in another country, but only where the predicate offence has been committed by a Bangladesh national. This has the potential to inhibit effectiveness, as it will not be possible in all cases to establish that the overseas predicate offence has been committed by a Bangladesh national.

### **Application to persons who commit the predicate offence**

224. There is no provision in the MLPO which precludes charging a person with both the predicate offence and the money laundering offence. ML triable under the Criminal Law Amendment Act, 1958 and section 6(1)(b) of the said Act authorises the Court to frame more than one offence and if the ML arises out of predicate offence, they may be tried in a same trial.

### **Ancillary offences**

225. The MLPO provides for appropriate ancillary offences. Section 4(2) extends the money laundering offence to the acts of persons who aid, abet or conspire in the commission of money laundering offences. In addition section 2(k)(iii) extends the money laundering offence to persons who attempt to carry out money laundering activities.

226. The terms aid, abet and conspire are not defined in the MLPO. However section 120A of the *Penal Code* defines a criminal conspiracy as an agreement between two or more persons to do, or cause to be done

1. an illegal act, or
2. an act which is not illegal by illegal means.

227. A small concern is that there is no provision in the MLPO extending the money laundering offence to those who counsel or procure its commission.

228. The MLPO makes no specific provision for the ML offence extending to the proceeds of crime which are derived from conduct that occurred in another country. However as noted, with the assistance of the *Penal Code* the money laundering offence is able to extend to conduct carried out overseas by Bangladesh nationals, which would have constituted a predicate offence had it occurred in Bangladesh. There is no requirement within the *Penal Code* that the overseas conduct be an offence in that country.

## **Recommendation 2**

229. Section 4(2) in providing the penalty for the money laundering offence, refers to ‘any person’ who engages in it.

230. ‘Person’ is not defined in the MLPO. Its application to natural persons might be inferred from the fact that section 4(2) provides for a penalty in the form of a prison term.

231. The money laundering offence expressly requires proof of an intentional element only for the conduct described within section 2(k)(ii) and (iii). Nothing in the MLPO precludes prosecutors from relying upon objective factual circumstances to invite an inference of that intentional element.

## **Criminal liability for legal persons**

232. As noted the MLPO extends liability for the money laundering offence to ‘any person’. ‘Person’ is not defined in the MLPO. However section 11 of the *Penal Code* 1860 defines ‘person’ to include:

... any company or association, or body or person, whether incorporated or not.

233. An intention to extend criminal liability to legal persons might be inferred from section 27 of the MLPO. In the event that ‘any offence under this Ordinance is committed by a company’, criminal liability is extended to directors and other officers. As noted above, section 27 defines ‘company’ in broad terms. Section 27(2) further provides that if a company is found to have engaged in money laundering, its registration shall be liable to cancellation.

## **Parallel criminal, civil or administrative proceedings**

234. Nothing in the MLPO precludes the availability of civil or administrative proceedings in conjunction with criminal proceedings. If any civil liability is necessary to be tried, authorities can exercise civil jurisdiction under the provisions of Code of Civil Procedure, 1908 along with related laws.

## **Effective, proportionate and dissuasive criminal, civil or administrative sanctions**

235. The penalty prescribed within section 4(2) for natural persons is reasonably proportionate and dissuasive, being a prison term for a minimum period of 6 months and a maximum period of 7 years, and forfeiture of the property involved with the offence.

236. Where a legal person has been convicted of money laundering, the only penalty option would appear to be liability to cancellation of registration: section 27(2). There is no provision for a fine, or for forfeiture independent of a prison term.

237. It is recommended that Bangladesh make provision for a proportionate and dissuasive penalty for offences committed by legal persons, such as the imposition of a significant fine.

## Effectiveness

### Rec 32 - Statistics of Investigation and prosecution of ML offences in Bangladesh

Year	MLPA 2002				
	investigations	Prosecutions	Verdict/Conviction	Pending	Under investigation
2004	43	43		32	-
2005	42	41		30	01
2006	39	28		18	11
2007	27	24		23	02
2008	-	-	2	--	-?
<b>Total</b>	<b>151</b>	<b>136</b>	<b>2</b>	<b>134</b>	<b>14</b>

238. Statistics indicate that since 2002, there has been a reasonable number of investigations and prosecutions under the now repealed MLPA. At the time of the onsite visit 78 ML cases were under investigation, and a further 123 ML cases were before the courts. Statistics were not provided to confirm whether any prosecutions of legal persons had been commenced.

239. At the time of the onsite visit the Assessment Team was advised that none of the court proceedings commenced under the MLPA had yet been completed.

240. The Assessment Team requested a breakdown of the MLPA prosecutions based on the type of predicate offence alleged in each, but this information was not provided to the assessors. Anecdotal information suggests that a large number are prosecutions based on the prohibition of hundi – that is, prosecutions under section 2(i)(ii) of the MLPA, of transferring funds through illegal means.

Year	MLPO 2008				
	Investigations	Prosecutions	Conviction	Pending	Under investigation
2008	3				3
<b>Total</b>	<b>3</b>				<b>3</b>

241. At the time of the onsite visit (August 2008) there had been no investigations or prosecutions under the MLPO, as it only came into force in April 2008. Three investigations were initiated.

242. The statistics indicate that the Bangladesh criminal justice system is afflicted by serious court delays. In an attempt to redress this situation, the MLPO provides that ML cases will be prosecuted in Special Judge Courts, in the manner that corruption offences are currently prosecuted. This should have the desirable effect of reducing court delays for ML prosecutions, as well as developing

expertise among the Special Judges. However this reform may worsen delays in the regular criminal courts unless additional judicial resources are provided.

243. A significant issue for effectiveness is that the MLPO confers upon the Anti-Corruption Commission [ACC] the sole responsibility of investigating the ML offence. Money laundering is now a scheduled offence under the *Anti-Corruption Commission Act 2004* [the ACC Act]. Section 9 (i) of the MLPO provides that:

...the offences under this Ordinance considered as scheduled offences of the *Anti-Corruption Commission Act 2004* will be investigated by the Anti-Corruption Commission or by an officer empowered by Anti-Corruption Commission for this purpose.

244. The ACC Act appears to limit the powers of the ACC to delegate investigation responsibility, for example to the Bangladesh Police.

245. This is a considerable departure from previous practice. Since the enactment of the MLPA in 2002, most of Bangladesh's money laundering investigations have been conducted by the Criminal Investigations Department (CID) of Bangladesh Police. As discussed in section 2.6 of this report, there are major issues concerning the capacity of the ACC to take on its new ML investigative role.

## 2.1.2 RECOMMENDATIONS AND COMMENTS

246. The MLPO incorporates some of the key requirements of FATF Recommendations 1 and 2. In addition reasonable efforts appear to have been made to investigate and prosecute ML offences under the MLPO's predecessor, the MLPA.

247. There are however some significant gaps in the coverage of the MLPO, as detailed below. In addition there are grounds for concern about the effectiveness of the new arrangements for the investigation and prosecution of ML offences.

248. In relation to the MLPO it is recommended that Bangladesh:

- utilise section 2(q)(xvi) to expand the list of predicate offences to include the missing categories of offences;
- amend the relevant part of section 2(k), so that it covers the proceeds or properties *directly or indirectly* acquired through commission of a predicate offence;
- amend the definition of 'predicate offences' within the MLPO, so that they extend to conduct that occurred in another country;
- expressly provide that conviction of a predicate offence is not a pre-requisite to proof that property is proceeds of crime;
- expressly provide that criminal liability for money laundering extends to legal persons;
- provide a proportionate and dissuasive penalty for offences committed by legal persons; and
- extend the ML offence to those who counsel or procure its commission.

249. It is recommended that Bangladesh vigorously pursue implementation of the ML offence to prosecute ML offences.

### 2.1.3 COMPLIANCE WITH RECOMMENDATIONS 1 & 2

	Rating	Summary of factors underlying rating
<b>R.1</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Incomplete coverage of predicate offences</li> <li>• Proceeds do not include property indirectly acquired from predicate offence</li> <li>• Predicate offence conduct occurring in another country is not fully covered</li> <li>• Effective use of the new ML offence cannot be established</li> </ul>
<b>R.2</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Penalty for ML offences committed by legal persons is not proportionate or dissuasive</li> <li>• Concerns about effectiveness of new arrangements for investigation and prosecution of ML offences</li> </ul>
<b>R.32</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Unconsolidated statistics relating to investigation and prosecution of the ML offence</li> </ul>

## 2.2 CRIMINALISATION OF TERRORIST FINANCING (SR.II)

### 2.2.1 DESCRIPTION AND ANALYSIS

250. Bangladesh's *Anti-Terrorism Ordinance 2008* [ATO 2008] came into effect on 11 June 2008. Prior to its enactment Bangladesh relied upon the *Explosive Substances Act 1908* and the *Special Powers Act 1974* to criminalise conduct in the nature of terrorism. Both these Acts are confined in their scope to activity which takes place within Bangladesh or threatens the security of Bangladesh. In addition they do not criminalise the provision or collection of funds for terrorist-related activity. See Annex 3 for the full text of the ATO.

#### **Key definitions**

251. The ATO 2008 criminalises 'terrorist financing' at section 7 as follows:

1. Whoever provides or incites to provide money, service or property and intends that it should be used, or has reasonable ground to suspect that it will or may be used for the purpose of terrorist acts, commits an act of terrorist financing.
2. Whoever receives money, service or property and intends that it should be used, or has reasonable ground to suspect that it will or may be used for the purpose of terrorist acts, commits an act of terrorist financing.
3. Whoever arranges money, service or property and intends that it should be used, or has reasonable ground to suspect that it will or may be used for the purpose of terrorist acts, commits an act of terrorist financing.
4. A person guilty of the offence as described in subsections 1 to 3 shall be punished with imprisonment for a term which may extend to 20 years and it shall not be less than 3 years, to which a fine may be added.

252. 'Terrorist acts' are defined at section 6 to mean:

...striking terror in the people or any section of the people in order to compel the Government of Bangladesh or any other person to do or abstain from doing any act with intent to threaten the unity, solidarity, security or sovereignty of Bangladesh through:

- killing, injuring grievously, abducting a person or causing damage to the property of a person; or
- possessing or using explosives, inflammable substance, firearms, or any other chemical to achieve the purpose of sub-section(a).

253. The term 'funds' is not generally used within the ATO 2008 and is not defined. However 'property' is defined at section 2(14) to mean:

.. property of every description, whether corporeal or incorporeal, moveable or immoveable, tangible or intangible, and profit derived from such property, and includes money or negotiable instruments capable of being converted into money.

254. Sections 10, 11, 12 and 13 criminalise the respective conduct of *conspiring, attempting, abetting and instigating* the commission of an offence under the ATO 2008.

255. In addition Chapter 4 of the ATO 2008 provides a mechanism for the proscription of organisations which are reasonably suspected to be involved in terrorist acts. Provision is made for the freezing of their bank accounts and the forfeiture of their funds and assets.

#### **Criminalisation of terrorist financing consistent with Article 2 of the TF Convention.**

256. As noted, the term 'funds' is not defined in the ATO 2008. However section 2(14) defines 'property' in broad terms. The definition does not specifically include legal documents or instruments evidencing title to or interest in property. It might be argued that the description:

'property of every description, whether corporeal or incorporeal, moveable or immoveable, tangible or intangible'

indicates an intention to cover all possible forms of property.

257. The terms of section 7 are generally compliant with the requirement to criminalise conduct of providing or collecting funds with the intention that they should be used, or in the knowledge that they are to be used, to carry out a terrorist act.

258. Section 7(1) criminalises the provision of money, services and property with this intention. While the *collection* of funds is not specifically referred to, arguably this is covered by the prohibition in section 7(3) of arranging money, services and property.

259. A significant omission is the failure to criminalise the provision or collection of funds with the intention that they should be used, or are to be used, by a terrorist organisation or terrorist individual. The section 7 offences criminalise only the provision, receipt or arranging of finance where the defendant intends/ suspects that it will or may be used for terrorist acts.

260. A further and equally significant omission is the failure to criminalise terrorist financing, where the terrorist act is intended to threaten the security of States other than Bangladesh. Under section 6 of the ATO 2008, an essential element of the terrorist act is that it be carried out:

...with intent to threaten the unity, solidarity, security, or sovereignty of Bangladesh.

261. This requirement in turn restricts the scope of the terrorist financing offence, confining it to the funding of acts of this nature.

262. It was suggested by Bangladesh authorities that section 5 of the ATO 2008 extends the scope of the terrorist act to include acts which threaten the security of other States. Section 5 provides that:

Whoever commits an offence beyond Bangladesh against any national or property of Bangladesh which, if committed in Bangladesh would have been punishable under this Ordinance, shall be dealt with according to the provisions of this Ordinance in the same manner as if such offence had been committed in Bangladesh.

263. But the effect of this provision is merely to extend criminal liability to persons outside Bangladesh whose terrorist acts threaten the people and property of Bangladesh.

264. It was further suggested that section 5(3) of the ATO 2008 extends criminal liability to those whose terrorist acts threaten other States. In the translation of the ATO 2008 which was supplied to the Assessment Team, section 5(3) provides that:

Whoever commits an offence beyond Bangladesh from within Bangladesh shall be dealt with according to the provisions of this Ordinance in the same manner as if such offence had been committed in Bangladesh.

265. The meaning of this provision is so unclear that the Assessment Team considered it likely to have been mistranslated. Bangladesh authorities advised that an official English translation of the ATO 2008 would not be available for many weeks. Despite repeated requests an official English translation of the ATO was never provided. In the circumstances the Assessment Team decided that it must regard this particular requirement of Criterion II.1 as unmet.

266. The three species of terrorist financing criminalised by section 7 require only that the funds are provided with the intention that they should be used, or with reasonable ground for suspecting that they may be used, for the purpose of terrorist acts. There is no requirement that the funds were actually used to carry out or attempt to carry out a terrorist act, or that the provision of funds be linked to a specific terrorist act.

267. As noted the ATO 2008 prohibits ancillary conduct of conspiring, abetting, instigating or attempting to commit offences of terrorist financing. Aside from instigating, none of these terms is defined in the ATO. The *Penal Code 1860* provides an acceptable definition of criminal conspiracy.

268. It is curious that the ATO 2008 does not criminalise the ancillary conduct of aiding the commission of an offence. The Assessment Team noted however that most dictionary definitions of 'abet' incorporate the activity of 'encouraging' or 'assisting'. In the circumstances the omission of 'aid' as an ancillary category was not considered to be a significant practical impediment.

### **Terrorist financing as a predicate offences for money laundering**

269. At the time of the onsite visit the offence of terrorist financing was not included in the list of predicate offences for money laundering.

270. The ATO 2008 partially complies with the requirement that TF offences should apply regardless of whether the terrorist financier is in the same country or a different country from the one in which the terrorist organisation is located or the terrorist act will occur. The purpose of section 5(1) is apparently to extend criminal liability to any person who, while outside Bangladesh, carries out conduct which is prohibited by the ATO 2008. Applying the definitions of terrorist act and terrorist financing, section 5 might be relied upon to prosecute:

- a person who, while outside Bangladesh, carried out a terrorist act which threatened a national or property of Bangladesh; and
- a person who, while within Bangladesh, provided, received or arranged funds for that activity.

271. It is less evident that ATO Section 5 enables persons to be charged with terrorist financing in the converse situation: that is where they, being outside Bangladesh, raise funds for an act of terrorism that is to take place within Bangladesh. This is because the manner in which the offending conduct is described within section 5 (commission of ‘an offence beyond Bangladesh against any national or property of Bangladesh’) is less apt to be applied to conduct of raising funds, than it is to conduct of committing terrorist acts.

272. It is possible that a court would be prepared to characterise conduct of raising funds outside Bangladesh, for an act of terrorism that will threaten Bangladesh, as ‘an offence beyond Bangladesh against any national or property of Bangladesh’. In the Assessment Team’s view however it would be preferable to amend the provision to put its intention beyond doubt.

273. All three species of offences in section 7 are drafted so that establishing whether there is a basis for suspicion as to the possible use of the funds can be determined by reference to an objective standard.

274. It is by no means evident that criminal liability for terrorist financing under the ATO 2008 can apply to legal persons. The section 7 offence provisions do not impose criminal liability upon any ‘person’. Instead, criminal liability is imposed upon ‘whoever’ carries out the prohibited conduct. This term is not defined in the ATO 2008. Nor is it used or defined in the *Criminal Procedure Code* or the *Penal Code*. Further, the prescribed penalty for an offence against section 7 does not encourage the view that criminal liability extends to legal persons. The penalty is a prison term for a minimum 3 years and a maximum 20 years ‘to which a fine may be added’. There is thus no provision for a penalty independent of a prison sentence.

275. Nor do the provisions of Chapter 4 of the ATO 2008 assist in this regard. These are measures for the proscription of organisations which commit or are involved in terrorist acts, and for the forfeiting of their funds and assets. It is not the purpose or the effect of these provisions to criminalise any activities of terrorist financing which these organisations may engage in.

276. In relation to natural persons, the penalty for committing offences of terrorist financing is effective and proportionate. Its dissuasive effect cannot be judged as there have not yet been any terrorist financing investigations or prosecutions.

## **Effectiveness**

277. No investigations or prosecutions of terrorist financing have been commenced under provisions of the ATO 2008. Bangladesh has in recent years conducted prosecutions for terrorism offences following a series of coordinated terrorist attacks across Bangladesh. As the TF provisions have come into effect only very recently, there have not been any investigations or prosecutions in this area. As discussed in Recommendation 27 there is an apparent lack of capacity for investigating and prosecuting the TF offence.

### **2.2.2 RECOMMENDATIONS AND COMMENTS**

202. The enactment of the ATO 2008 is an important addition to Bangladesh’s counter-terrorism regime and provides the basis for prosecution of terrorism and terrorist financing offences. However further work is needed to make the legislative scheme compliant with the requirements of SR II.

203. In relation to terrorist financing it is recommended that Bangladesh:

- criminalise the provision or collection of funds with the intention that they should be used, or are to be used, by a terrorist organisation or terrorist individual;
- extend the scope of the terrorist act to include acts which threaten the security of other States;



- include terrorist financing in the list of predicate offences for money laundering;
- include in the definition of property in the ATO 2008, legal documents or instruments evidencing title to the types of property set out therein;
- making clear provision for the extension of criminal liability to legal persons, and providing an effective penalty for legal persons convicted of TF; and
- vigorously pursue the implementation of the ATO 2008 to prosecute TF in Bangladesh.

### 2.2.3 COMPLIANCE WITH SPECIAL RECOMMENDATION II

	Rating	Summary of factors underlying rating
<b>SR.II</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• No coverage of providing or collecting funds with intention they will be used by terrorist group or terrorist individual</li> <li>• No coverage of terrorist financing where terrorist acts threaten security of States other than Bangladesh</li> <li>• Terrorist financing is not a predicate offence for ML</li> <li>• Not evident that terrorist financing offence applies to legal persons</li> <li>• No basis as yet to evaluate effectiveness of implementation</li> </ul>
<b>R.32</b>	<b>PC</b>	

## 2.3 *CONFISCATION, FREEZING AND SEIZING OF PROCEEDS OF CRIME (R.3)*

### 2.3.1 DESCRIPTION AND ANALYSIS

204. Bangladesh does not have a comprehensive Act for the confiscation, freezing and seizing of criminal proceeds and instruments. Various procedures are available under the following Acts and Ordinances:

- the MLPO 2008;
- the ATO 2008;
- the *Code of Criminal Procedure 1898* [the CPC]; and
- the *Anti-Corruption Act 2004* [the ACC Act].

205. Collectively the relevant provisions within the above Acts and Ordinances provide a basis for confiscation and freezing action in relation to ML, TF and other serious offences. Overall however they do not provide comprehensive coverage of such action.

206. The MLPO and the ATO 2008 contain forfeiture and freezing provisions which are specific to money laundering and terrorist financing. Analysis of provisional measures and confiscation for TF are included under SRIII (para 286 – 303) and are not repeated here. In relation to money laundering, the ACC Act is also important to an assessment of Bangladesh's forfeiture and freezing regime, for two reasons:

- the ACC is now the investigating organisation for ML offences. In cases where the ACC obtains money laundering convictions, it is possible that the ACC will use the forfeiture powers available under the MLPO. However this is one of many areas about which there is

uncertainty. It may be that the ACC will instead seek to use its forfeiture powers under the ACC Act, particularly where the predicate offence is corruption-related; and

- the ACC Act provides for forfeiture and freezing of proceeds of corruption offences. The Assessment Team was informed that these offences constitute a large proportion of serious predicate offending in Bangladesh.

**Confiscation of laundered property or proceeds from, or instruments of, the commission of ML, FT or other predicate offences, and property of corresponding value**

The MLPO

207. Section 17(1) of the MLPO provides that:

If a person is accused (sic) [*NB some confusion that the translation might have been “convicted”*] of the offence of money laundering under this ordinance the court shall give an order to be passed for forfeiture of the property involved with the offence wherever situated, within or outside Bangladesh, if the people of the country have an interest in it.

208. Section 17(1) appears to permit forfeiture of both proceeds and instruments of money laundering, since it applies to property ‘involved with the offence’. As noted ‘property’ is broadly defined within the MLPO. In addition section 17(1) specifically applies to property within and outside Bangladesh.

209. An incongruity is the precondition that a person be *accused* of the offence of ML. On the face of it this appears to enable forfeiture without the need for conviction. However the Assessment Team was informed that in practice a conviction is required before property can be forfeited, except where the accused person has absconded or died. This interpretation is supported by the consistent use of the term ‘the convicted person’ elsewhere in sections 17 and 18. It seems likely therefore that the term ‘accused’ in section 17(1) is a mistranslation.

210. A second and more significant incongruity is the use in section 17(1) of the phrase ‘if the people of the country have an interest in it’, with reference to the power of the court to order forfeiture of property. When the Assessment Team asked what this phrase referred to, Bangladesh authorities provided the example of public money which had been ‘siphoned’ out of Bangladesh as a result of corruption offences, and which was property rightfully belonging to the Bangladesh people. This raises a concern as to whether the forfeiture power under section 17(1) is able to apply in circumstances where public funds are not involved – for example, where money is derived from drug trafficking. If so this would be an undesirable restriction on the scope of the forfeiture provision.

211. It appears that in limited circumstances a court is able to order forfeiture of property of corresponding value. Section 17(3) of the MLPO provides that:

If a person in good faith and for proper value had purchased the property before the order of forfeiture passed by the court 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 order the convicted person to deposit the sold value of the said property in the government treasury within a timeframe determined by the court.

The AC Act

212. Forfeiture measures in the AC Act are found at section 27(1), as follows:-

If there are sufficient and reasonable grounds to believe that a person in his/her own name or any other person on his/her behalf is in possession and has obtained ownership of moveable or immoveable property through dishonest means and the property is not consistent with the known sources of his/her income and if he/she fails to submit to the court during trial a satisfactory

explanation for possessing that property, then that person shall be sentenced to a prison term ranging from a minimum of 3 years to a maximum of 10 years, and these properties shall be forfeited.

213. While this provision contains some useful features, including a reverse onus on the defendant to prove that the property was obtained by honest means, its scope is restricted in a number of ways:

- forfeiture appears to be confined to the proceeds of crime, and is not able to be applied to instruments as well;
- the phrase ‘moveable or immoveable property’ lacks specificity and it is not clear that it is able to extend to all the necessary types of property. Property is not elsewhere defined in the ACC Act; and
- it is not apparent that property can include property *indirectly* acquired through dishonest means. Despite this the Assessment Team is aware that the ACC obtains forfeiture of a wide range of properties including real estate, funds in bank accounts, gold and securities. It is likely that much of this property is the converted or indirect proceeds of corruption offences.

#### The Criminal Procedure Code (CPC)

214. The CPC contains a general provision for forfeiture of property upon conclusion of an inquiry or investigation. Section 517(1) is as follows:

When an inquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise of any property or document produced before it or in its custody or regarding which any offence appears to have been committed or which has been used for the commission of any offence.

215. Property is stated to include:

...not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

216. It is clear from the terms of section 517 that both proceeds and instruments of crime can be forfeited, as well as property of corresponding value.

#### The MLPO

217. Section 17(1) authorises forfeiture of ‘the property involved with the offence’. It is not clear that this includes property which is indirectly derived from the offence. However section 17(3) authorises forfeiture of indirect proceeds to a limited degree, in that it permits forfeiture of property which has been converted and which is in that way an indirect proceeds of crime.

218. It is implicit that property is liable to forfeiture even where it is held by a third party. Section 18 of the MLPO allows a third party who has a title, interest or right in the forfeited property to apply to the court for return of the property. In considering the application the court is required among other things to consider whether the third party was involved in the commission of the offence.

#### The ACC Act

219. The issue of whether the ACC Act enables forfeiture of property which is indirectly the proceeds of crime is discussed above.

220. It is clear from the terms of section 27 that forfeiture can apply to property held in the names of third parties.

#### The CPC

221. A forfeiture order pursuant to section 517 of the CPC can apply to property held in the names of third parties, as well as to the indirect proceeds of crime.

#### **Provisional measures, including freezing and/or seizing**

#### The MLPO

222. Section 14(1) empowers the court, upon application of the investigating organisation, to make an order:

... for freezing or attachment of property wherever situated within or outside Bangladesh in which the State has interest under this Ordinance.

223. Like section 17, section 14 uses the phrase ‘in which the State has interest’. This gives rise to a similar concern as to whether section 14 can enable freezing orders over property where it might be difficult to demonstrate that the State has an interest. In order to meet international standards, both provisions require amending to allow them to apply to property regardless of whether it might be considered to be property in which the State of Bangladesh has an interest.

224. It is unclear whether section 14 enables freezing action to be taken with respect to property which is an instrument of money laundering. Section 14(1) is silent on this point. However section 14(2) requires an application for freezing to be accompanied by preliminary evidence ‘for believing that the property is involved in money laundering’. This indicates that freezing action may be taken in respect of instruments as well as proceeds.

225. The MLPO also empowers the Bangladesh Bank to issue orders to banks and financial institutions to suspend a transaction or freeze an account ‘where Bangladesh Bank has reasonable grounds to suspect that the transaction involves proceeds of crime’.

#### The ACC Act

226. There is no specific provision authorising the ACC to seek orders for the freezing or seizure of property. However the Assessment Team is aware that the ACC routinely does so, particularly in the case of real estate. It has been suggested that in such cases the ACC relies upon the general power conferred upon it by section 19(1)(f), to take action in relation to:

any other matter required for realising and fulfilling the aims and objectives of [the AC Act].

#### The CPC

227. The CPC confers a power upon police officers to seize property pursuant to section 98. However the context indicates that the power is restricted to seizure of physical objects. The CPC does not contain any provisions for freezing of property.

#### **Initial freezing or seizing application to be made ex parte or without prior notice**

228. The MLPO is silent as to whether the initial freezing application under section 14(1) may be made ex parte or without prior notice. One of the grounds upon which a freezing order can be made, is that there is a substantial likelihood the property will become unavailable before the conclusion of the criminal proceedings (refer section 14(2)(d)), suggesting that the initial application is intended to be made without notice.

229. As noted the AC Act does not contain any specific provision in relation to freezing or seizing orders.

### **Powers to identify and trace property**

#### The MLPO

230. The MLPO confers only the following investigative powers:

- Bangladesh Bank is able to order banks and financial institutions to freeze accounts to allow a period for investigation where it is suspected that a transaction involves proceeds of crime: section 23(1)(c);
- Bangladesh Bank shall share information with the designated investigative agency, the ACC:: section 23(2).
- the FIU is able to seek information regarding suspected money laundering from another country on the basis of ‘any contract signed or arrangements’: section 24(2);
- on demand from Bangladesh Bank, reporting institutions must provide (in the case of open accounts) identification information and (in the case of closed accounts) previous transaction records: section 25(1)(c).

231. No other identifying or tracing powers are contained in the MLPO. The above do not provide law enforcement authorities with adequate powers to identify and trace property that is suspected of being the proceeds or instrument of crime.

#### The AC Act

232. The AC Act confers strong powers upon the ACC for the identification and tracing of property in corruption investigations. These include powers under sections 19 and 23 to:

- compel a suspect or any other person who may be holding property on his or her behalf to submit a statement of assets and liabilities and to furnish any other information;
- summons witnesses, interrogate them under oath and take evidence under oath;
- request discovery of any document;
- call for public records;
- issue warrants for examination of documents;
- require any person to furnish information in matters relating to any inquiry or investigation;
- call for any information from the government or any authority or organisation under the government; and
- require the co-operation of the government or any authority or organisation under the government in the manner determined by the ACC.

233. An issue arises as to the powers available to the ACC when it is required to identify or trace property in the course of money laundering investigations. The MLPO does not contain comprehensive provisions for the identification and tracing of property. If the ACC intends to rely upon the identification and tracing powers contained in the ACC Act, amendments will be needed making it clear that those powers are able to be used in the course of money laundering investigations as well as corruption investigations.

#### The CPC

234. Relevant provisions within the CPC include:

- the power to summon persons to produce documents or things which are considered necessary for investigation or prosecution (but not documents or things in the custody of banks or bankers unless it is for the purpose of investigating certain offences such as theft, breach of trust, fraud and forgery: section 94(1);
- the power to search pursuant to a search warrant: section 96(1);
- the power to search premises suspected of containing stolen property, forged documents or counterfeit material: section 165;
- the power to compel the attendance of witnesses and to examine them: sections 160 and 161.

### **Rights of bona fide third parties**

#### The MLPO

235. As noted, section 18 makes provision for bona fide third parties to seek return of property which is liable to forfeiture. In addition:

- notice of a freezing order must be published in the Government Gazette and in a well-circulated national daily newspaper: section 14(3);
- notice of a forfeiture order must be given through registered post to any person who controls the property: section 17(4);
- notice and details of the forfeited property must be published in the Government Gazette and in at least two well-circulated national newspapers: section 17(4);
- there is provision for forfeiture of property of corresponding value, where the property the subject of the offence has been sold to a bona fide purchaser: section 17(3);
- any person 'aggrieved' by an order for forfeiture may lodge an appeal in the High Court against the forfeiture decision: section 19(1).

236. The ACC Act does not contain any provisions regarding the rights of bona fide third parties.

237. Section 517(4) of the CPC enables a person to claim entitlement to property which is subject to forfeiture.

238. Neither the MLPO, the ACC Act, nor the CPC contains any provisions to take steps to prevent or avoid actions.

### **Effectiveness**

#### **Rec 32 – Statistics of provisional measures and confiscation**

239. Bangladesh provided statistics of property seized in four ML cases under the MLPA 2002, however the power used to seize this property was unable to be cited by the authorities.

**Table: Property seized by Bangladesh Police (CID) in four ML cases**

Case	Year	Taka	Total
Case #1	2002	34,214,655	95,170,393 (approx \$US 1.4 million)
Case #2	2004	10,849,137	
Case #3	2005	36,639,501	
Case #4	2006	13,467,100	

**Table: Actions to freeze, seize confiscate proceeds of crime under the Criminal Procedure code**

<b>Actions to freeze, seize confiscate proceeds of crime</b>				
<b>Year</b>	<b>Number of cases</b>	<b>Section of the CrPC</b>	<b>Property frozen/seized</b>	<b>Confiscation orders</b>
<b>2004</b>	3	Sections 102 & 103	TK 10,849,137	
<b>2005</b>	3	Sections 102 & 103		TK-628,390
<b>2006</b>	14	Sections 102 & 103	TK 35,237,600	
<b>2007</b>	3	Sections 102 & 103		
<b>2008</b>	-			
<b>Totals</b>	<b>23</b>		<b>46,086,737</b>	<b>TK-628,390</b>

240. While the MLPO establishes provisional measures and confiscation, there have not been any attachment orders or prosecutions under the MLPO, and thus no confiscation orders have been made.

241. The MLPO's predecessor, the MLPA 2002, did not make any provision for provisional measures or confiscation of proceeds of ML. In any event as noted, no cases under the MLPA have yet reached conclusion in the courts.

242. The absence prior to the MLPO of a legal basis for confiscating proceeds of ML has prevented Bangladesh from having an effective confiscation program in this area. Confiscation is now available for ML offences. However effectiveness will depend on resolution of the issues surrounding the transfer to the ACC of the ML investigative and prosecution function. These concerns have been discussed above in relation to Recommendations 1 and 2, and they apply likewise in relation to Recommendation 3.

243. In relation to corruption, the ACC provided statistics of cases prosecuted in 2007 and 2008. The statistics detailed numerous forfeitures of money and property, indicating that confiscation as a legal tool in such cases is being vigorously and extensively pursued.

### 2.3.2 RECOMMENDATIONS AND COMMENTS

244. Bangladesh's various laws dealing with freezing and confiscation permit partial compliance with the requirements of Recommendation 3. However they do not provide comprehensive coverage of Bangladesh's obligations in this area.

245. It is recommended that Bangladesh enact comprehensive measures to establish powers and mechanisms to identify, freeze and confiscate proceeds and instruments of all serious offences.

246. To achieve better compliance with Recommendation 3, Bangladesh should consider enacting a single and comprehensive Proceeds of Crime statute to deal with the identification, freezing and confiscation of proceeds and instruments of all serious offences.

247. In the absence of a single and comprehensive Proceeds of Crime statute, in relation to the MLPO Bangladesh should consider:

- amending section 17 to ensure that it permits forfeiture of property indirectly derived from money laundering offences;
- amending sections 14 and 17 to allow a court to consider freezing or confiscation action in relation to property linked to the commission of a money laundering offence, regardless of whether it might be regarded as property in which the State of Bangladesh has an interest; and

- inserting comprehensive powers to identify and trace property suspected of being linked to the commission of money laundering offences.

248. In the absence of a single and comprehensive Proceeds of Crime statute, in relation to the AC Act Bangladesh should consider:

- providing a definition of property which incorporates all the necessary types of property, including property which is the indirect proceeds of corruption offences;
- inserting a specific provision allowing for freezing of property suspected of being linked to the commission of corruption offences;
- expanding section 27 to include confiscation of instruments of corruption offences; and
- making provision for the rights of bona fide third parties.

249. In addition, if in the course of ML investigations the ACC intends to rely upon the AC Act's identification and tracing powers, which are currently restricted to corruption investigations, in the course of ML investigations. Appropriate amendments will be needed to give a proper statutory basis to such use such powers in ML investigations.

### 2.3.3 COMPLIANCE WITH RECOMMENDATIONS

	Rating	Summary of factors underlying rating
<b>R.3</b>	PC	<ul style="list-style-type: none"> <li>• Freezing and confiscation action in ML offences requires finding that Bangladesh State has an interest in the property</li> <li>• It is not clear that the law allows forfeiture of property indirectly derived from ML offences</li> <li>• No comprehensive powers to identify and trace property suspected of being linked to ML offences</li> <li>• In relation to corruption offences, scheme for freezing and confiscation is not comprehensive</li> <li>• Freezing and confiscation of terrorist related funds is not comprehensively covered.</li> <li>• Overall implementation of provisional and confiscation measures is weak</li> </ul>
<b>R.32</b>	PC	<ul style="list-style-type: none"> <li>• Comprehensive statistics were not available in relation to provisional measures and confiscation</li> </ul>

## 2.4 FREEZING OF FUNDS USED FOR TERRORIST FINANCING (SR.III)

### 2.4.1 DESCRIPTION AND ANALYSIS

250. Prior to the enactment of the ATO 2008, Bangladesh had no specific measures to take action in accordance with UN Security Council Resolutions 1267 and 1373. Despite this Bangladesh did in fact take action in relation to the UN Sanctions Committee Consolidated List by distributing the 1267 lists to banks and instructing them to check accounts and freeze in cases of any matches.

251. Bangladesh authorities advised that the legal basis which Bangladesh relied upon to take this action was section 4(f) of the now repealed *Money Laundering Prevention Act 2002*. This provision authorised Bangladesh Bank 'to perform any other functions for carrying out the purposes of this Act.'



252. Bangladesh has given instructions to banks and other financial institutions, to take search for matching entities and consider provisional measures based on the above section. The Assessment Team notes that this provision was unlikely to have provided a proper legal basis for such action, as the stated purpose of the MLPA was to make provisions for the prevention of money laundering, rather than terrorist financing.

253. The ATO 2008 now provides a basis for limited compliance with the requirements of UNSCR 1267. Bangladesh authorities advised that if Bangladesh were to receive a sanctions order from the UN 1267 Committee, the Ministry of Home Affairs as the responsible implementing agency would immediately advise both Bangladesh Bank and the Department of Immigration of the details of the order. These agencies would then take the necessary steps to ensure that bank accounts of the relevant entities were frozen and the physical movement of related persons was restricted.

254. Bangladesh Bank identified section 15(1)(g) of the ATO 2008 as the legal basis for issuing orders to financial institutions to freeze bank accounts. Section 15(1)(g) empowers Bangladesh Bank to:

..issue instructions to banks directing them to take preventive measures against terrorist financing activities.

255. According to section 15(3), any bank which fails to comply with a section 15 instruction issued by Bangladesh Bank shall be liable to pay a fine not exceeding 10 million Taka (approximately USD 15,000).

256. Bangladesh authorities advised that they have not yet had cause to use the new provisions within the ATO 2008.

#### **Laws and procedures to freeze terrorist funds or other assets in accordance with UNSCR 1267**

257. The ATO 2008 does not contain any specific provisions authorising Bangladesh Bank to take action in relation to:

- the funds or other assets owned or controlled by designated entities or persons or entities associated with them including funds derived from funds or other assets owned or controlled directly or indirectly by them or by persons acting on their behalf or at their direction.

258. Instead, Bangladesh Bank identified section 15(1)(g) of the ATO 2008 as the legal basis for issuing orders to financial institutions to freeze bank accounts in response to a UNSCR 1267 designation. Section 15(1)(g) provides for Bangladesh Bank to

‘issue instructions to banks directing them to take preventive measures against terrorist financing activities’.

259. A significant concern is whether a general provision such as the above provides a sufficient legal basis for the strong and very specific action which a jurisdiction must take to meet its obligations under UNSCR 1267.

260. A further concern is the scope of the ‘terrorist financing activities’ referred to in section 15(1)(g), which is not defined. The Assessment Team considered that it was likely to be interpreted by reference to the section 7 definition of terrorist financing. As noted elsewhere in this report, that definition is defective in that:

- it does not criminalise terrorist financing where the acts of terrorism are intended to threaten States other than Bangladesh; and
- it does not criminalise financing with the intent that the funds will be used by terrorist groups and individuals.

261. In light of the above, the Assessment Team had concerns that section 15(1)(g) could not be relied upon to authorise preventive measures where the terrorist acts of the organisation in question did not threaten the State of Bangladesh. Similarly, it was concerned there may be difficulties relying upon section 15(1)(g) where the funds in question are held in the accounts of terrorist groups and it cannot be clearly established that they may be used for the purpose of terrorist acts.

262. As a further matter, the Assessment Team noted that section 15(1)(g) only authorises Bangladesh Bank to issue instructions for preventive measures to banks. There is no provision for the issue of orders to organisations which might be holding other types of property, such as real estate or securities.

### **Laws and procedures to freeze terrorist funds or other assets in accordance with UNSCR 1373**

263. Bangladesh would rely upon Chapter 4 of the ATO 2008 to implement UNSCR 1373, whereby an organisation may be declared to be a proscribed organisation and its banks accounts frozen.

264. Section 18 of the ATO empowers the Bangladesh Government to proscribe an organisation if it has reasonable grounds to believe that it is involved in terrorist acts. Section 17 provides that an organisation is involved in terrorist acts if it:

- (a) commits or participates in terrorist acts;
- (b) prepares for terrorist acts;
- (c) abets or encourages terrorist acts;
- (d) supports or assists any organisation concerned with terrorist acts; or
- (e) is otherwise concerned in terrorist acts.

265. Once the organisation has been proscribed the Government is able to freeze all its bank accounts pursuant to section 20(1)(b).

266. The scheme established in Chapter 4 meets some of the requirements of UNSCR 1373. It provides a legal basis for the Bangladesh Government to designate an organisation as a proscribed organisation, on the basis of a belief based on reasonable grounds that it is involved in terrorist acts. The Government is then authorised to freeze the organisation's bank accounts and, in certain circumstances, to confiscate its funds and assets.

267. However the scheme is not able to fully meet the requirements of UNSCR 1373, for the following reasons:

- 'terrorist act' is defined in section 6 of the ATO in a manner which confines its scope to the performance of acts which threaten the security of Bangladesh alone. This casts doubt on the legal capacity of the ATO 2008 to authorise proscription and freezing action in respect of organisations which threaten the security of States other than Bangladesh.
- Chapter 4 provides no basis for the freezing of property other than bank accounts. (The Assessment Team noted however that section 20(3) authorises the *confiscation* of 'funds and assets' of the organisation: see discussion below).

268. A further deficiency is the confinement of the section 20 freezing mechanism to funds of the proscribed organisation, and not also to:

- funds of entities owned or controlled, directly or indirectly, by proscribed organisations; and
- funds of entities acting on behalf of or at the direction of proscribed organisations.

269. There may be an argument that although section 20 does not authorise freezing the funds of these additional entities, the additional entities may find themselves liable to proscription on the ground that they have ‘supported or assisted an organisation concerned with terrorist acts’, or that they are ‘otherwise concerned in terrorist acts’ (sections 17(d) and (e)).

270. However there will be circumstances where this argument is unable to be applied, leaving a gap in the coverage of the legislation.

271. The Ministry of Home Affairs provided statistics of organisations that have been banned by executive order or by issuing press notes:

**Table: Proscribed entities under Section 18 of the ATO:**

Name of the Entity	Date	Reasons
Horkatul Zihad Al Islami	17-10-2005	Self declared terrorist organization.
Zagrata Muslim Janata Bangladesh (JMJB)	23-02-2005	These entities tried to damage the peaceful life and property of Bangladesh through dacoity, murder, using explosive and threats. They use religious sentiment to misguide persons and create unrest
Jama'tul Mujahedin	23-02-2005	
Sahadat-E-Al-Hikma Party Bangladesh	09-02-2003	The programs declared by the entity are threatening to peace -harmony of the society and security of the people.

272. Authorities advised that Bangladesh has not yet taken any action to implement its obligations under UNSCR 1373 through application of Chapter 4 of the ATO 2008.

#### **Giving effect to actions initiated under the freezing mechanisms of other jurisdictions**

273. The ATO 2008 does not contain any express measures for Bangladesh to consider or give effect to requests from other jurisdictions to designate an organisation and to freeze its property. Nor was the Assessment Team aware of any clear procedures in place for the prompt determination of such requests.

274. Bangladesh authorities pointed to section 38(1) of the ATO. The purpose of this provision is to allow Bangladesh to ‘render all necessary legal assistance’ as may be requested by a foreign state, where:

... a terrorist act is committed, abetted, attempted, conspired or financed in such a manner that the territory of foreign state is involved, or the terrorist act is so committed, abetted, attempted, conspired or financed in Bangladesh from another sovereign state or from Bangladesh in another foreign state.

275. This provision suffers from the defect underlying all provisions within the ATO 2008 which utilise the term ‘terrorist act’: it is restricted to circumstances where the terrorist act threatens the security of Bangladesh alone. A further factor inhibiting its effectiveness is that it cannot authorise assistance unless and until Bangladesh and the requesting state enter a formal agreement or exchange of letters specifying the terms and conditions of the assistance to be rendered: section 38(2).

276. Article 4(x) of the South Asian Association of Regional Cooperation (SAARC) Convention on Mutual Assistance in Criminal Matters requires member countries to take measures to:

locate, freeze and confiscate any funds or finances meant for the financing of acts of terrorism in the territory of either party.

277. In addition Article 13 of the SAARC Convention requires a member country to notify another member country if it has reason to believe that funds are being collected for terrorist acts to take place in that other country, and to take steps to search, seize or confiscate such funds and to prosecute relevant persons.

278. Bangladesh's cabinet ratified the SAARC Convention on 9 March 2009. As a result Bangladesh has a legal basis to consider requests from fellow SAARC jurisdictions to initiate freezing action.<sup>2</sup>

279. As noted, in relation to UNSCR 1267 action Bangladesh authorities advised that Bangladesh Bank would rely on the power given to it pursuant to section 15(1)(g) of the ATO 2008.

280. The problems associated with this approach have been identified above – in particular the capacity of such a general provision to authorise the very specific measures required for compliance with SR III. Criterion III.4 requires freezing action in relation to property *owned or controlled, wholly or jointly, directly or indirectly*, by the named entities, as well as property derived from such property. It is unclear whether section 15(1)(g) would withstand challenge as to its capacity to freeze funds which the proscribed organisation owns or controls jointly, or which the proscribed organisation indirectly controls.

281. In addition, any freezing action which section 15(1)(g) might authorise is plainly restricted to the freezing of bank accounts, and not other types of assets.

282. In relation to action taken pursuant to UNSCR 1373, Bangladesh authorities advised that they would rely upon the power conferred by Chapter 4 of the ATO 2008 to freeze bank accounts of proscribed organisations. The ATO 2008 is silent as to whether this power extends to bank accounts which are only partly controlled, or are indirectly controlled, by the proscribed organisation.

283. In addition it is apparent that freezing activity pursuant to section 20 is restricted to bank accounts and does not extend to other types of property. In this regard The Assessment Team noted that the ATO 2008 defines property in a manner that, while it falls short of the full requirements of SR III, is reasonably broad [‘property of every description, whether corporeal or incorporeal, moveable or immoveable, tangible or intangible, and profit derived from such property’]. However neither section 15 nor section 20 utilises the term property, referring only to bank accounts.

### **Communicating actions taken to the financial sector**

284. Bangladesh authorities advised that a pro forma letter of instruction is the means by which Bangladesh Bank has directed banks to take the necessary freezing actions.

### **Guidance to financial institutions and other entities**

285. The Assessment Team was advised that no circulars had yet been issued to the financial sector to provide them with guidance as to their obligations in this area.

### **Procedures for considering de-listing requests and for unfreezing funds**

286. An organisation which has been proscribed pursuant to section 18 is able to seek a review of the proscription order from the Government: section 19(1). If the review is not granted the applicant may file an appeal to the High Court.

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<sup>2</sup> As ratification of the SAARC Convention occurred outside of the cut-off date for this assessment, it has not been considered when finalising the compliance rating.

287. This avenue for review appears to be available only to the proscribed organisation itself, and not to other entities which may have been affected by the proscription and its consequences.

288. There are no publicly known procedures for unfreezing funds of persons inadvertently affected. Nor are there publicly known procedures for a persons or entities whose funds have been frozen to challenge that measure with a view to having it reviewed by a court.

### **Procedures for authorising access to funds or other assets frozen pursuant to SR 1267**

289. There does not appear to be any law or mechanism for obtaining access to frozen funds. Bangladesh authorities advised they had not received any such requests.

### **Confiscation and provisional measures of terrorist-related funds in other contexts**

#### ***Forfeiture***

##### The Criminal Procedure Code

290. As outlined at section 2.3 above, the CPC contains a general provision for forfeiture of property upon conclusion of an inquiry or investigation (Section 517(1)). Section 517 enables forfeiture of both proceeds and instruments of crime, as well as forfeiture of property of corresponding value.

##### The Anti-Terrorism Ordinance

291. The ATO 2008 contains two distinct avenues for forfeiture of property which is the proceed of a terrorist financing offence. It should be noted however that both avenues are restricted in their scope by two significant factors:

- the limited definition of ‘terrorist act’ under the ATO, which in turn restricts the scope of the terrorist financing offence, confining it to the funding of acts which threaten the security of Bangladesh alone; and
- the limited scope of the terrorist financing offence, which criminalises funding only where the funds are intended for the purpose of terrorist acts, and not for the use of terrorist groups or individuals generally.

292. As a result Bangladesh’s laws cannot provide fully meet requirements for provisional measures related to terrorist funds.

293. Section 34(2) of the ATO provides as follows:

Proceeds of terrorist acts, whether held by a terrorist or by any other person and whether or not such person is prosecuted or convicted under this Ordinance, shall be liable to be forfeited in favour of the Government.

Explanation: Proceeds of terrorist acts means any money, property or assets earned or obtained/derived through commission of any offence under this Ordinance.

294. This section, when read with the aid of section 2(14) of the ATO 2008, provides coverage of a reasonably broad range of property. Section 2(14) defines property to mean:

.. property of every description, whether corporeal or incorporeal, moveable or immoveable, tangible or intangible, and profit derived from such property, and includes money or negotiable instruments capable of being converted into money.

295. Not specifically included are legal documents or instruments evidencing title to or interest in property. Arguably the phrase ‘property of every description, whether corporeal or incorporeal,

moveable or immoveable, tangible or intangible' indicates an intention to cover all possible forms of property. For the avoidance of doubt however it would be preferable for section 2(14) to be amended to expressly include legal documents or instruments.

296. Section 34 therefore enables forfeiture of:

- property which is the proceeds (but not the instrument) of terrorist financing offences;
- property which is the indirect proceeds of such offences;
- property of corresponding value;
- property which is held by a third party.

297. In addition section 34 authorises forfeiture of such property whether or not the person holding the property has been charged with or convicted of an offence under the ATO.

298. A second avenue for forfeiture of terrorist-related property is provided by section 20(3) of the ATO, as follows:

Funds and assets of the proscribed organisation shall be confiscated in favour of the state if found to be obtained illegally or used for an offence under this Ordinance.

299. Curiously this provision avoids the term 'property' which as noted is defined at section 2(14), instead using the term 'funds and assets'. The use throughout the ATO 2008 of different terminology makes it difficult to identify with accuracy the range of property which is liable to forfeiture.

300. 'Proscribed organisations' are defined at section 17 of the ATO and the categories have been set out above.

301. The Government is able to proscribe an organisation if it has reasonable grounds to believe that it is involved in terrorist acts. In that event section 20(3) may be used to obtain forfeiture of any of its funds and assets which have been derived illegally or have been used for an offence under the ATO. Confiscation is thus available for any property of the proscribed organisation which can be identified as either a proceed or an instrument of a terrorist financing offence.

302. The ATO contains a further provision for forfeiture in the form of section 35. Section 35 provides that:

Where any property is seized or attached on the ground that it constitutes proceeds of terrorist acts and the Judge is satisfied in this regard, he may order forfeiture of such property, whether or not the person from whose possession it is seized or attached, is prosecuted under this Ordinance.

303. The inclusion of this provision is confusing for two reasons:

- a confiscation provision for proceeds of terrorist acts or terrorist financing is already provided in the form of section 34(2)
- unlike section 34, section 35 is not accompanied by the Explanation that 'proceeds of terrorist acts' means proceeds of any offence under the ATO. As a result it is unclear whether section 35 authorises forfeiture of proceeds of terrorist financing in addition to proceeds of terrorist acts.

## **Freezing/seizing and tracing**

### The CPC

304. The CPC confers a power upon police officers to seize property pursuant to section 98. However the context indicates that the power is restricted to seizure of physical objects. The CPC contains only limited provision for freezing property. Section 516A CPC makes provision for a court to make orders, pending the conclusion of a trial, for 'the proper custody' of property regarding which an offence appears to have been committed or which appears to have been used for the commission of an offence. There is thus provision in the CPC for a species of freezing order, although the context indicates that it is restricted to physical property.

### The ATO

305. Despite the terms of section 35, there is no section in the ATO 2008 which authorises freezing or seizure of property on the ground that it constitutes proceeds of terrorist acts. Pursuant to section 20(1)(b), the Government may freeze and seize all bank accounts of a proscribed organisation. However this provision does not apply specifically to property which is a proceeds or instrument of a terrorist financing offence. In addition it applies only to bank accounts and not to other forms of property.

306. The ATO 2008 confers on law enforcement agencies limited powers to trace or identify property. Proscribed organisations are required to submit to the competent authority all accounts of income and expenditure and disclose all sources of income: section 20(2). This aside, investigating authorities would have to rely upon provisions contained within the CPC (Sections 94(1); and 96(1)) as discussed at Recommendation 3.

307. There are no provisions to void actions in TF investigations.

## **Protection for the rights of bona fide 3rd parties**

308. As noted, a proscribed organisation is able to seek judicial review of a proscription order: section 19. This right is restricted to the proscribed organisation itself.

309. Section 36 gives to the holder of property which is subject to forfeiture, the opportunity to resist forfeiture on the basis that he or she purchased it for proper value, without knowledge of its illicit origin. An order for forfeiture may be appealed to the High Court by 'any person aggrieved' by it: section 37.

## **Monitoring and enforcing compliance**

310. Section 15 of the ATO 2008 provides Bangladesh Bank with a series of powers and obligations directed toward the prevention and detection of terrorist financing, and the monitoring of compliance on the part of the banking industry.

311. The legal framework requires Bangladesh Bank to:

- monitor and observe the activities of banks; issue instructions to banks directing them to take CFT preventive measures; inspect banks for the purpose of detecting CFT STRs; and provide training to staff and officers of banks for the purpose of detection of CFT STRs.

312. Some training has taken place to banks on CFT.

313. Section 16 of the ATO 2008 imposes a statutory obligation upon banks to:

take necessary measures with due vigilance and diligence to detect and prevent transactions connected with offences under this Ordinance through banking channels.

314. Boards of all banks are required to approve and issue relevant instructions, and to ensure compliance with instructions issued by Bangladesh Bank.

315. There is no criminal sanction for non-complying banks. Section 16(3) imposes only an administrative sanction, of liability to a fine not exceeding 10 lakh (1 million) Taka (approx US\$15,000).

### **Effectiveness**

316. . The FIU reported that 1267 lists were issued to reporting institutions, with instructions, whenever they were received. No property had been frozen in relation to UNSCR 1373 designations. Bangladeshi measures to implement UNSCR 1267 has resulted in small amounts of funds (less than \$1500 each for Benevolence International Foundation and Al-Haramain Islamic Foundation, Bangladesh and two other entities) being frozen in four cases under the MLPA-related instructions. The property remains frozen and has not been subject to legal challenge by any party. Bangladesh has not given effect to the freezing mechanisms of another country.

## **2.4.2 RECOMMENDATIONS AND COMMENTS**

317. Due to its very recent proclamation the ATO 2008 has not been used to implement either SR 1267 or SR 1373. It is thus too early to evaluate its effectiveness in these areas. As noted, prior to the enactment of the ATO 2008 Bangladesh took some actions to implement SR 1267 under a general legal provision.

318. The ATO 2008 provides Bangladesh with a basis for compliance with some of its obligations under SR III. However the measures contained within the ATO 2008 do not permit Bangladesh to fully implement those obligations. In addition the ATO 2008 does not fully provide for freezing and confiscation of terrorist-related funds in other contexts. These are deficiencies which can only be remedied by careful amendment.

319. It is recommended that Bangladesh enact legislation to amend the ATO 2008 so as to:

- make all the changes and additions listed in the ‘Recommendations’ section of SR II of this report;
- provide a clear legal basis for the consideration of requests from foreign countries for the initiation of freezing orders;
- comprehensively define ‘terrorist’ property to include all the types of property and all the types of owning and controlling entities required by SR 1267 and SR 1373;
- provide a clear legal basis for the issue of directions to banks and other organisations to freeze terrorist property in response to SR 1267 and SR 1373 orders;
- provide for the protection of third parties;
- provide a criminal sanction for non-complying organisations;
- make clear provision for the freezing of property which is a proceed or instrument of a terrorist financing offence; and
- amend section 34 to allow forfeiture of the instruments of terrorist financing offences.



### 2.4.3 COMPLIANCE WITH SPECIAL RECOMMENDATION III

	Rating	Summary of factors underlying rating
<b>SR.III</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• While Bangladesh has taken steps to implement its legal obligation to the UN under UNSCR 1267 using the MLPO and ATO, MLPO does not clearly extend to freeze terrorist funds and the ATO is only apparently able to cover funds of terrorist entities which threaten the security of Bangladesh</li> <li>• The control of terrorist property not comprehensively covered</li> <li>• No legal basis to issue freezing orders to insurance or securities entities</li> <li>• No criminal sanction for non-complying organisations</li> <li>• No clear guidance has been provided to financial institutions that may be holding funds.</li> <li>• Beyond taking a writ to the High Court, there is a lack of publicly known procedures for unfreezing funds or appropriate procedures for authorizing access to funds, nor appropriate procedures through which a person whose funds are frozen to challenge the measure.</li> <li>• Freezing and confiscation of terrorist-related funds in other contexts is not comprehensively covered</li> </ul>
<b>R.32</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• No clear statistics are kept on implementing SR.III</li> </ul>

## **Authorities**

### **2.5 THE FINANCIAL INTELLIGENCE UNIT AND ITS FUNCTIONS (R.26)**

#### **Background**

320. With the passage of the MLPA in 2002, a number of FIU functions were performed by the AMLD of the Bangladesh Bank. The MLPA 2002 provided the Bangladesh Bank with powers of receipt, analysis and dissemination, but also investigation and supervision powers. Section 4(f) of the now repealed MLPA which stipulated the responsibility of the Bangladesh Bank:

shall be to resist and prevent offences relating to money laundering and for the purposes of resisting such offensive activities, perform any other functions for carrying out the purposes of this Act.

321. The FIU of Bangladesh was formally established in May 2007 as a unit within the AMLD of the Bangladesh Bank.

322. The passage of the MLPO in 2008 provided a clear legal basis for the FIU and its functions (sections 23 & 24).

323. The ATO (2008) does not refer to the FIU, but section 15 outlines the power/authority of the Bangladesh Bank to take necessary measures to prevent and detect transactions intended to commit offences under the ATO through any banking channel. Bangladesh Bank is empowered to:

- Call for STRs from banks;
- Compile and preserve all statistics and records;
- Create and maintain a database of all suspicious transaction reports;
- Analyze the suspicious transaction reports;
- Issue an order in writing to any bank to suspend a transaction for a period of 30 days where it has reasonable grounds to suspect that the transaction involves connection with terrorist acts, and extend the order so passed for another 30 days;
- Disseminate CFT STRs to law enforcement agencies.

#### **2.5.1 DESCRIPTION AND ANALYSIS**

324. The FIU is designated as the competent authority to receive STRs and CTRs from the reporting agencies as set out under section 23 of the MLPO. The AMLD also received public 'tip offs' regarding ML. Under section 15 of the ATO the Bangladesh Bank has the power/authority to call for and receive STRs related to TF. The FIU is presently performing such functions.

#### **Receipt**

325. At present the FIU receives all STRs in paper form via messenger, facsimile or email. The STRs are received by the senior management of the FIU, and this role is delegated to an acting officer in the General Manager's absence. All STRs received are entered onto the database by the analysis wing. It may take more than a day before the analysis wing receives the STR for entry onto the database and analysis can commence.

326. CTRs are received on CD-rom via post and entered onto the database as batch files. CTRs are received from reporting institutions on a monthly basis.

## **Analysis**

327. The analysis wing of the FIU has nine staff divided into three or four teams undertaking the analysis function. Analysts utilise i2 software and Analyst Notebook to assist their analysis.

328. FIU analysts work closely with the police in their work to analyse STRs and CTRs to develop financial intelligence ahead of a possible dissemination. The FIU works closely with the Central Intelligence Cell of the Police CID to check police data holdings.

329. The quality and timeliness of the analysis is limited somewhat by the lack of direct access to administrative and law enforcement information. Relevant records must be requested via letters from the FIU. Most records of other agencies are kept in manual form, which adds to delays in retrieving data in response to FIU request letters.

330. The analysis function of the AMLD is assisted by bi-monthly feedback sessions between the FIU analysis wing and the Police CID, who share law enforcement insights. FIU analysts undertake strategic analysis by visiting the CID to identify crime trends.

331. The FIU database includes STRs received over a number of years, as well as CTR data. The FIU is affected by regular daily blackouts during office hours (up to two hours per day) during which analysts are unable to access the FIU database and other analytical tools, including desktop computers. This is a serious impediment to effective analysis.

332. Typically the analysis wing takes between two weeks and 3 months to complete analysis of a complex STR.

333. CTRs are not subject to electronic matching at time of their entry onto the database to correlate new records with existing CTRs or previous analysis results.

## **Dissemination**

334. Since 2002 the Bangladesh Bank / FIU has made 82 disseminations in relation to money laundering. The function of the FIU to disseminate information to the investigation agency is indirectly defined in the MLPO, with section 23 (1)(g) and 23 (2) providing for the Bangladesh Bank to carry out any related function to meet the objectives of the MLPO; and the Bangladesh Bank shall provide information to the investigating agency if the investigation agency requests information relating to ML or suspicious transactions. The investigation agency is the ACC.

335. At the time of the onsite visit, only two disseminations had been made to the ACC under the MLPO 2008. The FIU had made a number of approaches to attempt to establish procedures for the ACC to receive disseminations from the FIU.

336. The ATO (Section 15) authorises dissemination of STRs and other information to the police for investigations of terrorism offences.

337. The FIU does not produce regular summary reports to share typologies and trend information with other law enforcement agencies.

## **Guidance on the manner of reporting**

338. The AMLD has issued guidance on the manner of reporting via AML Circular No.2 (July 2002) and Circular No.3 (December 2002). The instructions include a pre-set STR reporting form attached to the circular, which includes the following details:

- reporting officer particulars;

- information on the suspected person(s) including name, address, nationality, passport, National ID number; account number and name and address of the introducer for opening the account;
- description of the unusual/suspicious transaction including amount of money involved, dates of transaction, type of transaction; and
- reasons for treating the transaction as unusual/suspicious transaction

339. Circular 19 (2008) updated the reporting forms for STRs related to ML and TF to reflect obligations in the MLPO and ATO (both issued in 2008).

340. Instructions also set out the process to be followed by compliance officers within reporting institutions analysing suspicious transactions, escalating such instances to the Central Compliance Unit, which will examine and analyze the report received and record its observation on the form and if the incident is considered to be reportable, send it to the AMLD.

341. The AMLD has issued Circulars No. 8, 9 (2005), 10 (2006) and 13 (2007) regarding the submission of the cash transaction reports (CTR) with specific threshold, procedures, and instructions on completing the forms. Circular 8 was directed to all commercial banks in respect to cash deposits and withdrawals of 50000 (BDT) or above in any account. Banks have to submit these forms on a monthly basis to the Bangladesh Bank in both hard and soft copy. The Bangladesh Bank has developed data entry software for CTRs and provided it to all commercial banks for reporting CTRs electronically to Bangladesh Bank.

#### **Access to financial, administrative and law enforcement information to support analysis**

342. The FIU does not have direct access to any financial, administrative, or law enforcement databases such as National Board of Revenue, Bangladesh Police, or Customs. Most records of other agencies are kept in manual form, which adds to delays in retrieving data following a request by the FIU.

343. The FIU can and has requested further information from the police and other enforcement agencies. The turn around time for receiving information varies and is on a case by case basis. On average it can take between fifteen to thirty days to receive a response. This results in very significant delays in the analysis process. There are no clear channels to conduct urgent requests for information from law enforcement agencies.

#### **Obtaining additional information from reporting parties**

344. Section 23 of the MLPO provides powers to the AMLD to call for and receive from reporting organizations any information related to the transactions where there is reasonable grounds to suspect that the transaction is involved with money laundering. The reporting entities include banks, financial institutions, insurance companies, money changers, companies and organizations remitting or transferring money, other business organizations approved by the Bangladesh Bank, organizations as the Bangladesh Bank with the approval of Government may notify from time to time.

345. Bangladesh was not able to provide any statistics on its use of powers under Section 23.

340. The ATO does not provide the FIU, either directly or indirectly with authority to obtain from reporting parties additional information needed to properly undertake its functions to analyse CFT related STRs. FIU staff indicated that they would rely on powers in the MLPO to request data from reporting institutions in the case of suspected TF. In the absence of TF being included as a predicate in the MLPA, there are some gaps in relying on the MLPO to gain data to analyse CFT related STRs.

### **Authorisation for dissemination**

346. Prior to the implementation of the MLPO, the MLPA authorised the Bangladesh Bank or any person authorised by Bangladesh Bank to investigate ML offences. In practice the AMLD disseminated ML-related financial intelligence to the Bangladesh Police CID for investigation under Section 4(d) of the MLPA.

347. Under the MLPO 2008, sections 23(1)(g) and 23(2), the FIU can disseminate any financial information to a domestic investigation authority for investigation. Since April 2008 the ACC is the sole designated investigation authority to investigate ML offences. Immediately following the MLPO coming into force, there was no process for the ACC to receive disseminations from the FIU, however the FIU was taking initiatives to raise awareness and develop procedures with the ACC.

348. The FIU still maintains a working relationship with CID to support the FIU's conduct of preliminary investigation in respect of possible ML cases. CID considers financial intelligence shared by the FIU and forwards on results of preliminary inquiries to the FIU to assist their analysis, which the FIU may consider disseminating to the ACC for investigation.

349. For TF, under section 15(2) of the ATO, the FIU is authorised to disseminate STRs to appropriate law enforcement authorities. The investigation authority in this case has been assigned to Bangladesh Police and the CID would be the investigating wing.

### **Sufficient operational independence and autonomy**

350. The FIU is located within the Bangladesh Bank and is a unit within the AMLD. The Assessment Team notes that the General Manager of the FIU is responsible for all decisions regarding analysis and dissemination of STRs and other financial intelligence, and there is no indication of interference or undue influence from the Bangladesh Bank in the decision making processes of the FIU.

351. The overall policies of the Bangladesh Bank govern the operations of the FIU, but the day to day management of the FIU is left to the FIU General Manager. The influence of Bangladesh Bank has been positive to set up and support the operation of the FIU, including provision of the current budget.

352. The staffing of the FIU is managed by the Human Resource Department of the Bangladesh Bank. Selection of persons who become part of the FIU or the AMLD is also undertaken by the Human Resource Department. In practice, the Director of the FIU has been able to retain a dedicated and skilled workforce to man the FIU. There is a gap, however, with the discretion of the management of the FIU to hire and retain staff.

### **Secure and lawful use of information held by the FIU**

353. The FIU is physically located within a building of the Bangladesh Bank. Entrance to the building is secure and security pass controlled. Access to the AMLD is restricted to AMLD staff, although the AMLD office is not totally enclosed.

354. The FIU is set up as an office within the AMLD. Entrance to the FIU is through a single locked door. The FIU computer server is in a separate room off the FIU office with a locking door. There are some gaps with integrity of data and safekeeping of material as the FIU is not in a separate self-contained location/office. The AMLD and FIU have locking filing cabinets to secure material to secure hard copy material, but lack combination safes to store sensitive material.

355. The computer server and database are password protected. The password, which is changed regularly, is held by the General Manager of the AMLD. Access to the database is granted by the

General Manager (or a deputised manager in his absence) who logs the 9 analysts into the system each day. Only 9 analysts are granted such access.

356. The FIU and wider Bangladesh law enforcement lacks a system for security classification of sensitive data and related data handling protocols.

#### **Publicly reports on FIU activities and ML/TF trends**

357. At present the FIU does not release period reports of its activities, nor of typologies and trends information. The Annual Report of the Bangladesh Bank does not include information on the operation of the FIU.

358. The FIU holds meetings twice a year with compliance officers of reporting agencies to provide feedback, including statistics and typologies, but such data is not yet published. The FIU has done a lot of awareness training and media engagement to raise public awareness about its activities. .

#### **Egmont membership and principles of exchange**

359. The FIU is preparing to apply for membership of the Egmont Group at the next Egmont Plenary meeting in early 2009. Bangladesh requested Mauritius, Thailand and Malaysia to sponsor its application for membership. Malaysia and Thailand have agreed to sponsor Bangladesh for membership of the Egmont Group.

360. In an effort to facilitate the sharing of information between FIUs, Bangladesh has included provisions under section 26 the MLPO whereby the Government or, in some cases, Bangladesh Bank can sign a MOU, enter into bilateral or multilateral contracts, conventions or sign contracts with any foreign country or organization by means of acceptance of international legislation. Under this section, after signing a contract with a foreign country or agency to prevent ML, the Bangladesh Bank shall:

- (a) request that foreign country or organization to provide relevant information; and
- (b) provide information to that foreign country or organization if the requested information is not a threat to national security.

361. At the time of the onsite visit the Bangladesh Bank has signed one MOU with another FIU and was proposing to sign thirty other MOUs for the purpose of sharing information / intelligence. Outlined in the MOUs being proposed is the purpose of information and intelligence exchange concerning money laundering and terrorism financing. The proposed MOUs will also outline the scope of cooperation, the format for each request, the use of the information, the confidentiality of the information being shared, the audit trail of the information being shared and the effective and termination dates of the MOU.

#### **Recommendation 30**

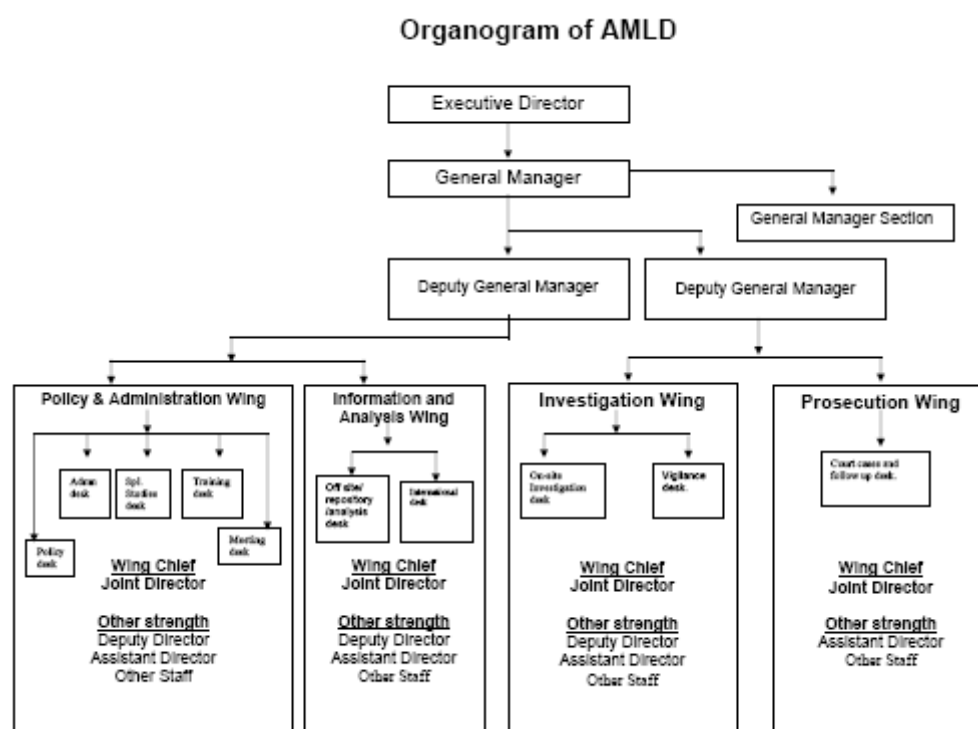
362. The FIU is the Information and Analysis Wing of the AMLD and consists of nine analysts. AMLD has in total 35 persons which the FIU draws upon for assistance as required. There is no fixed budget for the FIU and staffing of the FIU is managed by the Human Resource Department of the Bangladesh Bank.

363. The FIU has a server to establish an oracle database, but has not yet developed comprehensive database software. At present the FIU is utilising i2 Software and Analyst Notebook, but functionality is limited. There is a gap with capacity of the current database to receive, store and retrieve data required by the FIU.

364. The lack of online reporting functionality is an operational limitation.

365. The ability of analysts to undertake effective analysis of FIU data is undermined by regular (daily) power outages to the FIU for a period of hours at a time

366. The FIU has adequate human resources to undertake analysis and dissemination. In the 6 months prior to the onsite visit there had been a dramatic decline in the rate of STRs received by the FIU due to political uncertainty and a lack of clarity with the MLPO STR reporting obligation.



367. All staff in the AMLD and FIU have a Masters Degree usually in the area of Finance and Economics. Two of the nine members of the FIU are certified Anti-Money Laundering Specialists (ACAMS). All employees of the Bangladesh Bank must have at least sixteen years of education and must provide verification of their education, undergo a police record check, provide references which can be checked, and undergo a written test and interview. Of approximately 50,000 applications for employment received per annum only 100 are selected by the Bangladesh Bank.

368. The length of assignment for a person at the AMLD is approximately five years, following which they are transferred to another area of the Bangladesh Bank. During the five years, members of the AMLD attend at least one training session outside Bangladesh on ML. Each year, the Bangladesh Bank provides AML/CFT in-service training to AMLD staff.

## Effectiveness

### Rec 32 - Statistics

369. The FIU maintains annual statistics on STRs, and other reports where appropriate related to cross border transportation of currency and bearer negotiable instruments under the MLPO.

**Table: CTRs Received by the FIU**

Year	Number of CTRs
2006	1,145,823
2007	926,377

2008	80.815
<b>Total</b>	<b>2,153,015</b>

**Table: STRs received and disseminated**

Period	No of STRs received	No of STRs closed at end of FIU enquiries	Disseminations
<b>2002</b>	35	32	3
<b>2003</b>	23	18	5
<b>2004</b>	100	44	56
<b>2005</b>	52	46	6
<b>2006</b>	138	122	13
<b>2007</b>	105	105	0
<b>2008</b>	28	17	2
<b>TOTAL</b>	<b>481</b>	<b>384</b>	<b>85</b>

**Rec 32 – Statistics of disseminations**

Year	STR receipt and dissemination by the FIU					
	STRs received	Total disseminations	CID	BAC	ACC	Other
<b>2004</b>	100	49	3	46		
<b>2005</b>	52	03	3	-	46 (from BAC)	
<b>2006</b>	138	14	14	-	01 (from CID )	
<b>2007</b>	105	7	7	-	-	
<b>2008</b>	28	3	-	-	3	
<b>Totals</b>	<b>423</b>	<b>76</b>	<b>27</b>	<b>46</b>	<b>50</b>	

## 2.5.2 RECOMMENDATIONS AND COMMENTS

370. Overall the Bangladesh FIU has taken significant strides to develop its capacity to receive, analyse and disseminate STRs, CTRs and other data, however due to the prevailing political conditions and the change in legislation in the period leading up to the evaluation, there has been a sharp decline in STRs received and impediments top dissemination, which has undermined effectiveness over the past two years.

371. In order to improve the receipt of STRs and CTRs from reporting institutions a facility for online reporting should be implemented.

372. The overall quality and depth of analysis should be enhanced through greater understanding of ML and TF risks/typologies in Bangladesh, improved analytical tools, further staff training, and timely access to all available government and open source information.

373. The FIU should be provided with direct access to external databases that are accessible electronically such as the police, customs, and other government agencies and/ or as they become automated.



374. There is a need for more regular inter-agency meetings/cooperation/coordination with the ACC, CID, Customs, etc to understand ML and TF risks, techniques and to develop methodologies to analyse STRs.

375. MOUs are required to support domestic and international information sharing.

376. An independent IT assessment should be conducted to determine appropriate database and analytical tools for the FIU perform receipt, analysis and dissemination functions as well as recording statistical data and generating acknowledgement messages when STRs and CTRs are received.

377. Continuous power supply is required to ensure FIU servers and computer equipment are readily available during office hours.

378. Integrity of data and safekeeping of material is required in order to seek the cooperation of other foreign governments. A separate self contained location/office for the AMLD and FIU is needed to ensure security of information for the core FIU functions; secure cabinets such as safes with combination locks are needed for the storing of sensitive material.

379. Bangladesh Bank should ensure that the management of the FIU have autonomy in staff selection and retention within the FIU.

380. The system of keeping statistics should be improved to ensure comprehensive data to ensure a better review of the effectiveness of the system.

### 2.5.3 COMPLIANCE WITH RECOMMENDATION

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
<b>R.26</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• The FIU does not have timely access to information required to effectively analyse STRs, which undermines effective analysis.</li> <li>• Capacity of the server (power generation) undermines effective access to FIU database.</li> <li>• The office of the AMLD is not secure as it is not fully enclosed.</li> <li>• The FIU and AMLD require better storage material for classified material.</li> <li>• Statistics of analysis and disseminations indicates decreasing effectiveness over recent years</li> </ul>
<b>R.30</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• There is a need for greater resources for the FIU, including equipment and software</li> </ul>
<b>R.32</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• The FIU lacks comprehensive and organized compilation of data that would ensure a better review of the effectiveness of the system.</li> </ul>

## **2.6 LAW ENFORCEMENT, PROSECUTION AND OTHER COMPETENT AUTHORITIES – THE FRAMEWORK FOR THE INVESTIGATION AND PROSECUTION OF OFFENCES, AND FOR CONFISCATION AND FREEZING (R.27 & 28)**

### ***Process of investigation in Bangladesh***

381. Under the Code of Criminal Procedure an "enquiry" means the collection of information prior to an investigation. The power to investigate does not arise until either there is reason to suspect the commission of a cognizable offence, which an Officer-in-charge of a police-station is empowered to investigate under section 156 of the Code of Criminal Procedure (see also section 157), or, if the offence is non-cognizable, a Magistrate directs an investigation under section 155 of that Code.

382. In the case of ML or TF, preliminary analysis work is completed by the Bangladesh Bank FIU, which disseminates financial intelligence to the ACC for an ML inquiry or to the Police (CID) for a TF inquiry. In the case of an ML investigation, the inquiry has a time line of thirty days at which time the case is forwarded to the ACC commissioners for approval. Once approved the ACC lays a formal complaint (written) at the Bangladesh Police. Once this step is done the ACC can investigate the case. Once the ML investigation is completed a summary report is forwarded to the ACC commissioners. If approved, a charge sheet is forwarded to the courts and ACC will conduct the prosecution.

383. For terrorist financing, the police conduct an inquiry and, if there is sufficient evidence, lays a formal written complaint to commence an investigation.

### **2.6.1 DESCRIPTION AND ANALYSIS**

384. Under the MLPO 2008, the ACC is the sole law enforcement agency responsible for ML investigations. The police (CID) is the sole agency responsible for investigating TF. Predicate offences are investigated by the police, ACC, NBR (Customs), Border Rifles, etc.

### **Recommendation 27**

385. Prior to April 2008, under the MLPA section 5 the Bangladesh Bank, or any person authorized by the Bangladesh Bank, could investigate ML. In practice, under the MLPA the FIU delegated investigation powers to the CID and ML cases were forwarded to CID for purposes of conducting an inquiry and any subsequent investigation and the filing of a case. In 2005 AMLD had an arrangement with Bureau of Anti-Corruption (BAC) to receive STRs related to corruption. BAC was abolished in 2005. In the interim period AMLD had an arrangement with Criminal Investigation Department (CID) of Bangladesh Police.

386. BAC's successor is the ACC. Under the Anti-corruption Act, 2004 there was no provision for ACC to investigate ML cases therefore it could not act on a STRs in relation to ML. In 2007, the ML offence was scheduled under the ACC Act, 2004 and STRs were forwarded to the ACC. Forty-six cases referred by the FIU to the former BAC were handed over to the ACC. These were still awaiting investigation at the time of the onsite visit. Three cases were referred to other regulators. Twenty-one cases are with the CID for preliminary investigation to determine whether they may be related to ML.

387. Since April 2008, the MLPO has designated the ACC to investigate all ML cases (section 9 (i)):

..the offences under this Ordinance considered as scheduled offences of the Anti-Corruption Commission Act 2004 will be investigated by the Anti-Corruption Commission or by an officer empowered by Anti-Corruption Commission for this purpose.

388. Under the MLPO, the Bangladesh Bank will refer any ML case for investigation to the ACC. In practice the FIU works with the CID to conduct preliminary intelligence probes in respect of potential ML-related disseminations. CID does not play an investigation role.

389. The Assessment Team was unable to establish the impetus for the ACC to be the sole investigation agency and not be able to refer the investigation of ML cases to other agencies in appropriate matters. The wording of the ACC Act indicates that ML cases may only be undertaken by other agencies by officers seconded to the ACC.

390. This is a considerable departure from previous practice. Since the enactment of the MLPA in 2002, most of Bangladesh's ML investigations have been conducted by the CID.

391. When considering the likely effectiveness of Bangladesh's new regime to criminalise ML, a major issue is the capacity of the ACC to take on its new investigative role.

392. The ACC has developed considerable expertise in the investigation of corruption offences and has achieved some significant results. However, ACC officers have little background or experience in the investigation of ML offences. There is no specialised AML unit within the ACC, although the Assessment Team was advised that there are plans to establish one.

393. Bangladesh authorities advised that to date, 14 ACC officers have received training in ML investigations, and that plans are underway for further training. However the ACC has not yet established effective lines of communication and co-ordination with the CID and while contact had been made with the FIU, regular contact was not yet occurring. There is a pressing need for ACC and CID to work together to share intelligence/evidence related to predicate offence investigations and ML investigations.

394. In practice, the Bangladesh Police (CID) is generally responsible for investigating a wide range of serious offences in Bangladesh, that is all the predicate offences except for corruption. It is not clear how ACC will manage the investigation of ML offences, where the predicate offence is not corruption-related. Non-corruption predicate offences (for example, narcotics offences) will continue to be investigated by Bangladesh Police. Any related ML, however, must be investigated by the ACC. There will be a need for a high level of cooperation between Bangladesh Police and the ACC to ensure that the ACC has the information and evidence it needs to properly investigate and prosecute ML offences which are not corruption-related.

395. The Assessment Team regard the practical problems associated with this investigative split as a major concern and potentially, a significant impediment to the effective investigation of money laundering offences across the range of predicate offences. The Assessment Team notes that its concerns in this area were shared by senior officials of both the ACC and the CID.

396. While money laundering has been added to the schedule of offences which the ACC is authorised to investigate, corresponding amendments have not been made to those sections of the ACC Act which give the ACC its core investigative powers. Those provisions (notably sections 19 and 23 of the ACC Act) confer powers upon the ACC for the investigation of corruption offences only, and not money laundering offences. Amendment of these sections is urgently needed to provide the ACC with the legal basis it needs to perform its new anti-money laundering function.

397. At the time of the onsite visit, no action was underway to amend the MLPO to allow a wider range of agencies to investigate ML, nor to ensure ACC's investigations powers were available for all ML investigations.

398. In relation to TF investigations, under section 21 of ATO 2008, Bangladesh Police are designated to investigate TF offences and all cases of TF will be investigated by CID. Bangladesh

police has some experience with investigating terrorism cases, but has not yet investigated TF offences.

399. The CID has some experience of conducting financial investigations. CID conducts net worth analyses and other basic financial investigative techniques as part of its small specialist capacity.

400. Postponement or waiving of arrest/seizure is permitted to further identify persons to support an investigation

### **Additional elements**

401. At the time of the onsite visit the ACC had not utilized special investigative techniques to investigate money laundering. Section 20 of the ACC Act provides that ACC officers can investigate and prosecute ML cases. powers under the Evidence Act 1872 support their use of some special investigation techniques.

402. The Bangladesh Police/CID can utilize undercover operations, controlled deliveries, physical surveillance, human sources and police agents when investigating CFT. The use of these techniques is permitted under the Evidence Act of 1872. No cases or policy was cited to demonstrate these techniques being utilized.

403. There is not yet a statutory basis for use of electronic listening devices, tracking devices of interception of communications (telephones, internet, etc). Bangladesh is taking steps to establish a clear legal framework for authorised telephone intercepts by law enforcement agencies, which is expected to cover ML and TF investigations.

404. ACC advised they have not utilized special investigative techniques when investigating corruption or related money laundering cases.

405. The ATO was passed in June 2008 and at the time of the on site visit there were no active TF investigations. No statistics were provided by the respective agencies in respect to its use investigating TF offences.

406. The ACC is a specialized unit formed to investigate corruption and related offences. Specialized financial investigators from different agencies are deputed to ACC for the purpose of investigation, seizure, freezing and confiscation of proceeds of crime.

407. Although it was indicated seizures of real property take place on a regular basis, no cases were provided to demonstrate such seizure mechanisms. The ACC has frequently contacted the real estate development association for the purposes of identifying property belonging to persons under investigation for corruption.

408. There are task forces set up in Bangladesh headed by the military which consist of members from the military, police, ACC, Customs and National Revenue who investigate corruption cases and trace the assets derived from such offences.

409. While only limited information was provided in respect to co-operative investigations with other countries, one example is a case of involving an investigation of a group involved in large-scale importation of heroin into the UK which had been operating over a number of years to tranship heroin from Bangladesh to the UK. In May 2005, the UK government officially requested Bangladesh to investigate the matter. A five-member committee was formed (Customs, tax, Bangladesh Bank and Department of Narcotics Control) which found five Bangladeshi companies involved in the heroin smuggling.

410. Prior to the enactment of the new MLPO, the Bangladesh Bank met on a bi-monthly basis with the CID of Bangladesh Police to discuss the progress of money laundering cases.

411. In October 2007, Bangladesh Bank chaired a task force meeting including the Ministries of Finance, Home and Commerce, National Board of Revenue, Commercial Banks, and intelligence agencies to discuss new methods of money laundering, including internet banking, international credit card and mobile recharge cards.

## **Recommendation 28**

### ***ACC's powers to investigate ML and Predicate offences***

412. Section 17 of the AC Act gives the ACC the function of investigating ML offences.

413. Officers of the ACC rely on powers under the Code of Criminal Procedure to investigate ML. The power to investigate does not arise until either there is reason to suspect the commission of a cognizable offence, which is based on an inquiry by the ACC. The inquiry has a time line of thirty days at which time the case is forwarded to the ACC commissioners for approval. Once approved the ACC lays a formal complaint (written) at the Bangladesh Police. Once this step is done the ACC can investigate the case utilising powers under the Code of Criminal Procedure.

414. ACC has special powers of investigation in relation to the predicate offence of corruption, however these powers are not available for investigating ML offences. Sections 19 and 23 of the AC Act provide the ACC with special powers when investigating corruption, including summoning witnesses, compelling their appearance and interrogating them under oath, discovering and presenting documents, calling for public records and issuing warrants for the interrogation of witnesses and the examination of documents, or any other matter required for realizing and fulfilling the aims and objectives of this law. Section 23 of the ACC Act allows the ACC to call for any information from government agencies when investigating corruption.

415. ACC's inability to use its special investigative powers (sections 19 and 23 of the AC Act) for ML investigations is significant gap. Amendment of these sections is urgently needed to provide the ACC with the legal basis it needs to perform its new anti-money laundering function.

416. Under the ACC Act there are no specific provisions whereby the court may give an order for freezing or attachment of property wherever situated, within or outside Bangladesh, in which the state has an interest under the MLPO on written application of the investigating organization.

### ***Predicate Offences***

417. The Bangladesh Police have wide ranging powers under the *Code of Criminal Procedure* to investigate predicate offences. Section 94 allows a court, or an officer in charge of a police-station to require production of any document or other thing for the purposes of any investigation or inquiry. Section allows the court or District Superintendent of Police to require any document, parcel or thing for the purpose of any investigation or inquiry.

418. Sections 96, 102-103 provide wide powers of search with a search warrant issued by a magistrate and the owner or occupier of the place searched shall on application be furnished with a copy of the record of findings of the search by the Magistrate.

419. The police, customs and Bangladesh Rifles have powers to investigate narcotics related predicate offences. Section 36(1) *Narcotics Control Act (1990)* empowers a police inspector, a custom inspector, an officer of the Bangladesh Rifles to undertake search, seizure and arrest in relation to narcotics without a warrant. Section 46 empowers police with sufficient reason to believe that any person is collecting money or assets which are illegal by reason of being connected with any

offence under this Act, and that it is necessary, in order to take measures under this Act against the said person, to investigate his bank accounts or the records informing about his income tax or property tax, then he shall, after having recorded his reasons, apply at the sessions judge for the approval to investigate the said accounts or records: The sessions judge shall decide on the application and shall, if he thinks reasonable so to do, give his approval, and send a copy thereof to the bank and the tax officer concerned. The officer to whom an approval has been given shall inform the sessions judge about the progress and result of his investigation at the times determined

420. *The Customs Act* provides wide ranging powers including production of documents (Section 26 and 162-163), powers of search for goods liable to confiscation or any documents relating thereto.

421. Section 166 of the Customs Act allows customs officers to summon persons to give evidence or to produce a document or any other thing in any inquiry which such officer is making in connection with the smuggling of any goods. Section 168 allows officers to seize any documents or things which in his opinion will be useful as evidence in any proceedings under this Act.

422. Section 25 of the *Postal Act* provides power to intercept notified goods during transmission by post where a notification has been published under Section 19 of the Sea Customs Act, 1878.

### ***Terrorist Financing***

423. Bangladesh Police have powers under the Code of Criminal Procedure, as outlined above, which can be applied during the investigation of TF offences. As mentioned above Section 94 would allow investigating officers or the court to require production of any document or other thing for the purposes of any investigation or inquiry. This would extend to bank records.

424. The ATO provides the police with powers to call for bank records during the course of a TF investigation, although this power may only be exercised with the approval of the Bangladesh Bank. Article 15(2)(ii) of the ATO states that:

No law enforcement authority shall have any access to the documents or files of a bank without approval from the chief executive of the concerned bank or from Bangladesh Bank

425. This would appear to be a check and balance on law enforcement agencies indiscriminately calling for bank records during the course of a TF investigation without a warrant or the cooperation of the banking regulator.

### **Powers to take witness statements in cases of ML, TF and other underlying offences**

426. Under Sections 160 & 161 of the Code of Criminal Procedure, any investigating police-officer, including an ACC officer investigating a ML offence or a police officer for a TF or predicate offence, may order a person to attend a police station for an interview. The investigating officer may, by general or special order, take a witness statement. Section 162 of the Code of Criminal Procedure permits the use of written witness statements during criminal trials and inquiries.

427. The AC Act provides powers under Section 19 to take witness statements in relation to the investigation of corruption.

### **Recommendation 30**

428. The ACC is structured to into five organs (see organogram below). The ACC has 22 district offices and six divisions. The ACC has 40 Deputy Directors of whom four are from outside agencies, and 74 assistant directors of whom two are from partner agency. ACC has 39 deputy director inspectors of whom 14 are police inspectors. In each office there are approximately 18 persons consisting of ACC, Bangladesh Police (inspector rank), income tax, accountants, Bangladesh Bank, Customs and other departments.

429. The ACC has had powers to investigate corruption-related ML since 2007 and all other ML cases since early 2008. At the time of the onsite visit, the ACC had not yet set up its Money Laundering unit and has not dedicated staff to investigate ML, despite having trained staff available.

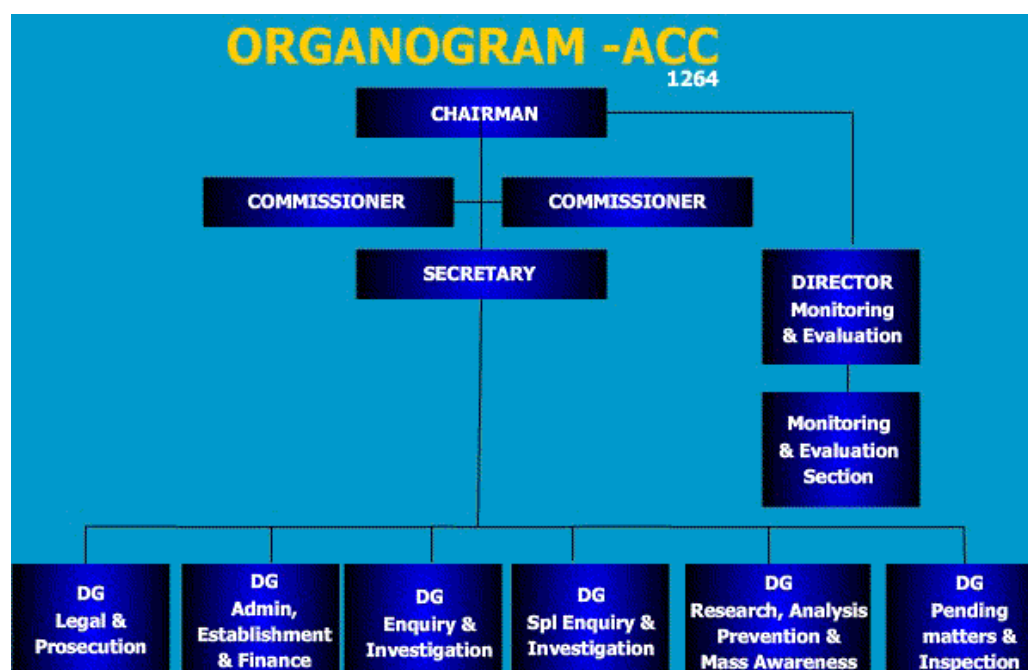
430. ACC has stronger integrity controls than other enforcement agencies in Bangladesh. ACC staff have received specialist training in financial investigations, but there are still very few officers with experience of conducting financial investigations, including ML cases.

431. While the Bangladesh Police is a very large force, there is only a very small handful of experienced officers in the CID who have received any form of financial investigation training and who have some experience of ML and related financial investigations.

432. In keeping with governance and corruption challenges facing Bangladesh, independent bodies continue to highlight significant corruption issues with various law enforcement agencies in Bangladesh, including the police and customs. While codes of conduct are in place for both organisations, these do not serve to significantly curb rampant corruption within those services.

433. There are gaps in the availability and use of legal tools to support investigation of cases that involve cross border elements (effective MLA statutes, adequate procedural law in the CrPC, etc).

### Structure of the ACC



### Recommendation 32

434. Statistics provided by Bangladesh authorities on investigations, prosecutions and convictions were not consolidated and could not always be reconciled against specific statutes or timeframes.

**i) Permission given by Bangladesh Bank to Police Authority in ML investigations (MLPA 2002):**

Year	Under Investigation	Court cases (pending)	Disposal of court cases	Year Total
2002	-	6	-	6
2003	-	22	7	29
2004	1	28	11	40
2005	2	29	9	40
2006	2	17	8	27
2007	3	19	2	24
2008	-	0	-	-
<b>Total</b>	<b>8</b>	<b>121</b>	<b>37</b>	<b>166</b>
ML cases carried over by CID	14 (under investigation)	-	-	14
Cases with ACC	51	-	-	51
Permission and cases filed by ACC (2008)	2	2	-	4
<b>Total</b>	<b>75</b>	<b>123</b>	<b>37</b>	<b>235</b>

Year	Total cases	Cases disposed of	Under investigation	Comments
2002	1	-	1	-
2003	2	2	-	1 case under trial
2004	3	2	1	1 case under trial
2005	3	-	3	-
2006	14	1	13	1 case under trial
2007	7	-	7	-
2008	2	-	2	-
<b>TOTAL</b>	<b>32</b>	<b>5</b>	<b>27</b>	

(a) Ref : Khilgaon (DMP) P.S Case no. 35, dt-23/10/05 U/S-13, MLPA 2002.

An amount of Tk 628,390 was frozen from three bank accounts on 21-05-2007.

**(b) Property seized in four ML Case.**

Year	Case Ref.	Value
2002	Zia International Airport PS case no-16 dt-27/08/2002 u/s-13 MLPA(2002) and others law	34,214,655
2004	Zia International Airport PS case no-31 dt-23/01/2004 u/s-13 MLPA(2002) and others law	108,491,371
2006	Ramna (DMP) PS case no-99 dt-27/06/2006 u/s-13 MLPA(2002)	13,467,100
2006	Paltan (DMP) PS case no-38 dt-28/02/2006 u/s-13(2) MLPA(2002)	217,705,005
<b>Total</b>		<b>TK 276,235,897</b>



**c. Suspects arrested in ML cases**

SL No	Year	Case Ref..	Person
1	2004	Dhanmondi (DMP) PS case no-16(11)/04	1
2	2005	Gulshan (DMP) PS case no-40(6)/05	1
3	2005	Khilgaon (DMP) PS case no-35(10)/05	1
4	2006	Savar PS case no-9(11)/05	1
5	2006	Tejgaon (DMP) PS case no-42(11)/06	1
6	2006	Cantonment (DMP) PS case no-4(11)/06	1
7	2006	Tejgaon (DMP) PS case no-43(11)/06	1
<b>Total</b>			<b>8</b>

\*\*The above statistics were provided by Dhaka Metropolitan Police. Most of these matters refer to illegal hundi.

***Statistics for Rec 28***

435. Bangladesh was unable to provide statistics on the use of investigation powers mentioned at Recommendation 28.

**2.6.2 RECOMMENDATIONS AND COMMENTS**

436. Bangladesh should assign sufficient resources to investigate ML offense under the MLPO,

437. The MLPO 2008's designation of the ACC as the sole investigation agency for ML has created confusion and caused a serious gap in the coverage of ML investigations and the parallel investigation of predicate offences and related money laundering.

438. Bangladesh should expand the designated investigation agencies for ML to include police and other law enforcement agencies in addition to the ACC.

439. Greater cooperation and coordination and sharing of information between ACC, Bangladesh Police and partner agencies (domestic and international) should be put in place to support ML, TF and predicate offence investigation.

440. Bangladesh authorities should ensure additional training is provided on financial investigations, including ML investigations, predicate offences and terrorist financing. Such training should include the use of special investigative techniques including undercover operations, controlled deliveries and surveillance .

441. Financial investigation procedures should be introduced into the course curriculum of police training institutions.

442. Authorities should support the retention of trained and experienced investigators through specialist ML/TF/proceeds of crime investigation teams.

443. Relevant agencies should formulate policies to avoid unnecessary administrative /bureaucratic complexity to collect necessary information and documentary evidence.

444. A specialized unit and/or training should be provided to the Bangladesh Police with respect to the seizing of property derived from or used in predicate, ML and TF offences.

445. Enhanced legal tools to support investigation of cases that involve cross border elements (effective MLA statutes, adequate procedural law in the CrPC, etc).

446. Bangladesh use all available powers to vigorously pursue ML and TF offences.

### 2.6.3 COMPLIANCE WITH RECOMMENDATIONS 27 & 28

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
<b>R.27</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Formal designation of the ACC as the sole investigation agency for ML has not been implemented in practice.</li> <li>• Predicate offence investigations are pursued at the expense of ML investigations</li> <li>• ACC investigate ML cases only in relation to corruption and not the other predicate offences</li> <li>• The newness of provisions has meant that it is too early to judge the effectiveness of implementation of TF provisions to investigate financial aspects of terrorism in Bangladesh.</li> <li>• Recent changes in the designation of investigation agency has resulted in a sharp decrease in effectiveness of ML investigations.</li> </ul>
<b>R.28</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Under the ACC Act 2004 Special investigation powers available to the ACC to investigate corruption are not available in relation to ML.</li> <li>• Effective use of the available powers was not demonstrated by statistics of cases and investigations.</li> </ul>
<b>R.30</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• The Bangladesh Police and ACC lack specialist capacities to investigate money laundering and terrorist financing.</li> <li>• Bangladesh has not allocated sufficient resources from available staff within the ACC to investigate ML</li> <li>• Investigations agencies lack training in conducting financial investigations</li> </ul>
<b>R.32</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Adequate statistics are not readily available in relation to investigations and use of investigative powers.</li> </ul>

## **2.7 CROSS BORDER DECLARATION OR DISCLOSURE (SR.IX)**

### **2.7.1 DESCRIPTION AND ANALYSIS**

#### **General description of laws or other measures, the situation, or context**

447. Bangladesh has a system of declarations and permissions which is applied to detect the physical cross border transaction of currency and bearer negotiable instruments. Bangladesh seeks to implement SR IX through application of foreign exchange controls under the Foreign Exchange Regulation Act (FERA).

448. Sections 8 (1) & (2) of the FERA, deal with the restrictions on import and export of 'currency' and bullion. The restrictions imposed by the FERA are deemed to have been imposed under Section 16 of the Customs Act, 1969. Under Section 16 of the Customs Act, the Government may, by notification in the official Gazette, prohibit or restrict the bringing into or taking out of Bangladesh any goods of specified description by air, sea or land.

449. 'Currency' under the FERA includes all coins, currency notes, postal notes, money orders, cheques, drafts, travellers cheques, letters of credit, bills of exchange and promissory notes. This extends to bearer negotiable instruments. FERA reporting forms do not clearly explain to passengers that their requirements to report include bearer negotiable instruments.

450. Bangladesh Bank under section 8(1) & 8(2) the FERA and section 16 of the Customs Act, 1969, has made notifications to cover inward and outward movement of currency:

#### ***Inward- Notification FE-2/94-Bangladesh Bank (1994)***

- persons may bring into Bangladesh currency without any limit, other than Bangladesh Taka in excess of Taka 500 in value;
- A declaration is needed for amounts exceeding:
  - 5000 (USD) or equivalent in foreign exchange;
  - Taka 500 in notes legal tender in Bangladesh.

#### ***Outward - Notification FE 1/94 (1994)***

- Person may take out up to 500 Bangladeshi Taka.

#### ***Outward - Notification FE 2/93 (1993)***

451. Bangladesh residents may take out up to 2500 USD or equivalent foreign exchange. Non-residents may take out any amount in foreign exchange not exceeding the amount declared by him on arrival in Bangladesh. However, such a person may take out at the time of his leaving Bangladesh foreign exchange not exceeding \$5000 (USD) or its equivalent brought in without declaration on arrival.

#### ***F.E Circular No. 16/2002***

452. Persons travelling abroad require endorsement from Bangladesh Bank. The prescribed amounts are:

For air travel to SAARC and Myanmar via air, outgoing passengers can gain permission for up to USD1,000 and via road maximum up to USD500. Other than the above permission may be given up to USD 3,000.

For business travel outgoing passengers can gain permission for up to USD6,000

For medical purposes, outgoing passengers can gain permission for up to USD 10,000

For higher study, student can gain permission to remit tuition fees and living expenses for one year through banking channels.

453. FERA is enforced by Bangladesh Bank with the help of Customs Authority. A person entering and leaving Bangladesh must do so by one of the official entry points. There are thirty official points by road, one by train and three International Airports.

454. Upon entry into Bangladesh, a person is provided a declaration form which is to be completed by the person entering the country. The information contained on the declaration form include, name of passenger, passport number, nationality, date of arrival/departure

455. These documents are filed manually and in hard copy. There is an index by name corresponding to the declaration form.

456. Bangladesh Bank under Section 19A of FERA may inspect and if necessary seize the books of accounts and other documents of any person, firm or business organisation or concern required to submit any, return, statement or information under the Act. Failure to produce any books etc required under sub-section (2) is a contravention of the FERA.

457. The Customs Act provides wide ranging powers to obtain information request and obtain further information, Under Section 26(1) of the Customs Act, a customs officer may seize goods believed to have been unlawfully imported, exported, under/over valued or unlawfully dealt with. Section 26(1)(b) allows Customs Assistant Commissioners and above to order persons related to the seized goods to produce and answer questions in relation to books of account, or other books, records or documents in which any entry or memorandum appears or may be supposed to appear in respect of the purchase, importation, exportation, cost, or value of, or payment for, the goods and any other goods so imported or exported or otherwise dealt with within a period of three years preceding the date of the notice.

458. Section 26A of the Customs Act allows Customs to issue a notice requiring any person, including any public or private entity, to produce necessary for an investigation or audit under the Act. Customs may require persons to appear before the Joint Commissioner of Customs and answer all questions regarding any goods or any transactions relating to goods that are the subject of investigation. Under 26B of the Act, a Customs officer may take possession of and retain any document or record presented in connection with any entry or required to be produced under this Act.

459. Under Section 165 (1) of the Customs Act customs officers may, during the course of an inquiry in connection with the smuggling of any goods:

- (a) require any person to produce or deliver any document or thing to such officer,
- (b) examine any person acquainted with the facts and circumstances of the case.

460. Under Section 166 of the Customs Act, a customs officer may summon any person to give evidence or to produce any document or other thing in any inquiry related to smuggling.

### **Powers to stop or restrain currency or bearer negotiable instruments**

461. Section 17 of the Customs Act allows Customs to detain and confiscate any goods imported into or attempted to be exported out of Bangladesh in violation of a notification under section 16. Customs has 30 days to institute a criminal case or to issue a show cause notice in respect of the goods, or else the goods shall be released. The Commissioner of Customs may extend the 30 day period by an additional 15 days.

### **Access to information by the FIU**

462. The information obtained through the declaration processes is held by Customs for an undetermined time and is indexed by name on manual registers. There is no mechanism in place whereby information obtained under FERA reports is forwarded to the FIU. This is a serious deficiency.

463. The FIU can request and gain access to these records held by Customs, however this is not routinely done in practice.

### **Domestic coordination**

464. There is no clear policy to coordinate between border enforcement agencies to implement SR IX. There is a lack of close cooperation with the FIU or with the ACC to coordinate on detecting and investigating ML cases.

465. Under Section 7 of the Customs Act, all officers of Excise, Value Added Tax, Police, Civil Armed Forces, Coast Guard, income tax and all officers engaged in the collections of land-revenue are required to assist officers of customs in the discharge of their functions.

466. There is a National Coordination Committee on Anti-Smuggling. It is a higher level national committee which reviews the issues related to smuggling or physical transportation of prohibited goods or currency and bearer negotiable instruments.

467. Customs officers also form part of task forces which include police at the local, district and National level which investigate corruption cases and seek to trace the money for the purposes of seizure and forfeiture to the government.

### **International co-operation and assistance**

468. Bangladesh has signed bi-lateral treaties with Myanmar, India, and Iran. The 1994 Mutual agreement with Myanmar is for the purpose of preventing drug trafficking, and includes cooperation to prevent money laundering and trace, identify, freeze, seize and forfeit properties derived from drug trafficking. Bangladesh's bi-lateral treaties with India and Iran are very similar in context.

469. Bangladesh is a member of RILO and Bangladesh Customs has made some use of RILO to share intelligence related to customs offences.

470. Bangladesh has a Cooperation Agreement with the European Community on partnership and development, which refers to the necessity of making every effort to prevent money laundering.

471. Bangladesh has signed the additional protocol to the South Asian Association for (SAARC) Regional Convention on Suppression of Terrorism. The SAARC Convention promotes co-operation and the exchange of information to improve immigration and customs control measures to detect and prevent the international movement of terrorists and their accomplices and trafficking in arms, narcotics and psychotropic substances or other materials intended to support terrorist activities.

472. Under the umbrella of SAARC, Bangladesh Customs has worked with India customs and shared information in respect to the importing and exporting of goods.

473. Bangladesh is a member of the World Customs Organization (WCO). Bangladesh has participated in WCO programmes, workshops, seminars and forum to implement the WCO mandate.

### **Sanctions**

474. Section 32 of the Customs Act, 1969 outlines the specific sanctions for false declaration. Under Section 23 of FERA whoever contravenes, attempts to contravene or abets the contravention of any of the provisions of this Act or of any rules, direction or order provisions of this Act or of any rules, direction or order shall be punishable with imprisonment for a term which may extend to two years or with an undisclosed fine. The Tribunal trying FERA contraventions may direct that any currency, security, gold or silver or goods or other property in respect of which the contravention has taken place shall be confiscated. Bangladesh authorities were not able to clarify the quantum of sanctions available for contraventions of the FERA and Customs Act as outlined above.

475. In cases of suspicion of ML or TF, Bangladesh customs can arrest the person and seize items and turn same over to the ACC or police for investigation. If Customs authorities have information they believe to be related to be ML or TF they can file a first information report under the Customs Act, 1969 to the nearest police station. Police would then refer the ML case to the ACC for investigation or retain the case related to TF.

476. There is no bar to application of the ML or TF offences to persons carrying out a physical cross border transportation of currency or bearer negotiable instruments that are related to terrorist financing or money laundering. See Recommendation 2 and SRII for a discussion of sanctions.

### **Provisional measures and confiscation**

477. The limited provisions for provisional measures and confiscation that apply to both ML and TF also apply in relation to persons who are carrying out a physical cross-border transportation of currency or bearer negotiable instruments that are related to terrorist financing or money laundering. A full discussion of the general powers is included at Recommendation 3.

478. Bangladesh's legal framework does not clearly apply in relation to applying SRIII to persons carrying out physical cross-border movement of currency.

479. Under Section 161 of the Customs Act customs officers have powers of arrest in cases of smuggling, including gold bullion and other precious metals and stones.

### **Safeguards on data collected**

480. All information is manually stored in hard copy with Customs. An index is made for cross-referencing the reporting to an entity and is available to the Bangladesh Bank Foreign Exchange Department, although not to the FIU.

481. Bangladesh has not yet implemented the measures in the Best Practice Paper for SRIX.

482. Cross border reports are not maintained on a computerised database and are not routinely provided to the FIU or investigation agencies for AML/CFT purposes.

### **Rec 30**

483. Customs advised they have Anti-Smuggling specialized teams at the Airports which target individuals who try to smuggle items such as gold, currency, and other high duty items.

484. Bangladesh Customs Authority lack sufficient technical resources to adequately perform their functions in relation to AML/CFT.

485. Customs maintains staff at the border points, airports and ports but did not produce any specifics as to the units and numbers of employees

486. Customs did not provide any information in respect to their training they receive, the maintaining professional standards, integrity, etc

487. Bangladesh advised that Customs staff maintain moderate professional standards, including standards concerning confidentiality, and are of high integrity and are appropriately skilled, but provided no information to support this assertion.

488. Bangladesh Customs staff have received a limited amount of training on ML typologies, techniques to investigate and prosecute these offences, techniques for tracing property that is the proceeds of crime. It is not clear that specific training has been provided or implemented in relation to identifying cash couriers and cases of ML and TF.

## Recommendation 32 – statistics

489. Customs or Bangladesh Bank were not able to produce any statistics in respect to cross border transportation of currency and bearer negotiable instruments but maintain a record of declaration made under FERA.

### 2.7.2 RECOMMENDATIONS AND COMMENTS

490. Cross border reporting measures are designed as currency controls and are not being effectively implemented to detect cross border movement of cash and bearer negotiable instruments for ML and TF.

491. There is a need for increased capacity and procedural support to effectively plan for and implement measures related to SRIX.

492. Bangladesh should implement a comprehensive declaration or disclosure system designed to address ML and TF risks in keeping with the FATF standards.

- Customs should increase its information sharing information with the FIU and law enforcement agencies such as the Bangladesh Police and the ACC;
- Data obtained from the current FERA declaration forms should be entered into a database for easy access and retrieval and made available to the FIU;
- Customs require further training on ML, TF and other predicate activities, as well as trade-based money laundering to allow customs to develop better intelligence on ML and TF.

493. While the definition of ‘currency’ includes bearer negotiable instruments, FERA reporting forms should clearly explain to passengers their requirements to report include bearer negotiable instruments.

### 2.7.3 COMPLIANCE WITH SPECIAL RECOMMENDATION IX

	Rating	Summary of factors underlying rating
<b>SR.IX</b>	<b>PC</b>	<ul style="list-style-type: none"><li>• The cross border declaration system is not targeted to detect cash couriers related to ML and TF</li><li>• Cross border declarations or reports of false declarations or failure to declare are not forwarded to the FIU</li><li>• There is inadequate coordination among customs immigration and other related authorities on issues related to the implementation of SRIX</li><li>• There are inadequate sanctions available to implement the FERA and Customs Act obligations</li><li>• International cooperation is not clearly pursued in relation to SRIX.</li><li>• Statistics were not available to show effective implementation of measures to implement SR IX.</li></ul>
<b>R.30</b>	<b>PC</b>	<ul style="list-style-type: none"><li>• Customs maintains staff at the Border Points, Airports and Ports but did not produce any specifics as to the units and numbers of employees</li><li>• Customs did not provide any information in respect to their training they receive, the maintaining professional standards, integrity, etc</li></ul>
<b>R.32</b>	<b>PC</b>	<ul style="list-style-type: none"><li>• Customs does not maintain statistics on cross border transportation of currency and bearer negotiable instruments.</li></ul>

### 3 PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

#### 3.1 RISK OF MONEY LAUNDERING AND TERRORIST FINANCING

##### Overview of legal and regulatory framework

494. AML preventative measures are set out in the MLPA 2002, which was replaced by the MLPO 2008, and various Bangladesh Bank AML Circulars and in AML Guidance Notes. For CFT, limited preventative measures are set out in the ATO 2008. Section 21 the MLPA 2002 gave the power to make rules to implement the Act. Section 29 of the MLPO 2008 provides the power to make rules to implement the Ordinance. Section 43 of the ATO 2008 provides the power to make rules to implement the Ordinance.

495. Bangladesh Bank has issued a number of Anti Money Laundering Circulars to instruct banks and financial institutions on AML/CFT requirements. The lists of circulars issued since the MLPA 2002 came into force is set out below. Note that circulars covering insurance companies and money changers were only issued in August 2008.

**Table: Instructions Issued by Bangladesh Bank AML Department**

AML Circular	Date	Subject
1	18 May 2002	MLPA 2002
2	17 July 2002	Instructions to be followed for compliance of the provisions contained in the Money Laundering Prevention Act, 2002 (CDD, record keeping, STRs guidance)
3	10 Dec 2002	Instructions to be followed for compliance of the provisions contained in the Money Laundering Prevention Act, 2002
4	23 Dec 2002	Cooperation to investigate the crime related to money laundering
5	22 May 2003	Amendment of Money Laundering Prevention Act, 2002
6	24 July 2005	Regarding KYC Procedures for the accounts opened before 30 April 2002
7	14 Aug 2005	Correspondent Banking
8	21 Dec 2005	Regarding Submission of Cash Transactions Report (CTR)
9	29 Dec 2005	Regarding Submission of Cash Transactions Report (CTR)
10	16 Feb 2006	Regarding Submission of Cash Transactions Report (CTR)
11	20 Feb 2007	Cooperation in conducting investigation by the law enforcing agencies and compliance of freezing/attachment order under the Special Powers Rules, 2007
12	20 Sept 2007	Money Laundering Prevention (amendment) Ordinance, 2007
13	24 Sept 2007	Submission of cash transaction report (CTR)
14	25 Sept 2007	Instructions for opening and maintaining the accounts of Politically Exposed Persons ( PEPs)



15	24 Mar 2008	Instruction to be followed regarding compliance of Self Assessment and Independent Testing Procedures Under Para 6.5 and 6.6 respectively of Guidance Notes on Prevention of Money Laundering
16	29 April 2008	Money Laundering Prevention Ordinance, 2008
17	29 June 2008	Anti Terrorist Ordinance 2008
18	10 August 2008	Instructions to be followed by Insurance Companies for compliance of the provisions contained in the Money Laundering Prevention Ordinance, 2008 and Anti Terrorist Ordinance 2008
19	14 August 2008	Instructions to be followed by Banks and Financial Institutions for compliance of the provisions contained in the Money Laundering Prevention Ordinance, 2008 and Anti Terrorist Ordinance 2008 – <i>updated earlier circulars to reflect the new MLPO.</i>
20	14 August 2008	Instructions to be followed by Money Changers for compliance of the provisions contained in the Money Laundering Prevention Ordinance, 2008 and Anti Terrorist Ordinance 2008

**Table: Instructions Issued by Bangladesh Bank Banking Regulation Policy Department (BRPD)**

BRPD Circular	Date	Subject
17	7 October 2003	Guidelines in managing core risk in banks, including money laundering risk

### *Status of Circulars*

496. The Circulars listed above are issued under rule making powers in the MLPA, MLPO, the Banking Companies Act and the Financial Institutions Act 1993. The Circulars use obligatory language and while they do not mention sanctions, they reference the previously mentioned statutes which provide for sanctions. Additionally, the regulator checks reporting entities for compliance against obligations in the Circulars and sanctions non-compliance with such circulars. As such Bangladesh Bank Circulars are “other enforceable means (OEM)” as set out by the FATF.

497. These OEM Circulars are further supported by guidelines and circular letters. The table below sets out the various laws/regulations and OEM that provide for preventive measures to be undertaken by financial institutions. Section 45 (a-c) of the Banking Companies Act provides a very broad basis for Bangladesh Bank to issue enforceable directions as it deems fit; and provides that the banking company concerned shall be bound to comply with such direction. The repeal of the MLPA and passage of the MLPO meant that a number of earlier notices were not clearly supported until August 2008 when the Bangladesh Bank AMLD issued Circular 19, which updated earlier AMLD circulars to cross reference relevant provisions in the new MLPO.

### *Status of Guidance Notes*

498. Guidance Notes on Preventing Money Laundering were prepared by the Focus Group on Prevention of Money Laundering and were issued to banks by Bangladesh Bank through BRPD Circular No. 17 on 7 October 2003. BRPD Circular 17 indicated that “Bangladesh Bank will also monitor progress of implementation of these manuals/guidelines through its on site inspection teams during routine inspection”.

499. No evidence was provided that the Guidance Notes were issued to non-bank financial institutions by way of a Bangladesh Bank Circular.

500. Section 1.1.6 of the AML Guidelines mentions that the Guidance Notes “go beyond the requirements of the Money Laundering Regulations (ie AMLD Circulars). Nonetheless, it is expected that all institutions conducting *relevant financial business* pay due regard to these Guidance Notes in developing responsible AML procedures suitable to their situation.” In cases of banks or financial institutions not implementing the Guidance Notes, Bangladesh Bank “may seek an explanation and may conclude that the *Bank or other Financial Institution* is carrying on business in a manner that may give rise to sanctions under the applicable legislation.”

501. As the Guidance Note was issued as Circular 17 and the Circulars are issued under the power of the Banking Company Act and Financial Institutions Act and reference the MLPA, the referred sanctions are derived from those statutes. ‘Sanctions available under the applicable legislation’ include a fine ranging from Taka 10,000 (approx USD150) to 500,000 (\$7200). Bangladesh bank may remove directors, cancel licenses or

502. The Banking Companies Act, Section 46, provides powers to remove a chairman or director or principal executive officer of a banking company in response to a breach of the enforceable directions.

Name of Law/Regulation/OEM	Subject Sectors	Hierarchy	Law/OEM
Money Laundering Prevention Act 2002 (MLPA 2002)	Bank and Financial Institutions	Law	Law/regulation
Money Laundering Prevention Ordinance 2008 (MLPO 2008)	All reporting Organizations	Law	Law/regulation
AML Circular No. 1,5	Bank, Financial Institutions and Money Changers	Bangladesh Bank Direction	OEM
AML Circular No. 2,3,4,6,11,12,14,15	Bank and Financial Institutions	Bangladesh Bank Direction	OEM
AML Circular No. 7,8,9,10,13	Banks	Bangladesh Bank Direction	OEM
AML Circular No. 16,17	Reporting Organizations	Bangladesh Bank Direction	OEM
AML Circular No. 18	Insurance Companies	Bangladesh Bank Direction	OEM
AML Circular No. 20	Money Changers	Bangladesh Bank Direction	OEM
AML Circular Letter	Specific Sector	Bangladesh Bank Direction	OEM
Guidance Notes on Preventing Money Laundering	Banks and Financial Institutions	Bangladesh Bank Direction	OEM
Bangladesh Bank - BRPD Policy on opening bank branches, subsidiaries or exchange house abroad BRPD (M) 204/2001-372-409 dated July 16, 2001	Banks	Bangladesh Bank Direction	OEM

## **Scope of coverage of financial institutions**

503. The scope of coverage of AML preventative measures in the MLPA 2002 was limited to banks, financial institutions and other institutions engaged in financial activities. 'Financial institutions' means such non-banking financial institutions, which i) make loans and advances for industries, commerce, agriculture or building construction; ii) carry out the business of underwriting, receiving, investing and reinvesting shares, stocks, bonds, securities or other marketable securities; iii) carry out instalment transactions including the lease of machinery and equipment; iv) finance venture capital; and v) shall include merchant banks, investment companies, mutual associations, mutual companies, leasing companies or building societies. (Financial Institution Act, 1993).

504. MLPO 2008 defines 'reporting organization' as banks, financial institutions, insurance companies, money changers, companies or organizations remitting or transferring money, other business organizations approved by Bangladesh Bank, and such other organizations as the Bangladesh Bank with the approval of Government may notify from time to time.

505. MLPO 2008 extends the coverage of financial institutions to include insurance company and money changers. At the time of the onsite visit, securities companies (such as brokerage houses, merchant banks, asset management companies and mutual fund managers), micro credit organizations (accepting deposits and lending) and the post office (remittance) and had not been included as financial institutions and were not subject to AML regulation.

506. For CFT measures, the ATO 2008 is limited to banks, non-bank financial institutions and money changers. The ATO 2008 defines banks as banks established under the Bank Companies Act, 1991 and any financial or commercial institutions authorized by any other law to take or disburse loan, or to exchange money

507. Capital market intermediaries and non-bank remittance entities are not included in the MLPO or ATO. The Rules of the Securities & Exchange Commission, and Regulations and by-laws of the Stock Exchange govern the brokers/dealers of the stock exchanges. Banks providing custodial services are under the supervision of the Bangladesh Bank and are subject to the Bank Companies Act, 1991.

## **Risk of money laundering or terrorist financing**

508. Bangladesh has not sought to exclude any of the 13 financial activities on the basis of risk. The same standard of CDD is applied for all financial institutions covered by the MLPO. Exclusion of micro-credit organizations, post offices and securities companies from the MLPO, and exclusion of insurance companies, post offices and securities companies from the ATO, does not reflect a risk-based approach, but rather a lack of coverage of relevant preventative measures.

509. Of these, securities brokers, the post office and securities companies pose the greatest systemic ML risks due to their current exclusion from the framework of AML/CFT preventative measures.

510. The risk of ML in micro credit institutions appears to be low due to the low values of transactions, the closely monitored lending practices and the village-level context of the institutions. The authorities highlighted that under the Micro Credit Regulatory Authority Act some KYC is in place. Prudential limits (micro loans and deposits) and the extent of supervision and scrutiny results in micro credit business representing a low risk for ML and TF.

511. There are no licensed money remitters outside of banking and post office channels in Bangladesh. Many participants continue to utilise informal remittance channels, which pose significant ML and TF risks. Formal money remittance conducted through the post office is limited to Tk 10,000 for domestic transactions. The post office has become an agent of foreign remittance companies to receive remittance from Bangladeshi workers abroad. The Post office receives

information about originator and beneficiary, pays the beneficiary and latter receives the money accumulatively from remittance company. There are some cases where the post office had paid the beneficiary more than Tk 10000, however it must obtain approval from Bangladesh Bank to do so.

512. Money Changers provide money exchange services only to the travellers on a limited scale. Money changers follow instructions in Foreign Exchange Regulation Act 1947 and Guidelines for Foreign Exchange Transaction laid down by Bangladesh Bank. For Bangladesh residents money changers can only release foreign exchange up to US\$ 200 per person per year and US\$ 1000 per person per year if the customers can show passport and visa to show that they are going to go abroad. For foreign tourist money changers can release foreign exchange up to US \$ 5.000 and more than US\$ 5000 with a declaration at the airport.

## 3.2 CUSTOMER DUE DILIGENCE, INCLUDING ENHANCED OR REDUCED MEASURES (R.5 TO 8)

### 3.2.1 Description and Analysis

#### *General description of laws or other measures, the situation, or context*

513. The MLPO 2008 sets out general obligations regarding customer identification and keeping records of customer identity. Obligations in the earlier MLPA 2002 were replaced by those in the MLPO in 2008 and references to the MLPA included in various Bangladesh Bank AML circulars were updated by AMLD Circular 19 in 2008.

514. Guidance Notes issued by Bangladesh Bank set out obligations for bank and financial institutions to implement 'Know Your Customer (KYC)' principles. Providers of financial service are required under their regulations/decrees/rules to establish and implement policies regarding:

- customer acceptance policy;
- customer identification;
- on-going monitoring of high risk accounts;
- Identification of suspicious transactions.

## **Recommendation 5**

### *Anonymous Accounts*

#### Banks and Non-Bank Financial Institutions

515. MLPA 2002 (Section 19(i)(Ka)) and AML Circular No. 2 (2002) called on all financial institutions to preserve full and correct identification information of their customers. 25(1)(a) of the MLPO and Circular 19 succeeded the obligation in the same terms.

516. A direct prohibition on opening or maintaining anonymous, fictitious or numbered accounts was only included in August 2008 in AML Circular No. 19.

517. Section 5.2.2 of the AML Guidance Notes requires all institutions to seek satisfactory evidence of the identity of those with whom they deal. Unless satisfactory evidence of the identity of potential customers is obtained in good time, the business relationship must not proceed. Section 5.2.4 requires an institution to establish to its satisfaction that it is dealing with a real person (natural, corporate or legal), and must verify the identity of persons who are authorized to operate any bank or investment account, or transact business for the customer.

518. Section 5.12.1 of the September 2003 Guidance Notes called on all banks/financial institutions to update KYC information, including accurate customer identity data, by 31st January 2010. In September 2005, Bangladesh Bank issued Circular No.6 which noted that banks/financial

institutions had failed to initiate procedures to update pre-2002 accounts and called for immediate action.

### Securities Companies

519. Security companies are not covered by the MLPO. There is no provision for securities companies that specifically prohibits opening or maintaining of an anonymous account or an account under a fictitious name. Provisions in the Ministry of Finance Investment Wing, Section 1, Notification (September 1987) do require members of the stock exchanges to record the names, national ID number and addresses of their customers.

### Insurance Companies & money changers

520. There is no provision for money changers and insurance companies that specifically prohibits opening or maintaining of an anonymous account or an account under a fictitious name. However, provisions in the MLPA 2002 and MLPO 2008 oblige financial institutions to identify the customer and to verify their identity, which effectively prohibits opening of anonymous accounts for new account holders. The probability of customer using fictitious name in money changers is low as passport and visa details must be provided when dealing with money changers.

### *Effectiveness*

521. Given the very long time-frame given for updating KYC data (until 2010), it is not possible to determine that anonymous accounts are not operating in the Bangladesh financial system. One case of Bangladesh Bank taking enforcement action on anonymous accounts involved an officer of a local commercial bank being dismissed for allowing an “associate” to open several thousand anonymous accounts with his knowledge with primary objectives of facilitating fraudulent access to have the primary shares of the particular bank. Other officials who assisted him were punished through the bank’s internal policies, such as demotion. There was no sanction for the banks in this case, as Bangladesh Bank mentioned that the mistake is the responsibility of the directors, not the banks.

### ***When CDD is required***

#### Banks and Non-Bank Financial Institutions

522. Section 6.1.1 of the Guidance Notes require financial institutions to perform due diligence on all prospective clients prior to opening an account. This process is completed by fulfilling the documentation requirements.

523. *When establishing business relations:* Section 5.2.3 of the Guidance Notes cover CDD when a business relationship is being established, and requires banks and financial institutions to discover the nature of the business that the customer expects to conduct with the institution should be ascertained at the outset to establish what might be expected later as normal activity. Before a business relationship is established, measures should be taken by way of company search and/or other commercial enquiries to ensure that the applicant company has not been, or is not in the process of being, dissolved, struck off, wound-up or terminated (Section 5.8.2).

### ***When carrying out occasional transactions***

524. Section 5.4.3 of the Guidance Notes covers requirements for one-off transactions or a series of linked transactions of Tk.5,000 or more.

### ***When carrying out wire transfers***

525. Section 7.4.2 of the Guidance Notes covers all outgoing wire transfers. Relevant financial businesses are required to include accurate and meaningful originator (name, account number, and where possible address) and beneficiary information (account name and/or account number) on all

outgoing funds transfers and related messages that are sent, and this information should remain with the transfer or related message throughout the payment chain.

***When there is a suspicion of ML or TF***

526. Section 5.4.3 of the Guidance Notes requires identity to be verified in all cases where money laundering is known, or suspected.

527. There is no specific requirement to perform CDD for transactions below Tk.5000 or when a financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.

528. The obligations of when CDD is required are not laid out in law or regulation, as is required by the FATF Recommendations. Instead, they are contained in the Guidance Notes, which are OEM. There is also no specific penalty for non-compliance.

529. In practice banks carry out due diligence when customers opens an account. In the case where they carry out transactions with walk-in customers, banks perform due diligence such as asking for the customer's address, purpose of transaction and introducer of the customer.

Securities Companies

530. The only related provision of CDD on securities companies is the Securities and Exchange Rules, 1987 contained Form IA-Customer Account Information Form, which includes requirements for basic customer identification information. There is no provision that explicitly mentioned CDD is required when there is a suspicion of ML or TF or when financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.

Insurance Companies

531. AML Circular No.18 requires insurance companies to collect correct and complete introductory information about the customer before issuing a policy in favour of any customer. In practice the information collected by insurance companies before issuing a policy to a new customer is focused on underwriting.

Money changers

532. AML Circular No. 20 requires money changer to comply with the instructions in Guidelines for Foreign Exchange Transaction. Those Guidelines require, in all cases of purchase of foreign currency, an application to be made by money changers to Bangladesh Bank. Discussions with money changers indicate that in practice tellers would ask for evidence of compliance with FERA requirement when conducting transactions with customers.

Money Remitters

533. There is no provision for money remitters regarding timing of CDD.

***Required CDD measures***

Banks and Non-Bank Financial Institutions

AML Circular No. 2, updated by Circular 19, requires banks and financial institutions to collect and preserve the following customer information when opening accounts:

Type of Customer	Information to be included in the supporting documents
Personal (natural person)	<ul style="list-style-type: none"> <li>• Name;</li> <li>• Present and Permanent Address;</li> <li>• Date of Birth, Age;</li> <li>• Nationality</li> <li>• TIN No.(if any)</li> <li>• Passport or employer certificate or certificate about the credentials by the Ward Commissioner/Union Chairman</li> <li>• Photograph of the account holder</li> </ul>
Sole Proprietorship	<ul style="list-style-type: none"> <li>• Name;</li> <li>• Present and Permanent Address;</li> <li>• Date of Birth, Age;</li> <li>• Nationality</li> <li>• TIN No.(if any)</li> <li>• Passport or employer certificate or certificate about the credentials by the Ward Commissioner/Union Chairman</li> <li>• Photograph of the account holder</li> <li>• Trade license</li> </ul>
Partnership	<ul style="list-style-type: none"> <li>• Names of partners;</li> <li>• Present and Permanent Address;</li> <li>• Date of Birth, Age;</li> <li>• Nationality</li> <li>• TIN No.(if any)</li> <li>• Passport / employer certificate / certificate of credentials by the Ward Commissioner/Union Chairman</li> <li>• Photograph of the account holder</li> <li>• Trade license</li> <li>• Partnership Deed</li> </ul>
Limited Company	<ul style="list-style-type: none"> <li>• Certificate of Incorporation</li> <li>• Articles and Memorandum of Association</li> <li>• Formal Resolution adopted in the Board meeting</li> <li>• declaration about the Directors</li> <li>• Name of account operator;</li> <li>• Present and Permanent Address of account operator;</li> <li>• Date of Birth, Age of account operator;</li> <li>• Nationality of account operator</li> <li>• TIN No. of account operator (if any)</li> <li>• Passport or employer certificate or certificate about the credentials by the Ward Commissioner/Union Chairman of account operator</li> <li>• Photograph of account operator</li> <li>• Certified copies of the returns submitted to the Registrar of Joint Stock Companies</li> <li>• Documents attested by the Bangladesh Embassies/High Commissions in the respective countries (if the Company is incorporated outside Bangladesh)</li> </ul>
Club/Society	<ul style="list-style-type: none"> <li>• Particulars of the office bearers</li> <li>• Constitution or By-Laws</li> <li>• the Government authorization letter (if registered)</li> <li>• Address of offices, etc.</li> </ul>
Co-operative Society/Limited Society	<ul style="list-style-type: none"> <li>• By-Laws authenticated by the Co-Operative Officer</li> <li>• particulars of the office bearers</li> <li>• resolution for opening of account</li> <li>• certificate of registration</li> <li>• Address of offices, etc.</li> </ul>
Private School, College and	<ul style="list-style-type: none"> <li>• Full particulars of the members of the Governing Body or Managing Committee</li> <li>• Resolution for opening of Account</li> </ul>

Madrasha	<ul style="list-style-type: none"> <li>• Etc</li> </ul>
Trustee Board	<ul style="list-style-type: none"> <li>• Certified copy of the deed of the trust</li> <li>• full particulars of the members of the trustee Board</li> <li>• resolution for opening of Account</li> <li>• etc</li> </ul>

535. AML Circular No. 2 requires, in the case of a request to remit money through a telegraphic transfer from any person other than the account holder, full name and address of the person requesting the remittance. A unique number is assigned for each citizen over 18 years.

536. AML Circular No. 19 section 2 (kha) of 2008 goes beyond Circular No. 2 and requires information on source of funds of the transaction by the customer and the beneficial owner. Circular 19 mentions that in the case of a company, detailed information of controlling shareholder and 20% or more shares held by single holder must be obtained.

537. Section 6.1.1 of the Guidance Notes requires Account Application, Bank References, Source of funds and Identification and also a 'Know Your Customer' profile which is used to record a client's source of wealth and expected transaction activity.

538. The required CDD measures are not laid out in law or regulation, as is required by the FATF Recommendations, but are contained in 'other enforceable means'. There is also no specific penalty for non-compliance.

### ***Natural Person***

539. Guidance Notes Section 5.6.1 requires the following be obtained and independently verified by the institution: (1) true name and/or names used (2) parent's names (3) date of birth (4) current and permanent address and (5) details of occupation/employment and sources of wealth or income

540. Guidance Notes Section 5.6.2 suggests verification steps for addresses including checking recent utility bills, tax assessment or bank statement containing details of the address, the voter lists, checking the telephone directory (4) record of home/office visit.

541. Guidance Notes Section 5.6.4 of the Guidance Notes states identification documents, either originals or certified copies, bearing the customer's signature and a photograph.

542. Guidance Notes Section 5.6.5 states that identification documents which do not bear photographs or signatures, or are easy to obtain, are normally not appropriate as sole evidence of identity. Where applicants put forward documents with which an institution is unfamiliar, either because of origin, format or language, the institution must take reasonable steps to verify that the document is indeed genuine, which may include contacting the relevant authorities or obtaining a notarized translation.

543. Section 5.6.6 of the Guidance Notes covers face-to-face contact, and requires sufficient evidence, either documentary or electronic, to confirm address and personal identity. At least one additional check should be undertaken to guard against impersonation. In the event that internal procedures require sight of a current passport or ID card where there is no face-to-face contact, then a certified true copy should be obtained.

544. Section 5.6.7 of the Guidance Notes recognises that there is a wide range of documents which might be provided as evidence of identity. It is for each institution to decide the appropriateness of any document in the light of other procedures adopted. However, particular care should be taken in accepting documents which are easily forged or which can be easily obtained using false identities



545. Section 5.6.8 of the Guidance Notes requires the surname and/or address of the both account holders to normally be verified in accordance with the procedures for individual account.

546. Section 5.7.1 of the Guidance Notes covers situations in which poor or elderly people may not have formal identification which can be used for verification and highlights the need for a common sense approach without compromising rigorous AML procedures. Internal procedures must allow for this, and provide advice to staff on how identity can be confirmed in these exceptional circumstances. The important point is that a person's identity can be verified from an original or certified copy of another document, preferably one with a photograph.

547. When certifying documents to be used for verification, the certifier must be a lawyer, accountant, director or manager of a regulated institution, a notary public, a member of the judiciary or a senior civil servant. A manager may authorize the opening of a business relationship if satisfied with the provided identity documents and must record the authorization to proceed on the customer's file, and must also retain this information in the same manner and for the same period of time as other identification records.

548. Section 5.7.5 of the Guidance Notes covers cases in which the person opening an account on behalf of a minor is not already known, the identity of that person, and any other person who will have control of the account, should be verified.

### ***Legal Persons and arrangements***

549. Section 5.9.1 of the Guidance Notes covers partnerships and other unincorporated businesses whose partners/directors have not already been identified by the institution. In such cases, the identity of all the partners or equivalent should be verified in line with the requirements for personal customers. Where a formal partnership agreement exists, a mandate from the partnership authorizing the opening of an account and conferring authority on those who will operate it should be obtained.

550. Section 5.9.2 of the Guidance Notes requires evidence of the trading address of the business or partnership to be obtained and a copy of the latest report and accounts (audited where applicable).

551. Section 5.8.1 notes that particular care should be taken to verify the legal existence of the applicant and to ensure that any person purporting to act on behalf of the applicant is authorized to do so. The principal requirement is to look behind a corporate entity to identify those who have ultimate control over the business and the company's assets, with particular attention being paid to any shareholders or others who exercise a significant influence over the affairs of the company. Enquiries should be made to confirm that the company exists for a legitimate trading or economic purpose, and that it is not merely a "brass plate company" where the controlling principals cannot be identified.

552. Section 5.8.2 of the Guidance Notes states before a business relationship is established, measures should be taken by way of company search and/or other commercial enquiries to ensure that the applicant company has not been, or is not in the process of being, dissolved, struck off, wound-up or terminated.

553. Section 5.8.5 of the Guidance Notes outlines the documents that should normally be obtained from companies to verify identity: (1) Certified true copy of Certificate of Incorporation or equivalent, details of the registered office, and place of business (2) Certified true copy of the Memorandum and Articles of Association, or by-laws of the client (3) Copy of the board resolution to open the account relationship and the empowering authority for those who will operate any accounts (4) Explanation of the nature of the applicant's business, the reason for the relationship being established, an indication of the expected turnover, the source of funds, and a copy of the last available financial statements where appropriate (5) Satisfactory evidence of the identity of each of the principal beneficial owners being any person holding 10% interest or more or with principal control over the company's assets and any person (or persons) on whose instructions the signatories on the account are to act or may act where such persons are not full time employees, officers or directors of the company (6) Satisfactory

evidence of the identity of the account signatories, details of their relationship with the company and if they are not employees an explanation of the relationship. Subsequent changes to signatories must be verified (7) Copies of the list/register of directors.

554. Section 5.8.3 of the Guidance Notes requires that particular is exercised when establishing business relationships with companies incorporated or registered abroad. Institutions should carry out effective checks on the source of funds and the nature of the activity to be undertaken during the proposed business relationship. In the case of a trading company, a visit to the place of business may also be made to confirm the true nature of the business.

555. There is no guideline on verification on legal arrangements such as persons acting as trustee.

556. There appear to be variations in the steps being taken to verify customers who are legal persons. Some institutions do not verify the legal entity management except for credit loans, others verify the management but not the shareholders. Others conduct verification on shareholders holding shares of 25% or more. None of the FIs interviewed conduct the verification as mentioned in Section 5.8.5 of the Guidance Notes which states satisfactory evidence of the identity of each of the principal beneficial owners being any person holding 10% interest or more or with principal control over the company's assets.

557. Verification on Club/Society has been done according to the AML Circular No.2, as bank seek Constitution or By-Laws and copies of the Government authorization letter.

### ***Beneficial Ownership***

558. There is no explicit requirement for banks and financial institutions to verify whether any person is act on behalf of another person. However the MLPO 2008 includes an indirect obligation to identify beneficial owners at section 8 'nobody shall provide false information concerning the source of funds or the identity of any account holder or beneficial owner or nominee'.

559. AML Circular No. 19 updates Circular 2 in light of the MLPO 2008. Section 2 (Kha) of Circular 19 requires financial institutions to keep information regarding source of funds of the transaction by the customer and beneficial owner. The section defines 'beneficial owner' information required of a company to include detailed information of controlling shareholder and 20% or more shares held by single holder.

560. Section 5.4.1 of the Guidance Notes discusses customer identification and defines a customer to include "the person or entity that maintains an account with the bank or those on whose behalf an account is maintained (i.e. beneficial owners)".

561. Section 5.8.1 considers beneficial ownership of a corporate entity and stresses that the principal requirement is to look behind a corporate entity to identify those who have ultimate control over the business and the company's assets, with particular attention being paid to any shareholders or others who exercise a significant influence over the affairs of the company.

562. Section 5.8.5 defines principal beneficial owners as being "any person holding 10% interest or more or with principal control over the company's assets and any person (or persons) on whose instructions the signatories on the account are to act or may act where such persons are not full time employees, officers or directors of the company". This is in contrast to the definition of beneficial ownership for a company in MLPO.

563. Section 5.8.7 of the Guidance Notes requires that the following natural and legal persons must also be identified:

- All of the directors who will be responsible for the operation of the account / transaction.
- All the authorized signatories for the account/transaction.

- All holders of powers of attorney to operate the account/transaction.
- The beneficial owner(s) of the company
- The majority shareholders of a private limited company

564. Section 5.10 of the Guidance Notes addresses the authority to deal with assets under a power of attorney and states that it “may be advisable to establish the identities of holders of powers of attorney, the grantor of the power of attorney and third party mandates”.

565. The obligation in relation to identifying the beneficial owner for individual customers is broad. The KYC Profile form at Annex D to the AML Guidance Notes includes a requirement for customers to identify the actual owner of the account.

566. There is some confusion with two overlapping requirements for what is required to determine the beneficial ownership of a legal entity. As AML Circular No. 19 had just been issued at the time of the onsite, banks have just recognized the regulation but have not yet implemented the provisions. However during interviews with banks, the understanding of the obligation to identify the beneficial owner was limited to shareholders who have 20% or more, but not detailed information of controlling shareholders. This is in contrast to Section 5.8.5 of the AML Guidance Notes which defines principal beneficial owners as being any person holding 10% interest or more or with principal control over the company’s assets.

#### ***Purpose and intended nature of business relationship***

567. Section 5 of the Guidance Notes sets out obligations when a business relationship is being established to understand the nature of the business that the customer expects to conduct with the institution and to establish what might be expected later as normal activity. This information should be updated as appropriate and should include patterns of transactions. For some business these may be obvious, however, for more complex businesses this may not be the case. Institutions should consider recording the purpose and reason for establishing the business relationship, and the anticipated level and nature of activity to be undertaken. Documentation about the nature of the applicant’s business should also cover the origin of funds to be used during the relationship.

568. Section 5.9.3 of the Guidance Notes requires an explanation of the nature of the business or partnership to be ascertained (but not necessarily verified from a partnership deed) to ensure that it has a legitimate purpose.

569. The Guidance Notes includes a pro-forma declaration whereby all banks seek a declaration of expected normal activity to be made at the opening of the account. This is intended to form the basis for determining ‘normal’ and ‘unusual’ patterns of activity.

#### ***Ongoing due diligence***

570. Section 6.1.2 of the Guidance Notes calls for monitoring of the conduct of the relationship to ensure that activity is consistent with the declared nature of business. The language in this section of the Guidance Note is not obligatory, but gives options to Financial Institutions including updating the client’s KYC profile for any significant changes in their lifestyle (e.g., change of employment status, increase in net worth) and by monitoring the transaction activity over the client’s account on a periodic basis.

571. Section 6.3.1 of the Guidance Notes expects financial Institutions to have systems and controls in place to monitor on an ongoing basis the relevant activities in the course of the business relationship. The nature of this monitoring will depend on the nature of the business. The purpose of this monitoring is for Financial Institutions to be vigilant for any significant changes or inconsistencies in the pattern of transactions. Inconsistency is measured against the states original purpose of the accounts i.e. the declared Transaction Profile (TP) of the Customer. Possible areas to monitor could be:

- a. transaction type
- b. frequency
- c. unusually large amounts
- d. geographical origin/destination
- e. changes in account signatories

572. Section 5.2.3 and 5.4.4 requires updating of the nature of the business that the customer expects to conduct with the institution information. Information of identity should be updated or reviewed as appropriate. If the institution becomes aware of changes in the company structure or ownership, or suspicions are aroused by a change in the nature of business transacted, further checks should be made.

573. Section 5.8.8 of the Guidance Notes sets out that when authorized signatories change; care should be taken to ensure that the identities of all current signatories have been verified. In addition, it may be appropriate to make periodic enquiries to establish whether there have been any changes in directors/shareholders, or the nature of the business/activity being undertaken. Such changes could be significant in relation to potential money laundering activity, even though authorized signatories have not changed.

#### Securities Companies

574. The Securities and Exchange Rules, 1987 contained Form IA-Customer Account Information Form, which includes requirements for basic customer identification information. Form 1A consists of name of customer, father's/husband's/CEO's (in case of firm or company) name, age, address and name and address of person introducing the customer (if any). CDBL Account Opening Form consists of name, date of birth, father's/husband's name, in case of company (company name, name of contact person and contact details), bank details, passport details, name of other of account holder (if joint applicant), name, contact details of the nominee and the relationship with account holders and guardian details (if nominee is a minor). There is no requirement to verify the customer or whether the customer acts on behalf of another person. There is also no requirement that securities companies should obtain information on the purpose or intended nature of business relationship.

575. Prior to opening the customer account, securities companies ask the customer to fill their own application form which includes information such as monthly income.

#### Insurance Companies

576. AML Circular No. 18 requires the insurance company to insurance company to collect correct and complete introductory information about the customer with related documents and verify the information/documents for its authenticity and preserve the documents.

577. Section 14 of Insurance Act 1938 requires insurers to maintain a register or record of policies, in which shall be entered, in respect of every policy issued by the insurer, the name and address of the policy-holder, the date when policy was effected and a record of any transfer, assignment or nomination of the insurer has notice.

578. Before issuing policies, insurance companies collect the following documents from their clients:

- a. proposal form
- b. age proof (passport/SS. Certificate/National ID/Birth Certificate)
- c. Income Certificate
- d. Health Certificate
- e. Financial questionnaire

### Money changers

579. Guidelines for Foreign Exchange Transaction require that in all cases of purchase of foreign currency an application must be made to money changers by filling form that include customer information and obtain copy of passport. There is no requirement to verify the customer or whether the customer acts on behalf of another person. There is also no requirement that financial institutions should obtain information on the purpose or intended nature of business relationship.

### Money Remitters

580. There is no provision for money remitters regarding required CDD that has to be conducted.

### ***Risk***

581. Section 5.3.1 of the Guidance Notes requires financial Institutions to develop clear customer acceptance policies and procedures, including a description of the types of customer that are likely to pose a higher than average ML risk to a bank. In preparing such policies, factors such as customers' background, country of origin, public or high profile position, linked accounts, business activities or other risk indicators should be considered.

582. Section 6.2 of the Guidance Notes indicates that when opening accounts, the concerned reporting entities must assess the risk that the accounts could be used for money laundering, and must classify the accounts as either High Risk or Low Risk. The risk assessment may be made using the KYC Profile Form given in which following seven risk categories are scored using a scale of 1 to 5 where scale 4-5 denotes High Risk, 3- Medium Risk and 1-2 Low Risk.

- Occupation or nature of customer's business
- Net worth / sales turnover of the customer
- Mode of opening the account
- Expected value of monthly transactions
- Expected number of monthly transactions
- Expected value of monthly cash transactions
- Expected number of monthly cash transactions

583. Risk scoring ranks <14 as low risk with >14 as high risk. The risk assessment scores are to be documented in the KYC Profile Form. However, management may judgmentally override this automatic risk assessment to "Low Risk" if it believes that there are appropriate measures mitigate to the risk. The decision to override must be documented and approved by the Branch Manager, and Branch AML Compliance Officer.

584. Section 6.1.3 of the Guidance Notes states if the customer is a public figure, the account will become automatically a High Risk Account. The Guidance Notes do not further define 'public figure'.

585. Section 6.3.5 of the Guidance Notes states it may not be feasible for some institutions or specific branches of institutions having very large number of customers to track every single account against the TP where a risk based approach should be taken for monitoring transactions based on use of "Customer Categories" and "Transaction Limits" (individual and aggregate) established within the branch. The Customer Category is assigned at account inception -and may be periodically revised - and is documented on the Transaction Profile. Transaction Limits are established by the business subject to agreement by Branch Officer. The Customer Categories and Transaction Limits are maintained in the manual ledgers or computer systems.

### ***Enhanced due diligence on High Risk Customer***

586. Section 5.3.2 of the Guidance Notes Financial Institutions should develop graduated customer acceptance policies and procedures that require more extensive due diligence for higher risk

customers. Decisions to enter into business relationships with higher risk customers should be taken exclusively at senior management level.

587. Section 6.2.3 of the Guidance Notes states KYC Profiles and Transaction Profiles must be updated and re-approved at least annually for “High Risk” accounts.

#### ***Simplified CDD Measures on low risk customers***

588. Section 5.8.4 of the Guidance Notes states no further steps to verify identity over and above usual commercial practice will normally be required where the applicant for business is known to be a company, or a subsidiary of a company, quoted on a recognized stock exchange.

589. Section 6.2.3 of the Guidance Notes states there is no requirement for periodic updating of profiles for “Low Risk” transactional accounts.

590. Banks appear to be using KYC profile form as the sole source to determine high, medium or low risk customers, although there seems some confusion, in practice, between credit risk and ML risk. For high risk customers, the decision of opening an account would be taken at senior level management. Apart for that, bank would conduct more periodic review. For example for low risk customers updating is conducted every three years, for medium risk customer is two years and for high risk customer is every years. There is also a probability to reclassify a customer, for example as the customer has already been reported its transaction as an STR, the customer would be reclassified from low risk to high risk.

591. There is no provision that require customers of securities companies, money changers and money remitters to perform enhanced due diligence for high risk customers.

#### ***Timing of verification***

592. Section 5.15.1-3 of the Guidance Notes states the best time to undertake verification is *prior to* entry into the account relationship. Verification of identity should, as soon as is reasonably practicable, be completed before any transaction is completed. If it is necessary for sound business reasons to open *an account* or carry out a significant *one-off* transaction before verification can be completed, this should be subject to stringent controls which should ensure that any funds received are not passed to third parties. Alternatively, a senior member of staff may give appropriate authority.

593. Section 5.15.3 of the Guidance Notes states this authority should not be delegated, and should only be done in exceptional circumstances. Any such decision should be recorded in writing.

594. There appear to be variations on timing of verification in practice. A number of banks may open the account on receipt of a customer’s supporting documents and check their validity afterwards.

595. AML Circular No. 18 requires insurance company to do verification before issuing a policy for the customers. Circular 18 has not yet been effectively implemented.

596. There is no provision regarding the timing of verification for customers of securities companies, money changers and money remitters. While Rule 4 of SEC Rules 1987 requires securities companies to collect all relevant information regarding “Manner of transaction of member’s business”, it does not set out requirements regarding the timing of verification of KYC. Rule 4 is focused on transactions conducted by customers rather than the customer itself. Rule 4 does mention that there should be a confirmation of transaction order if the buying or selling order is conducted by telephone.

#### ***Failure to satisfactorily complete CDD***

597. Section 5.2.2 of the Guidance Notes states unless satisfactory evidence of the identity of potential customers is obtained in good time, the business relationship must not proceed.

598. Section 5.15.4 of the Guidance Notes states verification, once begun, should normally be pursued either to a satisfactory conclusion or to the point of refusal. If a prospective customer does not pursue an application, staff may (or may not) consider that this is in itself suspicious.

599. In practice for new customer, there is variation in actions taken by financial institutions regarding on failure to satisfactorily complete CDD. One financial institution states that it would not activate the account. However no financial institutions visited by evaluation team consider failure to satisfactorily complete CDD should be regarded as a suspicious transaction.

600. For existing customers, according to explanations provided by banks which had discussions with evaluation team, if bank can not complete the verification of the customer, bank would give a notice in the newspaper and than legal notice and lastly confiscate the account and report to Bangladesh Bank as suspicious transaction.

601. There is no provision regarding failure to satisfactorily complete CDD for customers of securities companies, insurance companies, money changers and money remitters.

### ***Existing customers***

602. All relevant financial businesses were obliged to review existing business relationships commenced prior to 30 April 2002 (referred to in this section as “pre 2002 accounts”) to establish whether any documentary evidence required by their current KYC procedures is lacking. The review must be completed by 31 January 2010.

603. Section 5.12.3 of the Guidance Notes establishes requirements to update documentary evidence on existing customers on the basis of materiality and risk. In reviewing pre-2002 accounts, FIs must decide whether to obtain any missing data, or, in light of the existing nature of the business relationship, it is unnecessary to do so. Each business relationship must be treated in one-way or the other. A decision must not be taken on the basis of categories or groups of clients.

604. Section 5.12.4 of the Guidance Notes requires that when reviewing the nature of a business relationship, management should take into account a number of considerations, such as the length of time the relationship has been in place, the frequency with which the institution has contact with the client, and the volumes and numbers of transactions.

605. Where it is decided to seek missing documentation, the institution must do so at the earliest possible opportunity and persist until the information is received, or the original decision revised. Where missing information is not obtained within a reasonable period of time, the institution should consider termination of the business relationship.

606. Implementation of the requirement to update CDD data on existing customers has been very slow. Since 2002, it appears that the banking sector has updated or verified less than 50% of existing customers.

607. There is no provision that requires securities companies, insurance companies, money changers and money remitters to perform complete CDD.

### ***Effectiveness of Rec 5***

608. There are number of significant effectiveness issues with the measures introduced by Bangladesh to meet Recommendation 5. Key problems include the gaps in the scope of coverage of financial institutions (securities companies), the long time given to FIs to check legacy accounts and the depth of the requirements. Bangladesh has taken some significant steps to require FIs to obtain beneficial ownership information, but the over-reliance on the KYC Profile form may undermine effectiveness. For legal persons, implementation of the overlapping requirements for identifying

beneficial owners appears to be very weak. Available company data and beneficial ownership information is generally of poor quality (see Rec 33).

## **Recommendation 6**

### **Banks and Non-Bank Financial Institutions**

609. Bangladesh exercises very strict foreign exchange controls, which go some way to ensuring that foreign PEPs are not able to launder their funds through Bangladesh.

610. AML Circular No. 14 (September 2007) requires banks and financial institutions to exercise enhanced due diligence, in relation to Politically Exposed Persons (PEPs). The Circular requires that they:

- Have the risk management system to identify PEPs
- Obtain senior management approval for establishing business relationships with such customers
- Take reasonable measures to establish the source of wealth and source of funds
- Conduct ongoing monitoring of the business relationship

611. The definition of PEPs in the Circular is as per the FATF definition.

612. At the time of on-site visit the relevant circular was still based on MLPA 2002 and had not been updated to reflect the obligations in the MLPO 2008.

613. Section 5.3.2 of the Guidance Notes requires that decisions to enter into business relationships with higher risk customers such as public figures or politically exposed persons, should be taken exclusively at the senior management level.

614. There are no requirements in place for securities companies, insurance companies and money changers to identify customers who are PEPs or to take any enhanced measures related to customers who are PEPs.

### ***Additional elements***

615. The PEP requirements do not apply to domestic PEPs. Section 6.1.3 of the Guidance Notes states if the customer is a Public Figure, the account will become automatically a High Risk Account.

616. Bangladesh has signed and become party to UN Corruption Convention.

## **Effectiveness**

617. Banks and financial institutions do not appear to have comprehensive systems in place to check for the presence of PEPs operating or being the beneficial owner of accounts in Bangladesh.

618. In practice, banks note that it is rare for foreign nationals to open an account in Bangladesh for investment. In cases where it is obvious that a customer is a PEP, banks would utilise Bangladeshi embassies to assist them to gain information to identify PEPs. This would be a very long processes.



## **Recommendation 7**

619. AMLD Circular No 7 (2005) sets out the obligations for correspondent banking relationships. The circular requires banks to gather sufficient information about their respondent banks to understand the nature of business before providing correspondent services to them. The information to be collected includes details about the respondent bank's management, major business activities, location, money laundering prevention efforts, prevailing supervisory framework, and the purpose of the account.

620. Para 2 of the circular stipulates that senior management approval is required before establishing correspondent banking relationship.

621. Para 6 of the Circular requires banks to pay particular attention when maintaining a correspondent banking with banks incorporated in jurisdiction that do not meet international standards for the prevention of money laundering. Enhanced due diligence will generally be required in such cases, including obtaining details of the beneficial ownership of such banks and more extensive information about policies and procedures to prevent money laundering. No guidance has been provided on how to identify which jurisdictions do not meet international standards.

622. Where a correspondent banking relationship involves the maintaining of "payable through accounts" particular care should be exercised to ensure whether the customer of the respondent bank will be allowed to use the correspondent banking services and if so should take steps to complete required verification of identity of such customers. Discussions with commercial banks revealed that in practice Bangladesh Banks does not allow payable through facilities.

## **Effectiveness**

623. Verification of the reputation of the respondent institution and the quality of supervision, including whether it has been subject to ML or TF investigation or regulatory action, is done by banks by obtaining information through a questionnaire which covers the required information in AML Circular No.7.

624. In practice, banks largely rely on well reputed international commercial banks and establish new correspondent banking relationship with reputed international banks.

625. Commercial banks obtain some assistance from Bangladesh Foreign Service officials when assessing respondent banks' controls.

626. Compliance with the requirements of the mentioned circular is monitored by the Bangladesh Bank's AMLD inspections, however, the extent of compliance was not clearly demonstrated by the bank supervision department.

## **Recommendation 8**

627. Bangladesh has a predominantly cash-based economy. Most people still carry out transactions with financial institutions using cash.

628. There are some limitation on internet or on line Banking. Banks must gain permission from the Banking Regulation and Policy Department of Bangladesh Bank to conduct online banking. Banks must follow the *Guidelines on Information and Communication Technology for Scheduled Banks; Guidelines for Foreign Exchange Transactions*. The following controls are in place:

- In request of a customer no money can be transferred to a third party account (except utility bills)
- No money can be transferred from non-convertible taka account to coverable taka account

629. Since December 2007, various mobile phone companies have sought permission to conduct mobile banking. However until the time of evaluation visit, Bangladesh Bank has not granted permission for a mobile banking license.

630. AML Circular letter dated 07/02/2004 instructed financial institutions to obtain CDD in case of on line banking.

631. Section 5.13 of the Guidance Notes provides for some non-face to face transactions at the account opening stage. Initial application forms could be completed on-line and then followed up with appropriate identification checks. The account, in common with accounts opened through more traditional methods, should not be put into full operation until the relevant account opening provisions have been satisfied in accordance with Guidance Notes.

632. Section 5.6.6 of the Guidance Notes requires that in cases of non face-to-face contact, photographic identification would be inappropriate, and procedures to identify and authenticate customers should ensure that there is sufficient evidence, either documentary or electronic, to confirm address and personal identity. At least one additional check should be undertaken to guard against impersonation. In the event that internal procedures require sight of a current passport or ID card where there is no face-to-face contact, then a certified true copy should be obtained.

633. There is no provision that require securities companies, insurance companies, money changers and money remitters to have a policy to prevent misuse of technological developments in ML or TF schemes.

### **Effectiveness**

634. In practice in Bangladesh, banks and financial institutions rarely open customer accounts without face to face contact.

635. There is a limited number of ATM in Bangladesh. Looking at the scope of ATMs, there is still no policies and procedure on how to manage risk to prevent the misuse of ATM in money laundering or terrorist financing schemes.

636. AML Circular No. 19 section 2(Ga) requires ML risk to be taken into account while providing technology-based non face to face services. Banks must develop policies and procedures to mitigate those risks.

## **3.2.2 RECOMMENDATIONS AND COMMENTS**

### *Recommendation 5*

637. Bangladesh should include Securities Companies in CDD requirements

638. Bangladesh should require all reporting parties to:

- not keep anonymous accounts or accounts in fictitious names;
- undertake customer due diligence (CDD) measures when a) establishing business relations b) carrying out occasional transactions above the applicable designated threshold c) carrying out occasional transactions that are wire transfers d) there is a suspicion of money laundering or terrorist financing e) the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data;
- to identify the customer (whether permanent or occasional, and whether natural or legal persons or legal arrangements) and verify that customer's identity using reliable, independent source documents, data or information (identification data);
- verify that any person purporting to act on behalf of the customer is so authorised, and

identify and verify the identity of that person;

- identify the beneficial owner, and take reasonable measures to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source such that the financial institution is satisfied that it knows who the beneficial owner is;
- determine whether the customer is acting on behalf of another person, and should then take reasonable steps to obtain sufficient identification data to verify the identity of that other person;
- determine who are the natural persons that ultimately own or control the customer; and
- conduct ongoing due diligence on the business relationship.

639. Bangladesh should issue:

- CDD guidelines for insurance companies, money changers and money remitters; and
- instructions for all covered parties on verification of legal arrangement such as trusts.

640. Bangladesh should ensure effective implementation of core CDD measures, in particular verification on partnership; verification on shareholders of legal entities; Obtaining purpose and intended nature of business relationship for non bank financial institutions; Enhanced due diligence of high risk customers on the basis that source of fund come from illegal sources (not credit risk); and Timing of verification for new customer according to the guideline notes.

#### *Recommendation 6*

641. Bangladesh should issue:

- a PEPs requirement for Securities Companies, Insurance Companies, Money Changers and Money Remitters
- a new circular AML Circular for PEP based on MLPO 2008
- guidelines on how bank and financial institutions identify PEP and how to obtain the source of wealth and source of funds of the PEP

#### *Recommendation 7*

642. Bangladesh should:

- Introduce clear requirements to cover respondent's controls over AML\CFT.
- apply Circular 7 measures to pre-existing respondent relationships introduce and implement clear policy relating to shell banks.

#### *Recommendation 8*

643. Bangladesh should make a provision for banks to have a policy to prevent misuse of technological developments in TF schemes.

644. Bangladesh should make provision for securities companies, insurance companies, money changers and money remitters to have a policy to prevent misuse of technological developments in money laundering or terrorist financing schemes.

### 3.2.3 COMPLIANCE WITH RECOMMENDATIONS 5 to 8

	Rating	Summary of factors underlying rating
<b>R.5</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>Securities Companies are not included in the MLPO, regulatory instructions or enforceable guidelines and are not obliged to conduct CDD.</li> <li>Various key requirements covering anonymous accounts, timing and scope of CDD and ongoing CDD are not covered in law and regulation, but are set out in Other Enforceable Means (OEM).</li> <li>Detailed CDD requirements set out in the enforceable guidelines have not been extended to insurance companies and postal money remitting services.</li> <li>There are no obligations on verification of legal arrangement such as trustee.</li> <li>Overall the implementation of identification and CDD requirements are weak in those sectors that are covered by the framework, due to a poor culture of compliance with the existing obligations.</li> <li>The concept of beneficial ownership is poorly understood and not well implemented in practice.</li> </ul>
<b>R.6</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>Requirements for PEPs do not extend to securities companies, insurance companies, money changers and money remitters.</li> <li>AML Circular 14 on PEPs has not been updated to reflect the MLPO 2008, so the obligations previously issued under the MLPA were not in force at the time of the onsite visit</li> <li>PEP provisions appear to be poorly understood in practice by the covered sector.</li> </ul>
<b>R.7</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>No clear requirement to assess adequately of correspondent's AML/CFT controls</li> <li>No clear requirement to assess the existing correspondent relationships existing prior to the issuing of Circular No. 7.</li> <li>No requirement on banks to satisfy themselves about the respondent's CFT controls.</li> <li>Correspondent banking controls are poorly implemented in practice.</li> </ul>
<b>R.8</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>Controls are inadequate when dealings with non-face to face customers</li> <li>No provision for banks to have a policy to prevent misuse of technological developments in terrorist financing schemes</li> <li>No provision for Securities Companies, Insurance Companies, Money Changers and Money Remitters to have a policy to prevent misuse of technological developments in money laundering or terrorist financing schemes</li> </ul>

### 3.3 Third parties and introduced business (R.9)

#### 3.3.1 Description and Analysis

645. There is no specific rule that prohibits banks or other financial institutions from relying upon third party services to perform CDD. However section 25 MLP Ordinance 2008 states that reporting

parties shall keep, during the operation of accounts, the correct and full information of identification of its clients. This is interpreted by Bangladesh Bank as requiring CDD to be done directly by reporting parties.

646. There are a number of instances where third parties are relied upon in practice. In the case of banks undertaking remittance, the verification of customers is conducted by exchange house and not by the banks which ultimately conduct the remittance. In some cases banks used courier services to help it to verify the customer address if the address the customer in application form is different with the address in supporting documents such as utility bills.

647. Collection of customers in insurance business depends on Insurance Agents who are appointed by insurers. Agents are authorised by the Department of Insurance on the recommendation of insurer under section 42 and 42A of the Insurance Act 1938 for a specific period of time. Agents are the key personnel who direct by related to procure business from different parties.

648. Security companies operate products for Bangladeshi citizens staying abroad. As face to face interaction is not a requirement for opening an account, to mitigate their risk, security companies require applicants to have an account with a bank in Bangladesh. In this case, the security company relies on the bank to conduct verification of the customer's identity.

### 3.3.2 Recommendations and Comments

- Bangladesh should include Securities Companies into AML Regime, establish and implement explicit legal requirement for all reporting parties to have adequate procedures with respect to use of third parties for services that involve CDD.
- Bangladesh should establish and implement explicit legal requirement for all reporting parties to have adequate procedures with respect to use of third parties for services that involve CDD.

### 3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
<b>R.9</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• Securities Companies are not included in AML Regime and there is no provision on third party reliance for CDD.</li> <li>• No legal requirement for all reporting parties to have adequate procedures with respect to use of third parties for services that involve CDD</li> </ul>

### **3.4 FINANCIAL INSTITUTION SECRECY OR CONFIDENTIALITY (R.4)**

#### **3.4.1 DESCRIPTION AND ANALYSIS**

649. As per the Section 25(c) Money MLP Ordinance 2008 all financial institutions are bound to provide information to the Bangladesh Bank. Further MLPO section 23 empowers Bangladesh Bank to collect any banking information from Banks. Section 3 of the MLPO states that:

Notwithstanding anything contained in any other law for the time being in force, the provisions of this act shall have effect.

650. This provides an indirect override of all existing legislation which includes the provisions on the Banking Company Act where the protection has been given to the confidentiality of customer information retained by the banks. There is no explicit power given to Bangladesh Bank to share information so obtained with local authorities. The power to share information with foreign counterparts (S 24 of the MLPO) permits the FIU to share on the basis of any contract signed or arrangement.

651. There are typical banker- client confidentiality obligations under banking contracts, but this does not raise a significant problem when complying with AML/CFT requirements. Financial Institutions appear to be well educated about these provisions. There are currently no exemptions for financial institutions to undertake information sharing with one another, in particular relation of FATF R7, R9 and SR VII.

652. Banking Company Act contains provisions prohibiting the disclosure of customer information by financial institutions who acquire such information in the course of their business.

653. Section 15 (2) (2) of the ATO includes checks on powers of law enforcement to lift bank secrecy by requiring police to obtain approval from the chief executives of the banks or Bangladesh Bank to access documents. This does not hinder the operation of AML legislation.

#### **3.4.2 Recommendation and comments**

654. Bangladesh Bank has no impediment to obtain information from banks and finance companies. It is clear that financial institutions are aware of the legal strength of Bangladesh Bank to receive all necessary information for purposes of AML/CFT.

655. The Police CID indicated that they are able to obtain financial information through court order and were able to promptly obtain information from banks through Bangladesh Bank. ACC similarly reported no significant impediment to accessing bank records.

656. Scope of the section 25 and 23 of MLPO 2008 should be extended to explicitly include information sharing to avoid the possible legal impediments to sharing information with other agencies. Further clarification should be brought to the MLPO to ensure authorities have the ability to access information they require to properly perform their functions.

657. Bangladesh should issue exemptions for financial institutions to undertake information sharing in particular relation of FATF R 7, R 9 and SR VII.

#### **3.4.3 COMPLIANCE WITH RECOMMENDATION 4**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.4</b>	<b>LC</b>	<ul style="list-style-type: none"><li>• There are some minor limitations on Bangladesh Bank's powers to share information with local authorities and foreign counterparts</li><li>• No clear legal provisions that allows to share information between financial institutions where this is required by R7, R9, or SR.VII</li></ul>

### **3.5 RECORD KEEPING AND WIRE TRANSFER RULES (R.10 & SR.VII)**

#### **3.5.1 DESCRIPTION AND ANALYSIS**

##### **Recommendation 10**

658. Section 25 of MLPO 2008 requires reporting institutions to retain records relating to information of identification of its clients all records and documents of transactions, and records financial institutions the operation of accounts, the correct and full information of identification of its clients and in case of closed account of any client, to maintain personal and transaction related information of all clients. The financial institutions have to preserve such information for five years after the termination of business relationship.

659. AML Circular no. 02 and chapter VII of the AML Guidance Notes require banks and financial institutions to maintain records of the identification data and account files for at least five years following the termination of an account or business relationship. Section 7.1-7.3 of the Guidance Notes emphasises the need to retain documents verifying identity and retain transaction records. There is no obligation to retain business correspondence for five years.

660. Rule 7(3) of the Securities and Exchange Rules, 1987 every stock exchange is required to preserve its books of accounts and documents specified in the rules for a period of not less than five years.

661. Rule 14 of the Securities and Exchange Commission (Stock Dealer, Stock Broker and Authorized Representative) Rules, 2000 requires stock dealers and stock brokers to preserve accounts, registers, contracts and other documents for a period of minimum seven years.

662. Rule 11(3) of the Securities and Exchange Commission (Merchant Banker and Portfolio Manager) Rules, 1996 requires merchant bankers and portfolio managers to preserve their books of accounts, records and documents for twelve years.

663. Rule 13 of the Securities and Exchange Commission (Stock Dealer, Stock Broker and Authorized Representative) Rules, 2000 requires stock dealers and stock brokers to preserve clients' register (with name, address and code No.), securities sale-purchase register, security wise register, client-wise register, books of accounts and other relevant records.

664. Stock Dealers, Stock Brokers and Authorized Representatives are required to submit all trade related records/information to the stock exchange and SEC at any time.

665. There is no specific obligation for stock market entities to retain business correspondence.

666. AML Circular No. 20 requires money changers to preserve correct and complete introductory data of every customer for a period of at least of five years. This circular had been issued soon before the evaluation, so had not been implemented at the time of the evaluation. Money changers are required to keep records of identify and transactions under Foreign Exchange Policy Department controls.

##### **Effectiveness**

667. Banks appear to be retaining records. Most bank records are not computerized, which hampers financial institutions' ability to provide customer and transaction records on a timely basis to domestic competent authorities.

668. The Insurance sector appears to have reasonable levels of compliance with record keeping obligations.

669. Discussions held with different type of financial institutions showed that records of all types are being maintained for longer than the minimum period of five years as required by the MLPO.

## **SRVII**

670. Obligations for wire transfers are contained in OEM Guidelines.

671. Section 7.4.2 of the Guidance Notes requires relevant financial businesses to include accurate and meaningful originator and beneficiary information on all outgoing funds transfers and related messages that are sent. This information should remain with the transfers or related message throughout the payment chain. Institutions should conduct enhanced scrutiny of and monitor for suspicious incoming funds transfers which do not contain meaningful originator information.

672. Section 7.4.3 of the Guidance Notes requires that records of electronic payments and messages must be treated in the same way as any other records in support of entries in the account and kept for a minimum of five years.

673. As per the Foreign Exchange Policy Department requirement, for, any amount of outward remittance the originators/applicants have to complete the prescribed application form IMP (for Import) or TM (for the other than Import). On both IMP or TM forms, the remitter has to mention name & address, purpose of remittance, name of receiving country and a declaration of uses of remitted fund.

674. In case of inward remittance, if the amount is equivalent USD 2000 or more, the beneficiary/recipient has to declare in 'C Form' about the purpose, name & address of beneficiary and name & address of remitting bank.

675. Any kind of foreign exchange transaction should be with known customers and walk in customers are not generally entertained, i.e. the customer should maintain a banking relationship with that bank.

676. For cross-border wire transfers of any amount the ordering financial institutions must maintain full originator information in their respective files.

677. However, if several individual cross-border wire transfers from a single originator are bundled in a batch file for transmission to beneficiaries in another country, the ordering financial institution of Bangladesh is required to include the originator's account number on each individual cross-border wire transfer.

678. In case of domestic wire transfers the banks generally make TT or MT in favour of their account holder. Walk in customers have to fill up application form where the customer has to mention his/her full name & address.

679. According to chapter 7&8 of Guidelines for Foreign Exchange Transactions prepared under Foreign Exchange Regulation Act-1947, the Authorized Dealers have to report monthly basis detail of inward and outward remittance. Bangladesh Bank examines those transactions. Besides, Bangladesh Bank's inspection team conduct on-site inspections in regular basis. Any kinds of Foreign Exchange Transactions in Bangladesh are subject to monitoring by Bangladesh Bank.

680. Beneficiary financial institutions are not clearly required to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information.



### 3.5.2 RECOMMENDATIONS AND COMMENTS

681. With respect to the general record keeping requirements, it is apparent that record keeping requirements have long been embodied in sector specific regulations before the MLPO came into effect and compliance seems to reflect the long-standing nature of the obligations.

682. The MLPO created a new obligation to keep records of transactions by financial institutions. However the requirement that the records maintained should be sufficient to reconstruct the individual transactions has not been specifically provided for.

683. Bangladesh should issue clear binding instructions on all relevant institutions, including the SEC, to:

- maintain all necessary records on transactions, both domestic and international, at least five years following completion of the transaction and records should be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity; and
- maintain records including account files and business correspondence for at least five years following the termination of an account or business relationship or longer if requested by a competent authority in specific cases upon proper authority.

684. Bangladesh should issue instructions and support programs to fully implement all elements of SR.VII, including making collection and transmission of required originator information mandatory in the case of all wire transfers and also providing guidance on the course of action that a financial institution should take if the originator information has not been provided in the inward wire transfers.

#### 3.1.3 COMPLIANCE WITH RECOMMENDATION 10 AND SPECIAL RECOMMENDATION VII

	Rating	Summary of factors underlying rating
<b>R.10</b>	<b>LC</b>	<ul style="list-style-type: none"><li>• Obligations for retaining transaction records is new and is not yet fully implemented, and does not yet apply to securities companies.</li><li>• There appear to be relatively limited ability to obtain information swiftly due to the limited number of computerized data bases</li></ul>
<b>SR.VII</b>	<b>PC</b>	<ul style="list-style-type: none"><li>• Collection and transmission of required originator information is not mandatory in the case of all wire transfers.</li><li>• Beneficiary/recipient has to fill the form only in occasions of US\$ 2000 or more.</li><li>• Beneficiary financial institutions are not clearly required to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information.</li></ul>

## Unusual and Suspicious Transactions

### **3.6 MONITORING OF TRANSACTIONS AND RELATIONSHIPS (R.11 & 21)**

#### **3.6.1 DESCRIPTION AND ANALYSIS**

685. The distinct requirements of Recommendation 11 (to monitor unusual transactions) and Recommendation 13 (to report STRs) are somewhat confused under Bangladesh's AML legislation. Section 19 MLPA 2002 states "banks, financial institutions and other institutions engaged in financial activities, shall inform Bangladesh Bank from time to time, facts about abnormal transactions and doubtful transactions likely to be related to money laundering". Section 25 MLPO 2008 states "reporting organizations shall inform proactively and immediately Bangladesh Bank, facts on suspicious / unusual / doubtful or transactions likely to be related to money laundering".

#### Banks and Non-Bank Financial Institutions

686. AML Circular No. 2, as updated by Circular 19, requires each bank and financial institution to collect and preserve the prospective transaction profile of the client to support monitoring transactions. Transactions in the account will be considered as unusual if they are inconsistent with the declared transaction profile and if on enquiry the client fails to give a satisfactory explanation.

687. Circular 2 requires all employees of the bank and financial institution to remain alert to identify unusual/suspicious transactions. The Compliance Officers should be appointed to analyse reported unusual incidents and record in writing reasons for suspicion. If the reported issue appears to be connected with money laundering the Compliance Officer must send the details of the incident along with a copy of the above form to the Central Compliance Unit. Circular 2 includes example of unusual transaction is also mentioned in the Circular.

688. Section 6.3.5 of the Guidance Notes requires each Branch/ Unit of the financial institution on a monthly basis to prepare an exception report of customers whose accounts showed one or more individual account transaction during the period that exceeded the "transaction limit" established for that category of customer based on an ML risk assessment.

689. Section 6.3.6 of the Guidance Notes requires account Officers/Relationship Managers or other designated staff to review and sign-off on such exception reports for customers whose accounts showed one or more individual account transaction during the period that exceeded the "transaction limit" established for that category of customer. The concerned staff will document their review by initial on the report, and where necessary will prepare internal unusual transaction reports with action plans for approval by the relevant Branch Manager and review by the Branch AML compliance officer. A copy of the transaction identified will be attached to the unusual transaction which is forwarded to the Head Office AML Manager for consideration of filing an STR.

690. Section 7.1.4 of the Guidance Notes states where there has been a report of a suspicious activity or the Institution is aware of a continuing investigation into money laundering relating to a client or a transaction, records relating to the transaction or the client should be retained until confirmation is received that the matter has been concluded.

691. As mentioned in AML Circular No. 2 correct and detail up to date information of transactions in each account should be preserved and as per article 14(1) (Ka) of Money Laundering Prevention Act, 2002 the bank and financial institution will preserve record of transaction for a period of at least five years from the closing of transactions in the account of an client. Record of transaction includes unusual transaction conducted by customers.

## Securities companies, Insurance Companies and Money Changers

692. AML Guideline No. 18 and 20 mentioned in general the obligation to be careful about unusual transactions. However there is no specific guideline of unusual transaction for insurance and money changers.

693. There is no obligation on securities sector entities to monitor unusual transactions. Authorities cite S.21 of the Securities and Exchange Ordinance, 1969 and S.17A of the Securities and Exchange Commission Act, 1993 and S. 13 of the Depository Act, 1999, which provide the Commission with surveillance powers to monitor and enquire on market related affairs activity, but this is a function of supervision rather than preventative measures. These powers do not pose any obligations on securities market intermediaries to monitor unusual transactions.

### **Effectiveness**

694. It is clear that implementation of Recommendation 11 is weak and is not clearly enforced by Bangladesh Bank through supervision. In practice, there is some variations of the number of unusual transaction sent from AML compliance officers at the level of bank branches to AML officer in head office. One bank mentioned the number is high, the other state the number almost the same with the STR send by AML officer in head office to Bangladesh Bank. Banks reveal most transaction sent from AML officer in bank branches to AML officer in head office are related to high-value cash transactions.

695. Financial institution generally view unusual transaction as related to doubts about source of funds. In the case of insurance, early termination and payment from third party is possible even though the case is very rare, but it would not be consider as suspicious. As AML Guideline No. 18 had just been issued before evaluation visit, insurance companies appeared to not have a clear understanding of what constitutes unusual transactions in insurance.

### **Recommendation 21**

696. There is no explicit statement requiring financial institutions to give special attention to transaction with natural or legal persons from or in countries which do not or insufficiently apply the FATF Recommendations.

697. AML Circular No. 7 states banks should pay particular attention when maintaining a correspondent banking relationship with banks incorporated in a jurisdiction that do not meet international standards for the prevention of money laundering (such as Non-cooperating Countries and Territories or NCCTs listed by FATF). However this is only related to correspondent banking.

698. Very limited specific guidance is available from the respective regulators of the financial sector to define High Risk Countries in term of countries which do not or insufficiently apply the FATF Recommendations. Guidance Notes Section 8 discusses identification of corporate clients and stresses that particular care should be exercised when establishing business relationships with companies incorporated or registered abroad if the corporate body is registered or has known links to countries without anti-money laundering legislation and procedures equivalent to those in Bangladesh.

### **3.6.2 RECOMMENDATIONS AND COMMENTS**

699. Banks do not appear to have a clear understanding of countries which do not or insufficiently apply the FATF Recommendations. Banks pointed to Bangladesh Bank circulars related to UN sanctions (related to Iran and North Korea), but could not identify countries which do not or insufficiently apply the FATF Recommendations.

700. There is no obligation on securities companies, insurance companies, money changers and money remitters to give special attention to transaction with natural or legal persons from or in countries which do not or insufficiently apply the FATF Recommendations.

701. Bangladesh should:

- include Securities Companies into AML requirements to monitor unusual transaction;
- give specific instructions and guidelines for unusual transaction for non bank financial institutions, insurance companies, money remitters and money changers;
- establish and implement requirements for all reporting parties requiring them to give special attention and apply appropriate measures to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries which do not or insufficiently apply the FATF Recommendations; and
- issue information regarding countries which do not or insufficiently apply the FATF Recommendations.

### 3.6.3 COMPLIANCE WITH RECOMMENDATIONS 11 & 21

	Rating	Summary of factors underlying rating
<b>R.11</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Securities Companies are not included in AML Regime and are not obliged to monitor for unusual transactions.</li> <li>• Insurance companies, money remitters and money changers have not been provided with guidance on what constitutes unusual transactions.</li> <li>• Effective implementation of the requirements has not been demonstrated.</li> </ul>
<b>R.21</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• There is no requirement for all reporting parties to give special attention and conduct appropriate counter-measures to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries which do not or insufficiently apply the FATF Recommendations</li> <li>• There is no information from relevant authorities regarding countries which do not or insufficiently apply the FATF Recommendations</li> </ul>

## 3.7 SUSPICIOUS TRANSACTION REPORTS AND OTHER REPORTING (R.13-14, 19, 25 & SR.IV)

### 3.7.1 DESCRIPTION AND ANALYSIS

#### *Recommendation 13*

702. As noted above, the report that has to be informed by reporting organization under MLPA 2002 and MLPO 2008 includes concepts of both unusual transactions and suspicious transactions. Section 2(n) of MLPO 2008 defines ‘suspicious financial transactions’ as:

- a transaction that substantially deviates from the usual norm by which that transaction is usually conducted, or
- There is reasonable cause to believe that the transaction is related to any proceeds of crime.

703. Inconsistency occurs on the meaning of ‘suspicious transaction’ in the MLPO as one definition in the MLPO relates to ‘any proceeds of crime’, while another ties the concept to be ‘related to money laundering’. Section 2(n)(ii) of MLPO 2008 mentioned a suspicious transaction as when “there is reasonable cause to believe that the transaction is related to any proceeds of crime”,

section 25(1)(d) of the MLPO 2008 states reporting organization shall “inform proactively and immediately Bangladesh Bank, facts on suspicious / unusual / doubtful or transactions likely to be related to money laundering”.

704. As noted in section 2 of this report, the scope of proceeds of crime subject to STR reporting falls short of the FATF standard, with a number of areas of predicate criminal activity not covered. TF is not a predicate crime in the MLPO. The obligation to send an STR on suspicion of CFT as set out in the ATO 2008 does not appear to extend to the provision of funds to a terrorist organization or an individual terrorist, only to funding of a terrorist act.

705. There is no explicit statement requiring financial institutions to report AML-related STRs to the FIU in relation to attempted transactions.

706. Financial institutions are required to report suspicious transactions regardless of the amount of transaction and regardless of whether the transaction is related to tax matters.

707. STR obligations have not been extended to securities companies.

708. No STRs have been received from non-bank financial institutions, insurance companies or money changers.

#### ***Special Recommendation IV***

709. The obligation to report terrorist financing related transaction is included in section 15 ATO 2008 and applies to banks, NBFIs, insurance companies, money changers and remittance companies. The provision states:

Bangladesh Bank shall have the power and authority to take necessary measures to prevent and detect transaction intended to commit offence under this ordinance through any banking channel, and for that matter is empowered and authorized to (a) call for reports about suspicious transactions from a bank and shall keep such report confidential if law does not allow disclosure.

710. The above obligation does not cover securities or insurance sectors and is not a direct obligation to file an STR. The provision does not require financial institutions to report to the FIU when it suspects or has reasonable grounds to suspect that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism.

711. However, AML Circular No. 19 provides a direct obligation on banks and financial institutions if there is any reasonable ground to suspect that transaction or an attempt of transaction has connection to financing terrorist activities as per ATO 2008 shall have to be reported, with comments of the branch compliance officer, to the FIU no later than three days from the date of the receipt from the branch.

712. The obligations of sending STR on terrorist financing is indirectly laid out in law with supporting details set out in other enforceable means.

713. In the case of the TF-related STR obligation on banks in the ATO 2008 and its extension to non-bank financial institutions in Circular 19, the limitations with the scope of the TF offence in the ATO undermines the range of TF that would form the basis for suspicion. This results in a gap regarding suspicion of funds provided for a terrorist organizations or an individual terrorist.

### *Additional elements*

714. Financial institutions are required to report to the FIU when they suspect or have reasonable grounds to suspect that funds are the proceeds of all criminal acts that would constitute a predicate offence for money laundering domestically

### *Effectiveness*

#### **Rec 32 - statistics**

##### **Number of STRs Submitted by Sector since 2002**

<b>Reporting Parties</b>	<b>Number of Reporting Parties that Submitted STRs</b>	<b>No of STRs</b>
Banks		
Nationalized Commercial Banks	4	24
Private Commercial Banks	35	229
Foreign Banks	9	219
<b>Subtotal STR Banks</b>		<b>472</b>
Non-bank financial institutions		0
<b>Subtotal STR Non Bank</b>		<b>0</b>
<b>Total No of STRs Submitted</b>		<b>472</b>

##### **Number of STRs Submitted by Year**

<b>Year</b>	<b>Number of STRs received</b>	<b>Average per Month</b>
2003	23	2
2004	100	8
2005	52	4
2006	138	12
2007	105	9
2008	28	2
<b>Total</b>	<b>446</b>	

715. The rates of STR reporting are very low and have diminished since 2006. Based on discussions with the regulator and reporting parties in Bangladesh, the reduction reflects a poor understanding of what is suspicion amongst reporting parties, in particular the nationalised public banks which have the greatest numbers of customers and have the widest geographical coverage across Bangladesh. The reduced numbers reflect the uncertainty around the new MLPO in 2008.

716. As the ATO 2008 was enacted only in June 2008, no TF related STRs have been filed. The awareness of financial institutions about STRs related to terrorist financing is very limited and no guidance or instructions have been issued to augment the ATO obligations.

717. Between the issuance of the MLPO in April 2008 and the onsite visit in August 2008 just 6 STRs were submitted. Further STRs were generated in the period immediately following the onsite visit due, in part, to awareness raising efforts by Bangladesh Bank. There was some evidence of

confusion amongst reporting entities with the new STR obligation in the MLPO, as the threshold for suspicion is now linked to the proceeds of crime listed as predicate offences. Financial institutions were awaiting further instructions from the regulator before filing STRs. The few STRs received since April 2008 were based on media reports of the arrest of criminals, which reflects a tendency towards ‘confirmed suspicion’.

718. The Evaluation Team discussed with financial institutions how they distinguish between ‘unusual transactions and’ suspicious transactions. According to the strict interpretation of the provisions in AMLO 2002 and MPLO 2008, reporting parties are required to submit report on every unusual transaction.

719. According to explanations provided by reporting parties, transactions that were reported along the internal line of reporting are reviewed and filtered by a special unit or person who is responsible for STR reporting. Explanation by one bank revealed that if the customer conduct large cash transaction for first time than there is a reasonable transaction from the customers, than the bank will not forward the transaction to Bangladesh Bank as an STR. However if the customer conduct transaction for the second time, bank will send the transaction as an STR.

720. There is no checking conducted by financial institutions on publicly available information about the customers. Even the inquiry from law enforcement agency for particular customer may not be enough for financial institutions to look at related accounts to consider possible suspicious transactions.

#### **Recommendation 14**

721. Section 28 of MLPO 2008 states “no suit, prosecution either civil or criminal or other legal proceedings shall lie against government or any government officials or any reporting organizations if any person is affected or likely to be affected due to the proceedings done in good faith under this ordinance”.

722. It is not clear whether the safe harbour provision is also applied to Directors and others related officers and employees (permanent or temporary) of the financial institution. The provision does not safeguard against possible threats endangering the person, their life, their family and/or their assets.

723. Section 6 of MLPO 2008 states “(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 agent or news media... (3) Whoever contravenes the provision shall be liable to imprisonment of either description for a term, which may extend to one year, or to fine which may extend to Taka ten thousand or to both”.

724. AML Circular No. 19 forbids officials of reporting organizations from divulging any information regarding reported STRS, at any stage to its customer or any other person.

#### **Additional elements**

725. There are no laws or regulations or any other measures explicitly mention that the names and personal details of staff of financial institutions that make a STR are kept confidential by the FIU.

#### **Effectiveness**

726. Financial institutions have expressed concern regarding safe harbour and tipping off provisions. There is already one legal proceeding in court, with one bank employee being charged regarding tipping off.

## **Recommendation 25 (STRs)**

727. Bangladesh Bank has provided general guidelines on STR obligations, which include examples of suspicious transactions related to ML. At the time of the onsite visit Bangladesh Bank had not issued comprehensive Guidelines on identification of suspicion in relation to TF.

728. The FIU provides feedback to financial institutions on STRs via semi-annual workshops for AML Compliance Officers. AMLD gives general feedback with appropriate breakdowns of STRs. AMLD has also prepared a general feedback form for the purpose of giving case-by-case feedback to the financial institutions. AMLD also provide information regarding current technique, method and trend of money laundering. At the time of the visit FIU mentioned that corruption and cash smuggling is current trend of STR reporting.

729. AMLD has drafted an acknowledgement letter template to send to reporting institutions on receipt of the STR. At the time of the onsite visit these templates, and many others, were being prepared for peer review by a new technical assistance advisor in the near future.

730. AMLD prepares an AML newsletter which is shared on the Bangladesh Bank website to share of information from typologies or methods and trends – international or domestic. This document will provide other FIUs and stakeholders with general information about the activities of AMLD and other entities and organizations.

731. Bangladesh Bank does not seem to be regularly providing case specific feedback relating to STRs. As and when request comes from the reporting institution at that time FIU give them a feedback on result of investigation of STR.

732. It is also noted that there is no specific guidance on STR for capital market transaction and insurance companies.

733. DNFBPs are not currently covered as reporting parties. Therefore, no guidance or interaction with them seems to be in place regarding AML/ CFT safeguards.

## **Recommendation 19**

734. Bangladesh has considered and implemented a cash transaction reporting regime. This is in response to perceived risks of high-value transactions for ML and TF, particularly in the context of a predominantly cash economy.

735. AML Circular No. 8 states each bank will analysis the transaction of their branches and submit Cash Transaction Report (CTR) to Bangladesh Bank for the cash deposits or cash withdrawals of BDT 500,000 or above in any account in a day. However, there is no obligation for non bank financial institutions to send CTR to Bangladesh Bank. AML Circular No. 13 enhanced the threshold for CTR from BDT 500,000 to BDT 700,000. The reason to change the threshold is to reduce the burden of financial institutions and make the threshold almost the same as US\$ 10,000. This has had the effect of substantially reducing the number of CTRs made.

### ***Additional elements***

736. All reports are received by AMLD, as the FIU, and are securely stored on the AMLD database and are available for AML/CFT purposes. Financial institutions send CTR using compact disk and are upload to AMLD database. AMLD used the information to do off-site supervision which is used to do surprise check on financial institutions.

737. The systems for reporting CTR are subject to strict safeguard to ensure proper use of the information. As mentioned in FIU Manual Section 9.2, only authorized persons will be allowed to



enter into the computer server room after recording their name, designation, and time of entry and time of exit in a register for the purpose. The authority to enter into server room other than the authorized persons will be only with the General Manager/Deputy General Manager in charge of FIU.

738. Access of CTR data is available to law enforcement (ACC and CID) based on request to the FIU. Some request has been made and fulfilled by the FIU.

### *Effectiveness*

739. All banks appear to routinely send CTRs to the FIU. Non-bank financial institutions have not yet begun to send CTRs, partly because they handle much less cash and most large-scale transactions are done through bank channels.

**Table: Cash transaction reports (CTRs) Received by the FIU**

Year	Number of CTRs
2006	1,145,823
2007	926,377
2008	80,815
<b>Total</b>	<b>2,153,015</b>

### 3.7.2 RECOMMENDATIONS AND COMMENTS

740. The rate of STR reporting in Bangladesh is very low and appears to be diminishing over time. The dramatic drop in STR reporting following the passage of the MLPO in April 2008 reflects a lack of awareness raising, guidance and clear instruction with the new obligation, plus a number of unresolved inconsistencies in the obligations in the MLPO.

#### *Recommendation 13 & SRIV*

741. Bangladesh should:

- establish and implement a direct obligation in law or regulation for financial institutions to report STR on ML and TF in keeping with international standards
- undertake comprehensive education and awareness raising with reporting parties on the new MLPO STR obligations to encourage higher rates of quality STR reporting.
- expand the scope of predicate offences in the MLPO to ensure the proceeds of crime subject to STR reporting is in keeping with the FATF standard.
- expand the obligation of filing STR to cover legal funds provided for a terrorist organizations or an individual terrorist
- include Securities Companies and fully include insurance companies into AML/CFT requirement to report STRs
- issue explicit requirement for financial institutions to report to the FIU STRs in case of attempted transactions related to ML

#### *Recommendation 14*

- Bangladesh should include Securities Companies into AML requirement and include them in safe harbour provisions.
- Safe harbour provisions should include directors; others related officers and employees (permanent or temporary) of the financial institution.

### Recommendation 25

742. Bangladesh should:

- include Securities Companies and DNFBP into AML requirement and issues specific guidance to them;
- issue specific guideline for insurance companies, money changer and money remitters; and
- regularly provide case specific feedback relating to STRs to financial institutions.

### 3.7.3 RATINGS WITH RECOMMENDATIONS 13, SRIV, 14, 19 & 25

	Rating	Summary of factors underlying rating
<b>R.13</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• Securities Companies have not been included in AML requirements to report STRs to the FIU</li> <li>• It is not clear whether the definition of STR is related to all proceed of crime or money laundering</li> <li>• The scope of proceeds of crime subject to STR reporting falls short of the FATF standard.</li> <li>• The obligation of sending STR does not cover funds provided for a terrorist organizations or an individual terrorist</li> <li>• While there is a Bangladesh Bank circular addressing attempted transactions for TF, there is no explicit requirement for financial institutions to report to the FIU on attempted transactions related to ML</li> <li>• It is too early to judge the effectiveness of the STR obligation for TF.</li> <li>• The very low number of STRs submitted and the very limited range of institutions submitting them shows a lack of effective implementation of the STR obligation</li> </ul>
<b>R.14</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Securities Companies are not included in AML regime for safe harbour protections.</li> <li>• Safe harbour does not include directors; other related officers and employees (permanent or temporary) of the financial institution.</li> </ul>
<b>R 19</b>	<b>C</b>	<ul style="list-style-type: none"> <li>• Fully Observed</li> </ul>
<b>R.25</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Securities companies, money changers, insurance and remittance have not received detailed guidance on AML/CFT preventative measures</li> <li>• No regular case specific feedback relating to STRs to financial institutions</li> </ul>
<b>SR.IV</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• The obligations of sending STR on terrorist financing is indirectly laid out in law, with supporting details set out in other enforceable means No obligation to file STRs on funds provided for a terrorist organizations or an individual terrorist</li> <li>• Awareness of the TF-related STR reporting obligation appears to be low amongst institutions, which undermines effectiveness</li> <li>• The recent issuing of Circular 19 on TF related STRs means it is too early to judge effectiveness of the TF STR reporting obligation.</li> </ul>
<b>R.32</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>•</li> </ul>

### **Internal controls and other measures**

## **3.8 INTERNAL CONTROLS, COMPLIANCE, AUDIT AND FOREIGN BRANCHES (R.15 & 22)**

### ***Recommendation 15***

#### **3.8.1 DESCRIPTION AND ANALYSIS**

743. Section 23 of MLP Ordinance, 2008, and AML Circulars 2 & 15, and AML Guidance Notes set out requirements for internal controls.

#### ***Internal procedures and controls***

744. In order to implement Article 19 of the MLPA (reissued as Section 25 in MLPO), AML Circular No.2 requires each bank and financial institution to establish internal policies, arrangement for internal observation and control through the formation of a Central Compliance Unit (CCU). This CCU is under the leadership of a high official at the Head Office and nomination of an officer at the branch level of each bank and financial institution. At branch level each branch has to appoint a branch Anti Money Laundering Compliance Officer (AMLCO).

745. Chapter IV of AML Guidance Notes describes the duties and responsibilities of the CCU and the AMLCO in detail. This includes developing appropriate compliance management arrangements including designation of compliance officers at management level. The Guidelines indicate that the compliance officers should have timely access to customer data, including CDD and transaction records, to perform their compliance functions.

#### ***Independent audit function that test AML compliance***

746. There is no requirement for independent audit function to test adequacy of internal AML procedures. Bangladesh has not included any auditing standard relating to AML/CFT in relation to wider audit standards. Discussion with the Institute of the Chartered Accountants of Bangladesh confirmed this. Auditors who conduct the independent audits do not focus attention on AML compliance.

#### ***Employee training***

747. Section 9.1 and 7.6 of AML Guidance Notes requires that financial institutions should organize training all the year round. It includes first phase and second phase AML training, refreshers training and training for newly recruited staff. The contents of training should cover current ML and TF techniques, methods and trends; and that there is a clear explanation of all aspects of AML/CFT laws and obligations, and in particular, requirements concerning CDD and suspicious transaction reporting and monitoring of transactions issues.

748. AMLD instructed all the Commercial banks and financial institutions through AML Circular No.02 to conduct proper internal training programs to ensure proper compliance with the MLPA. Bangladesh Bank has provided considerable resources to train banks' staff by running workshops. Regional Bankers' Association workshops have been conducted which have included AML topics. Financial institutions appear to have relied on this central bank-provided training rather than designing and delivering their own internal training programs.

#### ***Screening procedures for new employees***

749. There are no clear obligations on financial Institutions to undertake employee screening when hiring employees.

### Insurance companies, money changers, securities companies and remittance providers

750. AML Circular No.18 for insurance companies and AML Circular No.20 for moneychangers requires them to comply with the instructions issued in AML Circular No. 02, including to establish internal controls. Circulars 18 and 20 were issued immediately prior to the assessment and implementation had not yet commenced.

751. Obligations to conduct staff training do not extend beyond banks and non-bank financial institutions.

752. There are no obligations on securities companies or remittance companies to establish internal controls or train staff for AML/CFT. There are no employee screening obligations for securities companies.

### **Effectiveness**

753. Banks and Non- Banks Financial Institutions have established required branch level compliance officers and coordination chief Compliance officers at head office. But in most institutions operations of Compliance Officers have not yet commenced.

754. Bangladesh Bank has conducted several training programs for compliance staff, with wide coverage of the banking sector across all provinces of Bangladesh. Despite the extent of training provided by the regulator, few financial institutions appear to have undertaken internal AML training as required under the Guidance Note. Implementation of AML/CFT training is negligible when compared with the size of the sector.

755. Timely access to customer identification data and other CDD information is limited since most of the banking institutions are not computerized and very limited network connection exists in the banking sector.

756. Statistics from AML/CFT inspections demonstrate a low level of compliance with existing obligations to establish internal controls.

### **Recommendation 22**

757. The Bangladesh Bank BRPD has issued a policy on opening bank branches, subsidiaries or exchange house abroad [BRPD (M) 204/2001-372-409 dated July 16, 2001]. For new branches, the proposed bank branch, subsidiary or exchange house has to get prior approval of respective country's Central Bank/Monitory Authority as well as it has to follow the Bank Company Act, 1991, Foreign Exchange Regulation Act, 1947 and other prevailing Act of home country.

758. All foreign branches of commercial banks are required to abide by all AML Circulars issued by the Bangladesh Bank

759. There is no obligation for financial institutions to inform Bangladesh Bank when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures.

760. While instructions have not yet been issued to cover securities companies, insurance companies, strict capital controls do not allow such companies to open branches outside Bangladesh.

### 3.8.2 RECOMMENDATIONS AND COMMENTS

761. Timely accessibility of customer identification data and other CDD information necessary for internal controls are limited since most of the banking institutions are not computerized and very limited network connection in banking sector.

- Obligations for internal controls should be extended to the Securities sector and should be properly implemented in the other sectors.
- Obligations for independent audit to include AML/CFT should apply to all sectors covered by the FATF standards.
- Implementation of AML/CFT training obligations should be further encouraged, supported and enforced, and supervision action should be taken to support effective implementation of requirements to establish internal training programs.
- Financial institutions should be obliged to inform Bangladesh Bank when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures.

### 3.8.3 COMPLIANCE WITH RECOMMENDATIONS 15 & 22

	Rating	Summary of factors underlying rating
<b>R.15</b>	<b>PC</b>	<ul style="list-style-type: none"><li>• No mandatory requirements for independent audit function for insurance and securities sectors.</li><li>• No guidance or direction provided on employees screening.</li><li>• The securities and insurance sectors were not subject to requirements for an internal AML/CFT controls and staff training.</li><li>• Implementation of existing obligations is weak.</li></ul>
<b>R.22</b>	<b>PC</b>	<ul style="list-style-type: none"><li>• No clear guidance to include foreign subsidiaries of banks although there is some coverage from prudential regulations</li><li>• There is no obligation for financial institutions to inform Bangladesh Bank when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures.</li></ul>

## 3.9 SHELL BANKS (R.18)

### 3.9.1 DESCRIPTION AND ANALYSIS

762. There is no explicit legislative prohibition on setting up a Shell Bank in Bangladesh. However in practice Bangladesh Bank has effective legal powers and policies in place to ensure that shell banks are not permitted.

763. Under article 31 of Banking Companies Act 1991 an organization must obtain a license from Bangladesh Bank to undertake banking business in Bangladesh. Before issuing a banking license Bangladesh examines several criteria set out in the Banking Company Act. These Criteria ensure the prevention of the establishment of shell banks in Bangladesh.

764. Article 32 of Banking Companies Act States, among other matters, provides that Bangladesh Bank may, before giving the permission referred in subsection (1) to any banking company, require to be satisfied by an inspection under section 44 otherwise regarding any subject of that banking company.

765. AML Circular No. 07 prohibits banks from establishing or continuing correspondent banking relationship with any shell bank i.e. a bank incorporated in a jurisdiction in which the bank has no presence and which is unaffiliated with a regulated financial group.

766. There is no requirement for financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

### 3.9.2 RECOMMENDATIONS AND COMMENTS

767. Given the operation of discretionary powers vested with Bank of Bangladesh via Article 31 of Banking Companies Act 1991, there is no scope to establish a shell banks in Bangladesh.

768. The provisions contained in AMLD Circular 7 prohibits banks from being established or continuing correspondent banking relationship with any shell bank, however this does not directly prohibit shell bank being registered in Bangladesh. In practice, it is evident that banks in Bangladesh are aware of the requirements to prevent the misuse of the correspondent bank accounts relationship directly or indirectly by shell banks. There does however, appear to be a problem with implementing the obligation to ensure that correspondent banks do not permit their accounts to be used by shell banks.

- Bangladesh should ensure that the enforceable prohibition on financial institutions from entering into or continuing, correspondent banking relationship with shell banks is fully enforced.
- Bangladesh should introduce an enforceable obligation financial institutions to satisfy themselves that respondent financial institutions in a foreign county do not permit their accounts to be used by shell banks.

### 3.9.3 COMPLIANCE WITH RECOMMENDATION 18

	Rating	Summary of factors underlying rating
<b>R.18</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>• There is no requirement for banks to establish that their respondent banks are not undertaking business with shell banks.</li> </ul>

## **Regulation, supervision, guidance, monitoring and sanctions**

### **3.10 THE SUPERVISORY AND OVERSIGHT SYSTEM - COMPETENT AUTHORITIES AND SRO'S ROLE, FUNCTIONS, DUTIES AND POWERS (INCLUDING SANCTIONS) (R.23, 29, 17 & 25)**

#### 3.10.1 DESCRIPTION AND ANALYSIS

##### ***Roles, functions and duties of AML/CFT regulators***

769. Bangladesh Bank regulates bank, non-bank financial institutions, money remitters and money changers. The SEC regulates capital market intermediaries including stock exchanges and securities companies (stock brokers). The Controller General of Insurance regulates insurance companies.

770. Sections 23 and 25 of MLPO 2008 and Sections 15 and 16 of ATO 2008 have empowered Bangladesh Bank to monitor and ensure compliance by banks, financial institutions, insurance brokers and money changers, with requirements to combat ML and TF consistent with the FATF Recommendations.

771. The current regulatory and supervisory measures that apply for prudential purposes and are also relevant for AML/CFT have been put in place in a similar manner for AML/CFT regulatory and supervisory purposes. The financial sector supervision framework for these entities aims to be consistent with the respective “core principles”.

772. Bangladesh Bank has the authority to conduct inspections of financial institutions, including on-site inspections, to ensure compliance with the Bank Company Act, 1991, Financial Institutions Act, 1993 and Foreign Exchange Regulations Act, 1947. It includes review of policies, procedures, books and records, and sample testing.

773. The Section 15 of ATO 2008 gives powers to Bangladesh Bank to issue instructions on CFT preventative measures, to monitor and observe and inspect the activities of all financial institutions, with the exception of the securities and insurance sectors, in relation to STRs. The distinction between the power to ‘monitor and observe’ at S.15(f), and to ‘inspect’, S.15(h) appears to limit onsite supervision for CFT to issues related to STRs. This may preclude, for example, onsite inspections to inspect compliance with implementation of SRIL.

774. SEC has the authority to supervise the securities sector for prudential purposes. In exercise of the power conferred on SEC by clause 21 of the Securities and Exchange Ordinance, 1969; section 17A of the Securities and Exchange Act, 1993 (Annexure-8) and section 13 of the Depository Act, 1999 (Annexure-9); Rule 15 and 16 of the Securities and Exchange Commission (Stock Dealer, Stock Broker and Authorized Representative) Rules, 2000 (Annexure-10); Rule 32 of the Securities and Exchange Commission (Merchant Banker and Portfolio Manager) Rules, 1996 (Annexure-11). The SEC is authorised to enquire into and inspect the activities of stock exchanges, stock dealers/brokers, depository participants, merchant banks and issuer companies. An enquiry or inspection can go through any matter of the relevant party including functional aspects, books, records and any other document.

775. Insurance Companies /Corporations are regulated by Insurance Act 1938, Insurance Rules 1958 and Insurance Corporations Act 1973. The Controller of Insurance has powers of regulation. A new regulatory regime was instituted in 2008 to establish the Insurance Regulatory Authority under the Insurance Regulatory Authority Ordinance 2008. The proposed regulatory regime was not promulgated in February 2009 and was not in place at the time of adopting this report. On the basis of the 2008 Ordinances, new Insurance Regulatory Authority Act and Insurance Act are in draft and at vetting stage.

776. The MLPO, ATO, Bank Company Act, Financial Institutions Act and Foreign Exchange Regulations Act, 1947 empower Bangladesh Bank to compel production of or to obtain access to all records, documents or information relevant to monitoring compliance. This includes all documents or information related to accounts or other business relationships, or transactions, including any analysis the financial institution have made to detect unusual or suspicious transactions.

777. SEC also has the power to obtain information and collect necessary document within its jurisdiction under Securities related statutes.

778. Bangladesh Bank has been empowered to compel production of or to obtain access for supervisory purposes to banks and financial institutions and there is no requirement for court order. SEC can obtain information and collect necessary document from the issuers and market intermediaries, excepting information from banks, without any court order.

779. Section 23 of MLPO and section 15 of ATO empower Bangladesh Bank to enforce and sanction against financial institutions and their directors or senior management for failure to comply with or properly implement requirements to combat money laundering and terrorist financing, consistent with the FATF Recommendations. SEC can take necessary action against stock exchanges, stock dealers/brokers, depository participants, merchant banks, any issuer, director or relevant official of any issuer company for violating securities related laws. The actions include warning, penalties, trade suspension for a certain period and cancellation of registration etc. SEC is not authorized to take any action pursuant to AML/CFT breaches.

***Powers of AML/CFT regulators, including sanctions***

780. Sections 25 of the MLPO, Section 16(2) of the ATO 2008, Section 46 section (1) Banking Companies Act 1993, Article 26 of the Financial Institutions Act 1993 and 46 -47 of the Banking Companies Act 1991 provide the available sanctions that may be applied to natural and legal persons that fail to comply with national AML requirements.

781. Section 25 of the MLPO describes details of responsibility of reporting organisations in preventing money laundering. For any violation, Bangladesh Bank has the authority to impose fine, take actions to cancel the license. According to Section 27 of the MLPO, if any offence under this ordinance committed by a company, every proprietor, director, manager, secretary or other officer or representative who is directly involved with the offence shall be deemed to be guilty of such an offence.

782. Monetary sanctions set out in the MLPO are very low, ranging from Taka 10,000 – 500,000 (US\$150 - 7,500). The outcomes of the process to impose sanctions, including the imposition of fines on banks, are published in the daily news paper, which is a reputational deterrent for AML/CFT breaches.

783. Section 46 section (1) Banking Companies Act 1993 Where the Bangladesh Bank is satisfied that it is necessary to remove a chairman or director or principal executive officer, by whatever name he be called, of a banking company in order to prevent its affairs being conducted in a manner prejudicial to the interests of the banking company or its depositors or to secure in the public interest the proper management of the banking company, it may, after committing its reasons to writing, issue direction that such chairman, director or principal executive officer be removed from his office, Bangladesh Bank is empowered to impose a range of sanction from cancelling a license to removing the director or dismissing the Board of Directors.

784. Section 47 Banking Companies Act 2003 holds that:

Where the Bangladesh Bank is satisfied a) that the Board of Directors of a banking company, by whatever name it be called, conducts its affairs in a manner detrimental or prejudicial to the interest of the banking company or its depositors; or b) that, for any or all of the reasons mentioned in subsection (1) of section 46, it is necessary to dismiss that Board of Directors, it may, after committing its reasons to writing, dismiss that Board of Directors by a direction; and the direction to dismiss that Board shall come into effect from such date and be in force for such period as is mentioned therein.

785. The Banking Companies Act does not provide monetary sanctions for failure to comply with an instruction from Bangladesh Bank.

786. Article 18 of the Financial Institutions Act provides for Bangladesh to make regulations to secure the public interest and Article 20 provides for powers of inspection. Article 26 of the Financial Institutions Act 1993 provides for removal of Chairman, directors or principal executive officers directors “to secure in the public interest the proper management of the company”. Such sanctions could be applied in cases of breaches of AML requirements.



787. SEC has the authority to give general or specific directions to a licensed stockbroker or dealer, unit trust managing company or registered market intermediary. The SEC can also suspend or cancel a license or registration when necessary. Failure to comply with any provision of the Securities and Exchange Ordinance constitutes an offence under the law liable takes necessary actions against the legal entities and their directors, senior management within its jurisdiction for violating securities laws. The Commission enforces securities laws by taking remedial measures that include imposing administrative sanctions, issuing penalties, taking civil action and filing criminal cases with the court.

#### Insurance sector

788. The Controller of Insurance may take any appropriate action such as imposing penalties against the insurers under section 102 (1) of the Insurance Corporations Act including suspension of their licence or licence of the companies as it may deem fit.

#### **AML Supervision**

789. At present, AML supervision is done exclusively by the Bangladesh Bank. Bangladesh Bank is in the process of developing a new AML inspection manual to reflect the recent changes under the MLPO. AMLD inspectors assist Bangladesh Bank supervision divisions in their conduct of inspections. A key challenge for inspections is the limited amount of training that supervision staff outside of the AMLD have in relation to AML.

**Table: Statistics of AML-related inspections by Bangladesh Bank**

Year	Sector	Number of inspections	AML Sanctions	Admin	Fines (BDT)
2004	Banks (branches)	1547	02	48	100,000/- (approx USD1400)
2005	Banks (branches)	1425	01	53	100,000/- (approx USD1400)
2006	Banks (branches)	1889	14	76	410,000/- (approx USD7000)
	NBFIs	45 ( 20 Head Offices and 25 Branch Offices)			
	Forex	-	-	-	
2007	Banks (branches)	1836	09	97	720,000/- (approx USD10,000)
	NBFIs	39( 22 Head Offices and 17 Branch Offices)			
	Forex	40	6	02	600,000/- (approx USD8000)
2008	Banks (branches)	2198	02	103	110,000/- (approx USD1500)
	NBFIs	52( 21 Head Offices and 31Br.Offices)			
	Forex	35			

**Table: Sanctions imposed by AMLD on banks for noncompliant issues relating to ML**

Year	No of Banks	Economic sanction	Reasons
2004	2	TK 100,000/- (approx USD1400)	Misreporting
2005	1	TK 100,000 (approx USD1400)/-	Irregularities in opening of bank accounts
2006	14	TK 410,000 (approx USD7000)	Irregularities in opening of bank accounts
2007	9	TK 720,000/- (approx USD10,000)	Misreporting
2008	2	Tk 110,000/- (approx USD1500)	Credit disbursement in anonymous account / Misreporting

790. In addition to the above statistics the CEO of a local commercial bank was dismissed from his position for allowing “associates” to open several thousand anonymous accounts with his knowledge. The accounts were opened with the primary objective of facilitating fraudulent access to the primary shares using those anonymous accounts to apply for Initial Public Offering (IPO) of that particular bank. However, other officials who assisted him were punished through the bank’s internal policies, ie demotion.

#### Securities Industry

791. During the first half of 2008 the SEC imposed penalties upon 10 issuer companies for non-compliance of securities laws, and issued warning letters to 15 issuer companies and warned them to ensure compliance of all securities related laws. During the same period the SEC imposed penalties upon 6 stock brokers /dealers for market manipulation. The SEC also issued warning letters to merchant banks for non-compliance with security related laws. None of these sanctions related to AML breaches, but they show a level of activity by the regulator.

**Table: SEC enforcement actions during period April-June 2008.**

Nature of Actions	Issuer Company Statutory Auditor	Stock / Broker/Dealer/Merchant Banker	Others
Monetary Penalty	10	6	1
Directive	-	-	-
Warning	20	8	-

#### Insurance sector

792. The insurance regulator did not commence regular prudential inspections until 2007. In 2007 62 onsite inspections (including branch offices) were conducted, but no sanctions were imposed, however instructions were given to address a range of identified areas of non-compliance. In 2008 27 inspections were conducted and penalties imposed by the Department of Inspection for violating the typical breaches amounted to approximately TK4.8 million (approximately \$US685,000).

793. No AML-related supervision of the insurance sector has taken place by the AMLD or the Controller General of Insurance and no AML related sanctions have been levied.

### ***Market entry***

794. There is no special provision in the MLPO to prevent or avoid any person who is unsuitable from controlling or participating directly or indirectly, in the directorship, management or operation of reporting institutions. However, Section 23(1) (d) of MLPO would allow Bangladesh Bank to issue such directions to reporting organizations for taking counter measures to combat money-laundering activities.

795. Under the 15, 17, 18, 23, 46 & 47 of Banking Company Act 1991, directors and senior management of banks are evaluated on the basis of “fit and proper” criteria including their expertise and integrity. Directors and senior management of Non-Bank Financial Institutions are also evaluated on the basis of “fit and proper” criteria according to FID Circular no.10 Dated 12-12-2002.

796. The above mentioned measures are not designed to prevent criminals from controlling financial institutions. The Banking Act and related Circulars supports a system of self-declaration by Board members and senior directors regarding their criminal record. Police record checks are not a requirement. There are no checks done on the beneficial owners or licensees of the bank.

797. Securities and Exchange Commission approves the appointments of chief executive officers, non elected directors of the Stock Exchanges and CEO of Central Depository Bangladesh Limited on the basis of requisite qualifications. The SEC usually maintains fit and proper for appointments of other officials.

### **Securities**

798. SEC does not have effective measures in place to prevent criminals or their associations from holding a license or managing securities companies. The SEC relies on a self declaration by prospective license holders in relation to criminal conviction. No checks are conducted with the police or other law enforcement authorities.

799. The SEC maintains some control over market entry for securities companies and brokers. Checks are essentially related to credit risk. The SEC forbids bankrupts from holding a license or managing a licensed entity. SEC limits its checks to the Credit Bureau.

### **Insurance**

800. Limited measures are in place to prevent criminals or their associations from holding a license or managing an insurance company in Bangladesh. Section 42(12) of the Insurance Act (1938) forbids the granting or renewal of a license if the person has been found guilty of criminal misappropriation or criminal breach of trust, cheating or forgery or an abetment of or attempt to commit any such offence by a Court of competent jurisdiction. This provision is relatively narrow (for example ML convictions are not included) and implementation of the provision has not been demonstrated in practice.

### **AML/CFT guidance/guidelines**

801. Bangladesh Bank has issued comprehensive guidance to banks and financial institutions, which cover a wide range of issues to assist those entities to implement their AML/CFT requirements. The Bangladesh Bank AML Guidance Notes both establish obligations and elaborate guidance to assist reporting parties and preventative measures.

802. Comprehensive guidelines have not been developed for insurance companies, money changers, remittance companies or securities companies.

### **Rec 30 - Resources**

803. Bangladesh Bank is a self funded autonomous body with adequate structure, staff, and sufficient technical and other resources to perform its functions, although specialist AML supervisory skills are still lacking. Bangladesh Bank maintains high standards concerning confidentiality, integrity under Bangladesh Bank recruiting policy.

804. The recruitment and selection of officials in SEC is guided by the Securities and Exchange Commission Service Regulations, 1995. SEC seeks to maintain proper quality in recruitment of its employees.

805. SEC staff have been sent abroad for short training programs sponsored by IOSCO and other security regulators.

806. SEC and Insurance Regulator staff have not received adequate training for AML/CFT.

807. Most of the officers of the FIU have been provided some AML/CFT local and international training programs, which includes elements of supervision.

### ***Effectiveness***

808. With the exception of the lack of coverage of the securities sector, regulators generally appear to have adequate powers of supervision. Capacity and expertise with AML/CFT issues remains a challenge for all supervisors. Clearer information on ML/TF risks is required to allow supervisors to understand Bangladesh-specific risks.

809. Market entry in the banking sector appears to be relatively sound, however outside that sector, due to the weak controls, there are significant vulnerabilities from criminals owning or controlling financial institutions.

810. The depth and scope of AML supervision is still to be effectively implemented. AML supervision commenced in the banking sector in 2004 and only commenced in the non-bank sector in 2006. Bangladesh Bank supervisors have found breaches of compliance, but the supervisory actions, including sanctions, has not resulted in significant improvements in rates of compliance.

811. There appears to be a lack of awareness of AML/CFT issues amongst prudential supervisors outside of the banking sector and there is a need for greater cooperation between the AMLD, as supervisor and sector-level supervisors.

812. Discussions with the regulators and the sector indicate, for example, that few banks have taken steps to update CDD records of customers which existed prior to the MLPA (2002). This represents a gap of millions of accounts that have yet to be subject to adequate CDD.

813. Weak compliance with STR reporting obligations is not adequately reflected in supervisory findings.

### **3.10.2 Recommendations and Comments**

#### **Recommendation 17**

- Available monetary sanctions should be raised to proportionate and dissuasive levels.
- Available sanctions should be implemented in response to findings of AML/CFT breaches

#### Recommendation 23

- All supervisors should integrate the AML/CFT requirements into their directions, regulations to the supervised institutions.
- Inspection should be undertaken for CFT measures across all sectors as well as AML
- Logistic support and man power is inadequate for effective supervision of the insurance sector. Bangladesh authorities should focus special attention to establish division to implement and monitor the compliance of AML & CFT requirements relating to Insurance sector.
- SEC should be fully integrated into the AML/CFT framework and should be responsible for AML/CFT supervision of the securities sector.
- SEC should be fully integrated into the AML/CFT framework and should have a clear role in AML/CFT supervision of the securities sector.
- Market entry controls should be designed and implemented to prevent criminals from controlling financial institutions.
- Comprehensive AML/CFT inspection should be undertaken beyond the banking sector

#### Recommendation 25

- Guidance should be issued to insurance, securities, remittance and money changer sectors to enhance levels of AML/CFT compliance.

#### Recommendation 29

- ATO 2008 should be amended does not clearly provide for CFT-related regulation and supervision powers beyond the banking sector.
- MLPO powers for regulation and supervision should be effectively implemented

#### Recommendation 30

- Securities and insurance sector supervisors should be adequately funded and staffed for combating money laundering and terrorist financing.
- Capacity and operational independence of the Insurance supervisor should be established
- AML/CFT training should be extended to supervisory staff of the SEC and insurance regulator

#### Recommendation 32

- Statistics for supervisory actions, including sanctions should be properly kept.

### 3.10.3 COMPLIANCE WITH RECOMMENDATIONS 23, 29, 17 & 25

	Rating	Summary of factors relevant to s.3.10 underlying overall rating
<b>R.17</b>	<b>PC</b>	<ul style="list-style-type: none"><li>• Available monetary fines are very low and are not proportionate or dissuasive.</li><li>• SEC regulated entities are not subject to AML-related sanctions</li><li>• Very weak implementation of available sanctions in relation to AML/CFT.</li><li>• Most of the sanctions and penalties that have been implemented by the authorities are not relevant to AML/CFT cases.</li><li>• Effective implementation is not demonstrated beyond the banking sector</li></ul>
<b>R.23</b>	<b>PC</b>	<ul style="list-style-type: none"><li>• The securities sector is not subject to AML/CFT regulation or supervision</li></ul>

		<ul style="list-style-type: none"> <li>• The insurance sector has is not subject to adequate AML/CFT regulation and supervision</li> <li>• Market entry controls do not prevent criminals from controlling financial institutions.</li> <li>• Limited inspection has gone on for AML beyond banks and the supervision that has taken place has not been effective in improving compliance with AML controls.</li> <li>• Not all natural and legal persons providing a money or value transfer service are licensed or registered.</li> <li>• Not all natural and legal persons providing a money or value transfer service are subject to effective systems for monitoring and ensuring compliance with national AML/CFT requirements</li> </ul>
<b>R.25</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Guidance has not been issued to insurance, securities, remittance or money changer sectors.</li> </ul>
<b>R.29</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Supervisors do not have adequate powers to monitor and ensure compliance by the securities sector with AML/CFT requirements</li> <li>• ATO does not clearly provide for CFT-related regulation and supervision in relation to insurance.</li> <li>• MLPO contains powers for regulation and supervision, however there has been a lack of effective implementation in relation to AML/CFT supervision</li> <li>• There are gaps in available sanctions for regulators to ensure effective compliance with AML/CFT requirements</li> <li>• Limited implementation of MLPO powers by the Bank of Bangladesh over reporting organizations other than banking institutions.</li> </ul>
<b>R.30</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Securities, Insurance sector supervisors are not adequately funded and staffed for combating money laundering and terrorist financing.</li> <li>• Operational independence of the Insurance supervisor is not clear</li> <li>• Capacity and integrity of the Office of the Controller of Insurance as the supervisor of insurance sector is weak.</li> <li>• Staff of the Securities Exchange and Controller of Insurance office have not received training for combating ML&amp;TF</li> </ul>
<b>R.32</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Statistics for supervisory actions, including sanctions are not used by regulators beyond the Bangladesh Bank to review effectiveness of AML/CFT systems.</li> </ul>

### **3.11 MONEY OR VALUE TRANSFER SERVICES (SR.VI)**

#### **3.11.1 Description and Analysis**

814. Remittance business in Bangladesh is limited to banking and post office channels. Beyond the national post office, no licenses are given for non-bank organizations conducting money remittance into or out of Bangladesh. Hundi/hawala, though very common, is strictly illegal in Bangladesh.

815. Bangladesh's economy relies heavily on the very large numbers of migrant workers overseas, in particular with Saudi Arabia. The more open and vibrant economies of its neighbours have attracted a significant labour force from Bangladesh.

816. Revenue from Bangladeshi nationals working in foreign countries represents a significant contribution to the Bangladesh economy. The authorities acknowledged the significant extent of alternative remittance services such as Hundi among the migrant workers in remitting money home from abroad. The Hundi system remains prevalent due to its simplicity, low cost, speed and for cultural issues of trust.

817. Though no official statistic is available for money transfers through informal channels, it Bangladesh's economy includes a sizable portion of inflows through informal channels. The World Bank Policy Research 3704, September 2005 estimated that just over 54% of the total remittance was conducted through informal channels.

818. Bangladesh has a policy of enforcing laws that make hundi illegal and the government takes steps to eliminate illegal Hundi.

819. It is apparent that remittance to/from Bangladesh includes a significant portion of informal money value transfer activity that is not subject to applicable AML/CFT controls. The size of the informal remittance sector poses risks for ML and TF. The nature of the economy, the existing controls on export of currency and the small number of licensed non-bank remittance channels contributes to challenges for comprehensive AML/CFT regulation of money or value transfer services operating in Bangladesh.

820. Bangladesh Bank has made some efforts to raise awareness of the need to use formal channels and to build incentives to move from using informal to formal channels of remittance. Bangladesh Bank has taken steps to support this by licensing exchange houses to operate in countries with significant populations of migrant workers. So far there are 229 exchange houses have been opened abroad and commercial remittance providers with a global presence have been granted permission to operate in Bangladesh.

821. There are clear signs that greater flows of remittance are moving through formal channels. Five years ago the value of inward remittance through formal channel was approximately US\$ 2 billion. In 2007 the number was increase to US\$ 6 billion and in 2008 it reached US\$ 9 billion. Authorities and local banks attribute the rise in figures, in part, to awareness amongst foreign workers of the ML risks in the informal sector.

822. Remittance companies with a global reach work in cooperation with local banks and the post office to offer remittance services, but in each case they serve as an agent to the banks / post office. The tie-in with the national post office allows overseas workers access to the wide network of post offices across Bangladesh, including towns and villages that may not have a banking presence. All such remittance services utilise banks for batch settlement of remittance.

#### *Compliance with SRVI*

823. AML/CFT obligations on banks cover remittance, and specific controls are discussed in previous sections on CDD, wire transfers, STR reporting, record keeping and supervision.

824. As mentioned above, the post office, which is the only formal non-bank remittance provider, has not yet been made subject to the MLPO 2008. Despite the lack of obligations, the post office has begun to implement AML internal controls and has reported two STRs. There is no clear safe harbour provided to the post office, in the absence of their inclusion as a reporting party under the MLPO 2008.

825. Statistic on measures taken to shut down illegal hundi were not available. In discussions with Police, cases were cited involving persons being arrested in relation with Hundi. A number of the ML cases taken up for prosecution under the MLPA 2002 related to running a hundi, rather than ML schemes involving the proceeds of crime.

### 3.11.2 RECOMMENDATION AND COMMENTS

826. The current system of relying primarily on sanctions against non-licensed activities does not appear to be effectively ensuring that remittance is undertaken through channels with proper AML/CFT controls.

827. Bangladesh should:

- proceed without delay to ensure that the non-bank remittance operator (post office) are effectively included in the AML/CFT framework, including sector-appropriate preventative measures and supervision as well as requiring checks against the UNSCR 1267 lists.
- ensure that all remittance business is conducted through formal channels regulated for AML/CFT. The significance of hundi / hawalla is a key issue and there is a need for authorities to ensure incentive structures properly balance the need for formalization with the risk of further driving customers to the informal sector.
- maintain statistics on the migration of remittance transfers from informal to formal channel.
- undertake further study of the nature of informal remittance business carried out and consider additional measures to build incentives that encourage a shift of remittance from informal to regulated channels. Such a review may seek to consider information from government and the private sectors and may include an outreach program to the informal remittance sector. The reviewers may wish to have regard to the experiences of other countries and typologies and best practices identified by international bodies including FATF, APG and World Bank for supporting better regulation of remittance for AML/CFT.

### 3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	NC	<ul style="list-style-type: none"><li>• Large scale unregulated informal remittance channels continue to operate without inclusion in national AML/CFT measures, with a continuing need for structures or strategies to support increased uptake of remittance through formal channels;</li><li>• Bangladesh has not ensured that all MVT service operators are subject to applicable FATF Recommendations</li><li>• Limitations identified under Recommendations 4-11, 13-15, 17, 21-23 and SR.VII also effect compliance with SR.VI</li></ul>



#### **4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS**

##### **Scope of application of the AML requirements to the DNFBP sectors**

828. At present DNFBP sectors are not included under Bangladesh's AML/CFT requirements. The MLPO does not include a reporting obligation for DNFBPs.

829. Gambling, including casinos and internet casinos, is outlawed in Bangladesh.

830. Section 2(L) of the MLPO allows the government to include other organisations as Reporting Parties. This could be utilised to include DNFBPs.

831. Bangladesh is actively considering including DNFBPs under AML/CFT measures. The Ministry of Finance, Ministry of Law and Bangladesh Bank have held a meeting to discuss the expansion of covered reporting organisations to include DNFBPs.

##### Real Estate

832. There are approximately 1000 real estate companies operating in Bangladesh, and approximately 400 of these are members of the industry body the Real Estate Association of Bangladesh (REHAB). REHAB members have an internal policy to conduct limited KYC and to be alert to possible unusual transactions, but there are no binding legal obligations for KYC, STR reporting, nor any safe harbour for reporting STRs by real estate agents.

833. Bangladesh has highlighted ML risks in the real estate sector and Bangladesh Bank indicated that it is giving consideration to include, as a priority, real estate agents under AML/CFT requirements.

##### Lawyers

834. The Bangladesh Bar Association was unable to provide any estimate on the numbers of legal professional engaged in commercial activities on behalf of clients including buying and selling of real estate, managing client money, management of bank, organization of contribution for the creation, operation or management of companies and creation, operation or management of legal person or arrangements.

##### Accountants

835. The Institute of Chartered Accountant of Bangladesh has taken some limited steps to socialise its members on the issue of AML, in particular in the context of audits. The Association was unable to provide an estimate on the extent of its member managing client money, management of bank or organization of contribution for the creation, operation or management of companies and creation, operation or management of legal person or arrangements.

##### Jewellers

836. The jewellery trade in Bangladesh is not well developed and generally does not extend to large value transactions. According to explanations provided by Association of Jewellery Exporters, the scope of jewellery trading in Bangladesh is very limited. The maximum transaction of Jewellery store is approximately only Tk 1 Million (approx USD20,000).

## **4.1 Customer due diligence and record-keeping (R.12)** (Applying R.5, 6, 8 to 11, & 17)

### **4.1.1 Description and Analysis**

837. As DNFBPs are not yet included in Bangladesh's AML/CFT regime, there are no comprehensive CDD obligations or practices on other DNFBP sectors. Only the real estate sector has any CDD measures in place, but this is entirely voluntary. Accountants and lawyers have very limited requirements to identify their clients and to keep records, but this is not to the extent envisaged by the FATF standards.

838. REHAB has a voluntary policy for its members to conduct some KYC during property transactions. REHAB has issued a form to its members for collecting customer data during purchase of a property. The non-compulsory form requests buyer's name, address, profession (which contain information regarding source of income), monthly income, two referees, nominee, TIN number and clearance from a police station. It also asks the client to provide three months bank statement. REHAB KYC policy is entirely voluntary.

839. Verification of real estate customers is generally conducted by post. REHAB indicates that member real estate companies would not proceed with a sale if the client did not provide all the required information or problems occurred when verifying the client. This is a matter of credit risk.

840. When dealing with foreign nationals as customers, REHAB members seek to reduce risk by conducting all transactions through banks.

841. Real Estate Companies generally keeps records for a minimum four years after the transaction and maximum five years.

### **4.1.2 RECOMMENDATIONS AND COMMENTS**

- Bangladesh should take steps to extend CDD measures to the full range of DNFBPs, taking into account the level of risk from different DNFBP sectors.

### **4.1.3 COMPLIANCE WITH RECOMMENDATION 12**

	<b>Rating</b>	<b>Summary of factors relevant to s.4.1 underlying overall rating</b>
<b>R.12</b>	<b>NC</b>	<ul style="list-style-type: none"><li>• As DNFBPs are not yet included in the AML/CFT regime in Bangladesh, CDD requirements do not extend to DNFBPs</li></ul>

## **4.2 SUSPICIOUS TRANSACTION REPORTING (R.16)**

### **4.2.1 DESCRIPTION AND ANALYSIS**

842. As DNFBPs are not yet included in Bangladesh's AML/CFT regime, STR obligations do not extend to any of the covered DNFBP sectors. (See comments above regarding other sectors)

### **4.2.2 RECOMMENDATIONS AND COMMENTS**

- Bangladesh should take steps to extend STR measures to the full range of DNFBPs.

### **4.2.3 COMPLIANCE WITH RECOMMENDATION 16**

	<b>Rating</b>	<b>Summary of factors relevant to s.4.2 underlying overall rating</b>
<b>R.16</b>	<b>NC</b>	<ul style="list-style-type: none"><li>• As DNFBPs are not yet included in the AML/CFT regime in Bangladesh, STR requirements do not extend to DNFBPs</li></ul>

### 4.3 REGULATION SUPERVISION AND MONITORING (R24-25)

#### 4.3.1 Description and Analysis

843. There are no existing guidelines or mechanisms for monitoring and ensuring compliance of DNFBPs with AML/CFT requirements. At such time that DNFBPs are included, Bangladesh Bank (the FIU) would have the power to monitor compliance with AML/CFT obligations as per S 23(e) of the MLPO.

844. At present, awareness amongst DNFBPs of ML and TF risks and possible future AML/CFT preventative measures is low.

#### 4.3.2 RECOMMENDATION AND COMMENTS

845. Bangladesh should conduct a risk analysis to identify the categories of DNFBPs which should be given priority to introduce AML/CFT requirements. These sectors could be included by exercising the powers in the provisions of MLPO vested to the Bangladesh Bank with the approval of Government.

846. Discussions should be undertaken with the regulators and SROs of the DNFBP sectors to determine the extent of their role in monitoring and ensuring compliance.

847. AML/CFT guidance should be formulated and issued for each industry in the DNFBP sector to reflect specific ML/TF risks in each sector.

#### 4.3.3 Compliance with recommendation 24

	Rating	Summary of factors underling rating
R24	NC	<ul style="list-style-type: none"><li>There is no regime for AML/CFT regulation and supervision of designated non – financial business and professions.</li></ul>

### 4.4 OTHER NON-FINANCIAL BUSINESSES AND PROFESSIONS –MODERN SECURE TRANSACTION TECHNIQUES

848. The MLPO 2008 mentions that other business organizations approved by Bangladesh Bank are included as Reporting Parties. In a context other than AML, Bangladesh Bank gives approval (license or registration) to buying agents, shipping agents, forwarding agents, general service agents, house agents, and courier services which move currency. Although these are technically included in the definition of reporting entities, at the time of on site visit there was no intention to extend AML requirements to those parties. The reason given by Bangladesh Bank is that they are not dealing with financial business and all of their transactions are conducted through banks.

849. Bangladesh has given some preliminary consideration to applying Recommendations 5, 6, 8-11, 13-15, 17 and 21 to non-financial businesses and professions (other than DNFBP). Section 2 (L) of the MLPO provides Bangladesh with the flexibility to include other NFBPs as reporting entities and to extend various preventative measures to those entities in the future. As yet, however, no action has been taken to extend the requirements to other classes of NFBP.

850. Bangladesh is a predominantly cash economy. Although starting from a very low technological base, the government has taken significant steps to encourage the development and use

of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering. Bangladesh Bank has encouraged further development of the ATM network, the development of phone banking and net banking and improving payment systems to achieve a reduced reliance on cash. Bangladesh has only issued very low value, low denomination bank notes .

851. Bangladesh does not issue bank notes in denomination higher than 500 Taka, which is equivalent to approximately USD65.

852. Bangladesh Bank has undertaken the “Remittance and Payment Partnership Project” in conjunction with foreign donor agencies to develop a uniform instrument for conducting financial transactions less vulnerable to money laundering. This project had not commenced at the time of evaluation team visit.

#### 4.4.2 RECOMMENDATIONS AND COMMENTS

853. Bangladesh should continue to develop effective measures to develop and use modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering.

854. Measures should be developed to reduce the reliance on cash and to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering and terrorist financing.

#### 4.4.3 COMPLIANCE WITH RECOMMENDATION 20

	Rating	Summary of factors relevant to s.4.4 underlying overall rating
<b>R.20</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>• There are still gaps with effective measures to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering</li> <li>• Bangladesh has not yet undertaken a formal risk assessment of vulnerabilities to non-financial businesses and professions other than DNFBPs</li> </ul>

## **5 LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS (NPOs)**

### **5.1 LEGAL PERSONS – ACCESS TO BENEFICIAL OWNERSHIP AND CONTROL INFORMATION (R.33)**

#### **5.1.1 DESCRIPTION AND ANALYSIS**

855. The *Companies Act 1994* [the CA 1994] is the principal legislation governing the formation, management and dissolution of companies. The CA 1994 is administered by the Registrar of Firms and Joint Stock Companies [the RFJSC].

856. All companies, associations and partnerships whose number of members exceeds 20, and which are formed for the purpose of gain, must be registered with the RFJSC: section 4(2) CA 1994. There is no obligation to register if the membership is less than 20.

857. Public listed companies are also incorporated under the CA 1994, with a legal framework also provided by the *Securities Act*. These Acts are administered by the SEC.

858. As of September 2008 there were approximately 115,000 registered companies in Bangladesh. In addition there were 242 companies listed on the Chittagong Stock Exchange and 350 listed on the Dhaka Stock Exchange.

#### **System of central registration**

859. All companies, associations and partnerships whose number of members exceeds 20, and which are formed for the purpose of gain, must seek registration with the RFJSC. Incorporated companies may be:

- limited by shares;
- limited by guarantee; or
- Unlimited.

860. Information to be provided to the RFJSC on application for registration must include:

- the name of the company;
- the address of its registered office; and
- Memorandum and Articles of Association.

861. Other information which must be filed with the RFJSC under the CA 1994 includes the following:

- a register of the directors, managers and managing agents detailing their names, addresses, nationality and occupation;
- notification of any changes in directors, managers or managing agents;
- notification of any change to the registered office; and
- a register of shares with the name, address and nationality of each shareholder.

862. Additionally the company must file annually with the RFJSC a list of:

- its current members;
- those who have ceased to be members; and
- the number of shares that are held or have been transferred.

863. In addition each year the company must prepare and file with the RFJSC a statutory report containing:

- names, addresses and occupations of all directors and auditors, managing agents and secretaries, as well as any changes thereto;
- a list of all shareholders including names, addresses, occupations, and number of shares held by each; and
- all receipts and payments made by the company.

864. Companies are obliged to maintain much of the above material at their registered offices. A register of members, and a register of directors and managers, must be kept at the registered office and be available for inspection by any member free of cost (CA 1994 Section 41). In addition the company must keep at its registered office all proper books of account including sums received and expended, sales and purchases made, and assets and liabilities of the company (CA 1994 Section 181). These records are required to be kept for a period of at least 12 years.

865. Only natural persons may be directors: s 90(3). A legal person may be a shareholder of a company; however there is no requirement upon the company to obtain and keep ownership and control details of the shareholder company. Nor is there any requirement to file such details with the RFJSC. The Assessment Team was informed that in such cases the Registrar requires only the name of the company shareholder, its address, and the name of a person responsible for the company.

866. Failure to comply with the above requirements attracts criminal sanctions against the company and/or its officers. There does not appear to be any option for administrative sanctions in place of criminal sanctions. The Registrar advised that his own officers were responsible for conducting breach proceedings and that the prosecution process was a slow one.

867. There is thus a system of central registration of companies and partnerships in Bangladesh, at least where membership exceeds 20. However there is no requirement or practice of maintaining beneficial ownership and control details where company shareholdings are held by legal persons.

868. A further issue of concern is the accuracy and currency of records maintained by the RFJSC. The Assessment Team was advised that the RFJSC had minimal capacity to monitor or enforce compliance with the above obligations. By way of example the Registrar estimated at between 20% and 25% the rate of compliance with the obligation to maintain an annual list of shareholders and to file it with the RFJSC. The Registrar advised that in the past 12 months he had taken some breach action against companies for alleged non-compliance with this requirement, but none of these cases had yet reached completion.

869. The Assessment Team concluded as a result of the above that the RFJSC is unable to ensure the accuracy and currency of its own records. In practice the RFJSC's interface with most companies appears limited to the initial registration process, and there is little or no capacity to ensure that the initial information is kept up to date.

870. This also appears to be the case in relation to the records maintained by the companies themselves. In the Registrar's view, within the business community there was a low rate of compliance with these obligations as well. It was the further view of the Registrar that the RFJSC was not resourced sufficiently to allow it to monitor and enforce compliance in this area.

871. Although it appears that lawyers and accountants are involved in the formation and administration of companies, there is no legal obligation upon them to obtain, verify and retain records of their beneficial ownership and control.

### *Ownership of shares*

872. There are no clear obligations upon stock brokers or the stock exchanges to obtain and maintain information on beneficial ownership of shares in trading accounts. Nor are there any AML obligations on capital market intermediaries to identify and record beneficial ownership details.

873. The SEC Rules require that a broker obtain identification of the legal person who is to own an account, and the name of the authorised person who is to operate the account. There is no requirement to obtain details of the shareholders of the company account holder.

874. The relevant account-opening documentation does not request any details of beneficial owners (shareholders etc) where an account-holder is a legal person. The SEC advised that in practice a broker should request a copy of the Memorandum and Articles of Association of the company (which in the ordinary course would contain member details). However this is not a requirement under law. For opening depository (BO) account, an investor is required to submit his particulars with National Identification Card (NID), Bank Certificate for bank account.

875. Company registers do not maintain information about beneficial ownership of shares held by a legal person.

876. Records held by the RFJSC are not computerised although the Assessment Team was advised that this process is underway.

877. Overall, competent authorities have available to them a reasonable, albeit non-specific, range of powers to request access to information about beneficial ownership.

878. The CA 1994 provides the Registrar with the power:

- to conduct routine inspections of the books and records of a company (Section 182);
- to require the company's officers to furnish him with books, papers or information (Section 193); and
- to obtain a court order for seizure of books and papers (Section 194).

879. The Registrar advised that he has rarely used his powers under Section 182, but has on occasions requested further company information pursuant to section 193.

880. Where it is suspected that the business of the company is being conducted for an unlawful purpose, the Government may appoint an inspector. In such cases the company and its officers must produce all books and records as are requested (Section 200(2)).

881. As noted elsewhere in this report, sections 19 and 23 of the ACC Act confer strong investigative powers upon the ACC, including the power to:

- compel a suspect or any other person who may be holding property on his or her behalf to submit a statement of assets and liabilities and to furnish any other information
- summons witnesses, interrogate them under oath and take evidence under oath
- request discovery of any document
- call for public records
- issue warrants for examination of documents
- require any person to furnish information in matters relating to any inquiry or investigation
- call for any information from the government or any authority or organisation under the government
- require the co-operation of the government or any authority or organisation under the government in the manner determined by orders of the ACC.

882. Police officers also have powers under the Code of Criminal Procedure to summons persons to produce documents and to answer questions; and to search persons and premises.

883. Thus competent authorities are invested with general powers to obtain or have access to such information about beneficial ownership as may be in the custody of the RFJSC or other entities and persons. However there is no obligation on either the RFJSC or the companies themselves to maintain information as to beneficial ownership. In addition there is very weak compliance with the obligation to update such records as do exist. As a result the effectiveness of these measures is much reduced.

884. Section 45 of the CA 1994 permits share warrants to be issued which entitle the bearer of the warrant to the shares or stock specified within it. The shares or stock are able to be transferred by delivery of the warrant.

885. In such cases, the CA 1994 obliges the company to enter into its register the fact that the warrant has been issued, the date of issue, and the number of shares or stock included. There is no requirement that the company or any other entity record details of the bearer's identity.

886. According to section 45, companies limited by shares are able to issue such warrants, but not private companies. "Private company" is defined at section 2(q) as a company which:

- (i) restricts the right to transfer its shares, if any;
- (ii) prohibits any invitation to the public to subscribe for its shares or debenture, if any;
- (iii) limits the number of its members to fifty, not including persons who are in its employment.

887. It is unclear from the above whether the intention of the legislation is to allow only public companies to issue bearer share warrants, or whether any company with a membership greater than fifty may do so.

888. In any event it is clear that in those cases where the CA 1994 permits bearer shares, Bangladesh lacks an effective mechanism to mitigate the risks posed by bearer shares, including adequate provision to establish beneficial ownership of those shares.

889. The process to dematerialize all shares in Bangladesh was undertaken in recent years and the SEC reports that almost 98% of shares are held in dematerialised form. Dematerialization of shares is optional and an investor can still hold shares in physical form. However, investors must dematerialise shares, through the Central Depository of Bangladesh to sell them through the Stock Exchanges. Similarly, if an investor purchases shares, he/she will get delivery of the shares in dematerialised form only. There are over 250 Full Service Participants in the Central Depository of Bangladesh.

#### 5.1.2 RECOMMENDATIONS AND COMMENTS

890. Bangladesh has a national system for recording and making available information on companies. However the effectiveness of the RFJSC in making information available on those who own and control legal persons in order to combat money laundering is greatly inhibited by:

- the low rate of compliance with the obligation to provide the RFJSC with updated information;
- its lack of capacity to enforce compliance with the above obligation; and
- the lack of a requirement on the RFJSC to maintain information as to whether shares of registered entities are held beneficially and if so, details of the beneficial owner.

891. The availability of information as to beneficial ownership is also greatly inhibited by:



- the lack of a requirement on legal persons themselves to maintain information as to whether their shares are held beneficially and if so, details of the beneficial owner
- inadequate provision in the case of bearer share warrants, for obtaining information as to the beneficial ownership of the shares.

892. Investigative agencies have a reasonable range of powers to obtain information about companies. However the effectiveness of their powers in this area is much reduced by the fact that the RFJSC and the companies themselves do not maintain information about beneficial ownership. In addition due to the low rate of compliance with and enforcement of CA 1994 obligations, there can be little confidence that such records as do exist are accurate and up to date.

893. Bangladesh should:

- require the RFJSC and company registers to maintain information as to whether shares of registered entities are held beneficially and if so, to maintain details of the beneficial owner;
- require companies to maintain beneficial ownership information in relation to bearer shares where these are permitted;
- extend AML obligations to the capital market so as to require intermediaries to maintain information about beneficial ownership of company accounts; and
- increase the capacity of the RFJSC to monitor and enforce *Companies Act 1994* obligations.

### 5.1.3 COMPLIANCE WITH RECOMMENDATIONS 33

	Rating	Summary of factors underlying rating
<b>R.33</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• Records held by Company registers and the central registration agency [RFJSC] do not include sufficient information about beneficial ownership</li> <li>• Accuracy and currency of RFJSC's records is limited</li> <li>• Company formation agents do not have to maintain information about beneficial ownership</li> <li>• Capital market intermediaries do not have to maintain information about beneficial ownership of company accounts</li> <li>• No mechanism to mitigate the risks posed by bearer shares</li> <li>• Above factors inhibit effectiveness of law enforcement powers to obtain information about beneficial ownership</li> </ul>

## 5.2 **LEGAL ARRANGEMENTS – ACCESS TO BENEFICIAL OWNERSHIP AND CONTROL INFORMATION (R.34)**

### 5.2.1 DESCRIPTION AND ANALYSIS

894. Express trusts may be formed in Bangladesh under the provisions of the *Trusts Act 1882*. The Act sets out the roles for the author of the trust, the trustee and the beneficiary and related obligations. Every person capable of holding property may be a beneficiary or trustee. As such, natural persons and legal persons may also act as trustee and can operate a trust. The *Trusts Act* does not require disclosure of beneficial ownership information as envisaged in the FATF standards.

895. The services of a lawyer are required to prepare the trust deed. The trust deed must contain the names, dates of birth and addresses of the settlor, trustees and beneficiaries of the trust. The trust

deed must also specify the purpose of the trust, its assets and any instructions relating to the management of those assets. Trusts are operated by their trustee board.

## Legal Framework

896. Trusts may be registered under the *Registration Act 1908*. For immovable property, Section 5 of the *Trusts Act* requires the written instrument of the trust to be signed by the author of the trust or the trustee and registered. This is done under provisions of the Registration Act, 1908 with the sub-registrar or joint-registrar in whose jurisdiction the whole or part of the property under transfer is situated. Registration of an instrument of trust is not required for movable property. An instrument of trust for movable property may be registered with the sub-Registrar on the discretion of the trustee.

897. Bangladesh law does not prevent recognition of trusts formed in other jurisdictions.

898. Bangladesh has a decentralized system of registration of trusts under the *Registration Act*. Registration of trust deeds is carried out by various Registrars at the district and city level. Details recorded include the trustees and beneficiaries of the trust. While the obligation to register trust deeds is mandatory for immovable property, it is discretionary for movable property.

899. Registration of trust information is not centralized. Any registration of trusts is done on manual registers kept by local and city registrars who are responsible for recording trusts under the *Registration Act*. Trust registrations is included on a publicly available register. Law enforcement agencies have legal access to the register, but police and the ACC would face significant practical challenges in searching and retrieving such information. Based on discussions with regulatory and law enforcement authorities in Bangladesh, there is an apparent lack of awareness of which agency registers trusts and how to access trust information.

## Effectiveness

900. As the information is not centralized, no statistics or estimates were available on the extent of registration of trusts formed in Bangladesh. There is an apparent lack of awareness of which agency registers trusts and how to access trust information.

901. The information required to be included in the trust agreement on trustees, settlors and beneficiaries does not cover the concept of beneficial ownership, which undermines effectiveness.

902. As registered trust information is held only in manual form, law enforcement would have difficulty accessing such material, which undermines effectiveness.

## 5.2.2 RECOMMENDATIONS AND COMMENTS

- Bangladesh should take measures to ensure that information registered with the various district and city registrars on trusts contains information on beneficial ownership and is readily accessible to law enforcement and other competent authorities.
- Authorities should raise awareness on where trust deed information is held and how to access such information for AML/CFT purposes.

## 5.2.3 COMPLIANCE WITH RECOMMENDATIONS 34

	Rating	Summary of factors underlying rating
<b>R.34</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• Information on the ultimate beneficiaries of trusts is not required to be determined and made available to authorities on request, which undermines effectiveness.</li> <li>• Registration of information on parties to a trust is held in decentralized</li> </ul>

		manual registers and is very difficult for law enforcement agencies to access in practice.
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### 5.3 **NON-PROFIT ORGANISATIONS (SR. VIII)**

#### 5.3.1 DESCRIPTION AND ANALYSIS

903. Bangladesh's non-profit organisation (NPO) sector includes over 60,000 registered societies, associations, clubs, companies limited by guarantee, and foundations. Most NPOs are small and local in nature, and are involved in welfare projects in the areas of education, health, agriculture, water supply and sanitation. However some NPOs such as BRAC are very substantial and have expanded beyond education and health activities to income-generating programs and the provision of micro-credit.

904. Numerous statutes deal with the establishment and registration of NPOs in Bangladesh. The bulk of Bangladesh's NPOs are incorporated under:

- *The Voluntary Social Welfare Agencies (Registration & Control) Ordinance, 1961*
- *The Societies Registration Act 1860*
- *The Trust Act 1882*
- *The Co-operative Societies Act 2001*
- *The Companies Act 1994*

905. Approximately 51,000 of Bangladesh's 60,000 registered NPOs are registered with the Ministry of Social Welfare pursuant to the *Voluntary Social Welfare Agencies (Registration and Control) Ordinance 1961*. There is also a legal framework for the administration of religious foundations. The primary legislation for the management of foundations which hold property dedicated for religious purposes is the *Waqfs Ordinance 1962*.

906. Other legislation regulating the operation of various NPOs in Bangladesh includes:

- The Micro-Credit Regulatory Authority Act, 2006
- Charitable endowment Act, 1890
- Wakf Ordinance, 1962
- Hindu Religious Welfare Trust Ordinance, 1983
- Christian Religious Welfare Trust Ordinance, 1983
- Buddhist Religious Welfare Trust Ordinance, 1983

**Table: Registration authorities for NPOs**

Registration authority / Department	No. of NGOs	Legislation
Department of Social Service	49,517 voluntary Social welfare organizations 3,455 private orphanages	Under the Voluntary Social Welfare Agencies (Registration & Control) Ordinance, 1961 (No. XLVI)
Department of Women Affairs	15,325	
Registrar of Joint Stock Companies & Firms	9,031	

Micro Credit Regulatory Authorities	312	
NGO Affairs Bureau	2,306 (Only Foreign Funded NGOs)	

907. NPOs which receive foreign donations must be registered with the Non-Government Organisation Affairs Bureau [the NGOAB]. Currently 2,306 NPOs are registered with the NGOAB, 2,095 of them being local NPOs.

908. NPOs which wish to register with the NGOAB, and so obtain release of foreign funds, are subject to a reasonably high level of scrutiny and oversight. This regime is described below. In the observation of the assessment team however, other major regulatory authorities such as the Registrar of Firms and Joint Stock Companies [RFJSC], the Ministry of Social Welfare, and the Ministry of Religious Affairs are not well-resourced for effective supervision, have weak arrangements for oversight, and experience very low rates of compliance on the part of their registered entities. Authorities indicate that the Department of social service has started supervision of registered organization under the Voluntary Social Welfare Agencies (Registration & Control) Ordinance, 1961.

### **Review of the domestic non-profit sector**

909. Bangladesh authorities advised that an NPO sector review is underway, under the coordination of Bangladesh Bank's AML Department. Regulators have been asked to prepare a review report in relation to the NPOs under their supervision. In addition the assessment team was advised that an action plan is being developed for enhanced NPO sector supervision. Following this the AML Department will prepare a consolidated NPO sector review report, which is expected to be ready for submission by mid-2009. The review is expected to consider the adequacy of Bangladesh's laws and regulations relating to NPOs, identify the vulnerability of different NPO-types to misuse for terrorist financing and make proposals for more effective monitoring and supervision. Department of Social Services issues circulars, to all district level officers, from time to time and advises them to supervise all the registered agencies under said Ordinance.

### **Outreach programs**

910. Very few outreach activities have been undertaken to raise awareness of terrorist financing risks in Bangladesh's NPO sector. The Ministry of Social Welfare and the Ministry of Religious Affairs have not undertaken outreach on terrorist financing risks. The NGOAB has undertaken some preliminary steps to interact with NGOs on CFT issues, but the NGOAB has interaction with only a small portion of the total NPO sector.

### **Effective supervision**

#### The NGOAB

911. The NGOAB was established in 1990. Located within the Chief Adviser's Office (Prime Minister's Office), it operates as a regulator for NPOs which receive and use foreign donations for voluntary activities. The primary legislation governing the powers and operation of the NGOAB are:

- the *Foreign Donation (Voluntary Activities) Regulation Ordinance* 1978 [the FD Ordinance]
- the *Foreign Donation (Voluntary Activities) Regulation Rules* 1978 [the FD Rules]
- the *Foreign Contribution (Regulation) Ordinance* 1982 [the FC Ordinance].

912. An NPO which wishes to use foreign funds for its projects must apply for registration with the NGOAB: Rule 3 of the Foreign Donation Rules. The NPO must submit material which includes:

- a copy of its constitution

- details of members of its executive committee
- plan of operation and areas of operation
- letter of intent of donor agency.

913. The NGOAB assesses registration applications in consultation with the Ministry of Home Affairs. Registrations remain valid for five years, after which the NPO must seek renewal of registration if it wishes to continue its operations.

914. An NPO may only maintain one bank account for the receipt of foreign funds: Rule 7 of the FD Rules. Once foreign funds have been received through this account, the NPO is permitted to operate other bank accounts for internal transactions.

915. The NPO must submit annual project plans and plans of operation for approval by the NGOAB: Rule 5A of the FD Rules. In addition the NPO must prepare and submit an annual report containing:

- full description of projects undertaken
- complete list of property held by the NPO
- statement of the NPOs sources of income
- statement of foreign travel undertaken by the NPOs officers and staff
- in relation to all salaried employees: their names, designations, ages, qualifications, nationality, salary and service tenure.

916. In addition the NPO must maintain audited books of account and submit copies of its audited accounts to the NGOAB: Rule 6.

917. Both the *FD Ordinance* and the *FC Ordinance* contain sanctions for defaulting NPOs. Non-complying NPOs face cancellation of their registration with the NGOAB, and closure of those projects which are reliant on foreign donations. In addition there is provision for imposition of fines and sentences of imprisonment. Authorities of the NGOAB advised that they had taken action to cancel registrations. This was mainly in relation to NPOs which had continued to operate without seeking renewal of their registration.

918. NGOAB monitors compliance with Rule 5A and 6 obligations, ie submission of annual project plans and audited accounts. NGOAB has found a reasonable rate of compliance amongst covered entities.

### The Ministry of Social Welfare

919. The Ministry of Social Welfare oversees the *Voluntary Social Welfare Agencies (Registration and Control) Ordinance* 1961 [the VSWA Ordinance], pursuant to which over 52,000 NPOs are registered, but the Ministry estimates that up to 1/3 are dormant. Department of Social Services under the Ministry of Social Welfare, after primary verification of over 55,439 organizations found approximately 23,280 to be dormant.

920. Registration is compulsory: section 3 of the VSWA Ordinance. The VSWA Ordinance prescribes that an agency having as its purpose the rendering of welfare services must obtain registration by filing with the Registration Authority a copy of its constitution, together with 'such other documents as may be prescribed'. Ministry officials advised that these included the names and addresses of all committee members, details of proposed activities, and details of bank accounts.

921. An agency is required pursuant to section 7 of the VSWA Ordinance to maintain audited accounts and to submit its Annual Report and audited accounts to the Registration Authority 'at such time and in such manner as may be prescribed'.

922. The Registration Authority must keep a register containing details of all registrations, including material which accompanied the original registration application: section 4. However there is no requirement that NPOs renew their registration. As a consequence, information maintained by the Registration Authority may not be accurate or current. For this reason, Ministry officials advised that they are considering the introduction of a requirement for renewal of registration.

923. Annual reports and audited accounts are required to be maintained within the agency but are not currently received by the Directorate of Social Welfare. The Ministry indicates that in the future it will collect audited statements. DSS confirmed that 24,404 NPOs have never submitted their audit reports to the District Social Services Office. DSS has been already advised to take necessary action.

924. Monitoring and supervision of NGOs' activities is the responsibility of regional offices of the Ministry of Social Welfare. Officials acknowledged that appropriate monitoring was a difficult task given the number and diversity of NPOs covered, and the very limited resources at the Ministry's disposal; and that overall there needed to be a greater degree of supervision.

925. The VSWA Ordinance provides sanctions for breach of the Ordinance and for irregularity in use of funds or conduct of affairs: the Registration Authority may suspend the governing body and recommend to the Government that the agency be dissolved. Persons who breach the Ordinance or who make false statements are also liable to a fine and imprisonment. The Director General of the Dept of Social Services is empowered to cancel registration. In the last few years the Directorate of Social Welfare has dissolved 20 social welfare organizations due to activities against public interest and violation of their constitution and some governing bodies of Social Welfare Organization have been suspended under same ordinance.

926. Ministry officials advised that NPOs under the Ministry's supervision were required to maintain books and records for a period of 12 years; however they were unable to advise as to the levels of compliance.

#### Ministry of Religious Affairs

927. The Ministry of Religious Affairs oversees the activities of religious foundations and religious welfare trusts throughout Bangladesh. There is currently no obligation for places of worship such as mosques to be registered, but Ministry officials advised that this will soon be a requirement.

928. When people dedicate income and assets for religious purposes the resulting trust is known as a waqf. Waqf funds and property are administered by an Administrator appointed pursuant to the *Waqfs Ordinance* 1962, who is assisted by a committee. The Administrator's functions include:

- to determine the nature and extent of waqf properties, and to call for books and records from the managers of individual waqfs (known as mutawallis); and
- to ensure that waqf properties and income are applied for the purposes for which the waqf was created.

929. All waqfs must be enrolled at the office of the Administrator: section 47 *Waqfs Ordinance*. The following information must accompany the application for enrolment:

- a description of the properties held by the waqf
- gross income earned from the properties
- expenses incurred
- amounts set apart for the salary of the mutawalli and for the religious or charitable purposes of the waqf.

930. In addition the applicant must file a copy of the waqf deed or (if a deed has not been executed), a statement of the nature and objects of the waqf.

931. The Administrator is obliged to maintain a register of all waqfs together with copies of the above information: section 48.

932. A mutawalli is required to submit to the Administrator on an annual basis, statements of accounts of all moneys received or expended on behalf of the waqf. The accounts must also specify any changes in the extent, nature or quality of the waqf properties: section 52. The accounts must be audited and examined by an auditor appointed by the Administrator.

933. The *Waqf Ordinance* does not impose any requirement upon the Administrator to make initial enquiries into the background or connections of a person proposed for appointment as a mutawalli. Once the mutawalli is appointed the Administrator has the power to remove him in the event that he breaches any requirements of the Ordinance, or is found 'unsuitable, incompetent, negligent or otherwise undesirable': section 32. Defaults by mutawallis are punishable by fines and in lieu, imprisonment.

934. The *Waqf Ordinance* does not contain any provisions expressly authorising the Administrator to make inspections or calls for information, other than in situations where an enquiry into the administration of the waqf has been initiated. However Ministry officials advised that waqf premises are visited twice per year.

935. Despite the requirement for compulsory enrolment of waqfs, Ministry officials estimated that only 15% were in fact enrolled. Furthermore although figures were not available, officials were of the view that few mutawallis actually complied with the obligation to submit annual reports. In those cases where annual reports were submitted, it was suspected that in many cases waqf income was understated. It does not appear that the Administrator has taken any action to verify or address these suspected deficiencies.

936. As yet there is no Ordinance in relation to Hindu foundations or trusts. Ministry officials advised that there are plans to establish legislation containing similar measures for their enrolment and monitoring.

#### Registrar of Joint Firms and Stock Companies

937. The Registrar of Joint Firms and Stock Companies [the RJFSC] is responsible for the registration of NPOs formed for charitable, scientific or literary purposes under the *Societies Registration Act 1860*. A society of 7 or more persons can register by filing with the RJFSC:

- their Memorandum and Articles of association
- a copy of the rules and regulations of the society.

938. The Memorandum and Articles must include the name and objects of the society, and the names, addresses and occupations of its governors, directors and committee members: section 2. Once a year the society must file with the RJFSC an updated list of these persons: section 4.

939. Bangladesh authorities advised that approximately 10,000 such societies are currently registered with the RJFSC. However it was apparent from discussions with authorities that the level of compliance with the obligation to update registration information is very low. Further it does not appear that the RJFSC undertakes any activities to enforce this obligation.

#### **Measures to gather information on and investigate NPOs**

940. During 2008 the Chief Advisor initiated a Working Committee to bring together NGO Regulators to consider improvements to the NPO regulatory framework in Bangladesh.

941. NPO regulators work closely with the Ministry of Home Affairs and law enforcement agencies (in particular the police) to investigate the proper function of NPOs and case of abuse of

NPOs. The low levels of compliance with registration, and low rate of return of program and financial information means that the quality of data available to competent authorities to investigate NPOs may be generally low.

### **Responding to international requests**

942. The Ministry of Social Welfare indicates that in cases involving international requests for information regarding particular NPOs they would go through the Ministry of Home Affairs and Ministry of Foreign Affairs before responding to any request.

943. The NGO Affairs Bureau advised that it would likewise liaise with the Foreign Ministry when fielding requests for international cooperation relating to sharing NPO regulatory information about a specific NPO.

### **5.3.2 RECOMMENDATIONS AND COMMENTS**

944. Bangladesh has a system for registration of NPOs. As a result a certain amount of information is available on the purposes and objectives of registered NPOs, and the identity of their managers and governing committees.

945. Social Welfare Organizations, at the time of seeking registration, have to furnish detail of managers and their governing committee .

946. However regulators acknowledge that many NPOs remain unregistered and only some types of NPO are required to provide regulators with updated details of purpose and personnel, and with information on their financial affairs. Further, with the possible exception of NGOAB-regulated entities, there is a low rate of compliance, and little activity on the part of the regulators to monitor and enforce compliance.

947. With the possible exception of the NGOAB, regulators lack adequate systems to promote effective supervision and monitoring of the NPOs.

948. There is a lack of understanding of risks of terrorist financing in the sector. In addition there is a lack of coordinated national strategy to aim at further protecting NPOs from abuse for terrorist financing.

949. Bangladesh should take steps to consolidate its legal/regulatory framework for NPOs and significantly boost the capacity of NPO regulators to fulfil their oversight function.

950. Bangladesh should:

- review the NPO sector for the purpose of identifying those NPOs which are at risk of abuse by terrorist financiers and money launderers (the Committee noted that such a review is currently underway);
- review existing laws and regulations with a view to identifying gaps in coverage;
- work with the NPO sector and the public to raise awareness among regulators and NPOs of the vulnerability of NPOs to abuse for TF;
- increase the financial, personnel and technical resources available to regulators, to allow them to develop and implement more effective supervision programs;
- enhance domestic coordination between NPO regulators and various other competent authorities involved in AML/CFT; and



- ensure clear mechanisms of international cooperation between NPO regulators to respond to international requests.

951. Bangladesh authorities acknowledge that monitoring and oversight of NPOs requires strengthening, and that there is a need to develop a framework for information-sharing among the various NPO regulatory bodies. The assessment team was advised that Bangladesh is considering the feasibility of establishing a single agency to register and regulate the activities of all NPOs.

### 5.3.3 COMPLIANCE WITH SPECIAL RECOMMENDATION VIII

	Rating	Summary of factors underlying rating
<b>SR.VIII</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• No overall strategy to identify and address AML/CTF risks within NPO sector</li> <li>• Limited outreach to the NPO sector or awareness raising on CFT risks</li> <li>• Supervision of NPOs is inadequate and compliance with registration and financial reporting obligations is very low</li> <li>• A significant portion of the NPO sector remains outside of formal regulation and supervision</li> </ul>
<b>R. 30</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Capacity and resources of NPO regulators outside of the NGO Affairs Bureau is weak</li> </ul>

## 6 NATIONAL AND INTERNATIONAL CO-OPERATION

### 6.1 NATIONAL CO-OPERATION AND COORDINATION (R.31)

#### 6.1.1 DESCRIPTION AND ANALYSIS

##### Policy Level

952. A National Committee on AML has been formed to coordinate AML policy formation and implementation. The Law Advisor (Law Minister) chairs the National Committee. The Committee includes the Law Ministry, Home Ministry, Finance Ministry, Foreign Ministry, Bangladesh Bank, National Board of Revenue and other key agencies.

953. A significant gap in interagency coordination is the absence of the ACC from the high-level National Committee on AML. The ACC is an independent statutory body which is outside of the executive branch and answers directly to the parliament. As such, there is little interaction at a policy level within inter-departmental committees.

954. The National AML Committee has a role in considering amendments to the MLPO and related implementation issues. There is a need to more closely engage key AML/CFT-relevant line agencies under the various ministries to ensure that they are adequately involved in policy level coordination for AML/CFT (eg SEC, the new Insurance Regulatory Authority).

955. Reflecting the national priority to combat corruption, Bangladesh has formed an Interagency Task Force on Stolen Asset Recovery. The Terms of Reference indicate the Task Force will take initiatives to recover stolen assets that have been siphoned abroad; and maintain communication with foreign counterparts and ensure inter-agency coordination.

956. The Stolen Asset Recovery Task Force includes:

Governor Bangladesh Bank (Convenor)  
Secretary, Chief Advisor's Officer (Prime Minister's Office)  
Secretary, Ministry of Finance  
Secretary, Ministry of Home Affairs  
Secretary, Ministry of Foreign Affairs  
Chairman, National Board of Revenue  
Representative of the Attorney General's Office  
Representative of the CID  
Executive Director, Bangladesh Bank FIU (Member Secretary)

957. There is a lack of policy level coordination to give effect to CFT provision as set out in the ATO 2008.

##### Operational Level (law enforcement and regulatory)

958. Some initial steps have been taken to coordinate between the ACC, the FIU, the CID and other law enforcement agencies to implement the investigations and prosecution aspects of the MLPO 2008. The ACC's role as sole investigation agency requires coordinated inter-agency input and support to ensure effective implementation. A small number of meetings had been held between the ACC and the FIU to coordinate efforts to develop and share ML intelligence and to support and conduct ML investigations and prosecutions.

959. There is a lack of supporting agreements / MOUs / terms of reference to support enhanced information sharing between domestic agencies. Such agreements would assist with regular

cooperation and sharing of information and resources when conducting ML and TF investigations, prosecutions and regulatory actions.

960. A National Coordination Committee for Serious Offences has been formed consisting of personnel from CID, NBR, DGFI and the Army. FIU is helping them case to case basis.

961. A Working Group has been formed consisting of Criminal Investigation Department (CID), Bangladesh Bank (BB), National Board of Revenue, Attorney General's Office (AG) and Ministry of Finance for better coordination to investigate and prosecute ML cases.

962. There is not currently any inter-regulatory coordination on AML issues. The expected inclusion of SEC-regulated entities in the AML framework will require cooperation and coordination with Bangladesh Bank, the SEC and the FIU. The pending establishment of the new Insurance Regulatory Authority will provide an opportunity for enhanced cooperation to implement AML/CFT measures across the insurance sector.

### **Effectiveness**

963. The absence of the ACC from the National AML Committee undermines effective AML policy formation.

964. The lack of an inter-agency structure to support coordination and cooperation in setting and implementing national CFT policies undermines effective CFT measures in Bangladesh.

965. The key role played by Bangladesh Bank in various aspects of inter-agency cooperation enhances effective coordination.

### **6.1.2 RECOMMENDATIONS AND COMMENTS**

966. A significant gap in interagency coordination is the absence of the ACC from the high-level National Committee on AML

967. Bangladesh should:

- ensure that the ACC is closely involved with other agencies in policy and operational level structures to coordinate implementation of the MLPO.
- include key AML/CFT-relevant line agencies in policy-level coordination for AML/CFT (eg SEC & the Insurance Regulatory Authority).
- Establish a policy level coordination structure to give lead and oversight implementation of the CFT provision as set out in the ATO 2008.

968. Enhance AML/CFT cooperation and coordination between regulators, in particular Bangladesh Bank, SEC and the new insurance regulator.

### **6.1.3 COMPLIANCE WITH RECOMMENDATION 31**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.31</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• ACC, as the sole investigation agency for ML, has not sought to be included in inter-agency coordination mechanisms</li> <li>• There is a lack of effective coordination to implement key CFT provisions</li> <li>• There is a lack of coordination to support the inclusion of key agencies in AML controls, in particular the SEC</li> </ul>

## 6.2 THE CONVENTIONS AND UN SPECIAL RESOLUTIONS (R.35 & SR.I)

### 6.2.1 DESCRIPTION AND ANALYSIS

#### *Ratification of AML Related UN Conventions*

969. Bangladesh became a signatory to the Vienna Convention on 14 April 1989 without reservation. Ratification occurred on 11 October 1990. Bangladesh has implemented the provisions of the Vienna Convention.

970. Bangladesh is not yet a party to the Palermo Convention on Transnational Organised Crime. Delays with joining the convention derive from concerns over issues related to the UN Convention on the Rights of Migrant Workers.

971. Bangladesh has adopted some of the language and coverage of a number of offences required in the Palermo Convention, but has not yet comprehensively implemented the requirements of the Palermo Convention.

#### *Ratification of the UN TF Conventions*

972. Bangladesh acceded to the UN TF Convention on 26 August 2005, with effect from 25 September 2005. Bangladesh joined the Convention with a Reservation as follows:

“Pursuant to Article 24, paragraph 2 of the Convention [the] Government of the People’s Republic of Bangladesh does not consider itself bound by the provisions of Article 24, paragraph 1 of the Convention.”

973. Article 24(1) relates to parties submitting to arbitration if any dispute on implementation of the Convention cannot be settled through negotiation within a reasonable time period.

974. Full implementation of the TF Convention has not yet been achieved.

#### *Implementation of UNSCRs 1267 and 1373*

975. Bangladesh has taken some steps, but has not yet fully implemented UNSCRs relating to suppressing TF. See SRIII above.

#### **Additional Elements**

976. Bangladesh is party to the UN Convention Against Corruption (Merida Convention), having acceded to the Convention on February 27 2007 without reservation.

### 6.2.2 RECOMMENDATIONS AND COMMENTS

977. Bangladesh should:

- become a party to and fully implement the Palermo Convention as a matter of urgency.
- take steps to fully implement the TF convention
- take steps to fully implement UNSCRs 1267 and 1373.

### 6.2.3 COMPLIANCE WITH RECOMMENDATION 35 AND SPECIAL RECOMMENDATION I

	Rating	Summary of factors underlying rating
R.35	PC	<ul style="list-style-type: none"><li>• Has not yet become a party to nor implemented the requirements of the Palermo convention</li></ul>
SR.I	PC	<ul style="list-style-type: none"><li>• Has not yet taken steps to fully implement the TF Convention</li><li>• Has not yet taken steps to fully implement UNSCRs 1267 and 1373.</li></ul>

### 6.3 **MUTUAL LEGAL ASSISTANCE (R.36-38, SR.V)**

#### 6.3.1 DESCRIPTION AND ANALYSIS

978. Bangladesh has no comprehensive legislation to provide for the giving and receiving of mutual legal assistance (MLA). Some offence-creating statutes, such as the MLPO and the ATO 2008, include MLA provision but their coverage is not comprehensive.

979. Despite the absence of effective legislation, Bangladesh appears willing to consider and give effect to requests for MLA on a case-by-case basis. In doing so Bangladesh appears to rely upon the direct application of international conventions which it has ratified, notably the UN Convention Against Corruption [the UNCAC]. For the execution of such requests Bangladesh relies upon domestic investigative provisions such as those within the ACC Act, the MLPO, and the Code of Criminal Procedure 1898 [the CPC]. The CPC enables law enforcement officers to:

- summons persons to produce documents or things
- search persons and premises
- compel the attendance of witnesses and to examine them
- take statements from witnesses
- serve process and other legal documents.

980. In the absence of clear enabling legislation to support MLA, authorities claim that domestic administrative orders are used to support responses to mutual legal assistance requests, including collecting evidence and other coercive measures. Authorities highlight their willingness to cooperate with international partners. Under these administrative orders, the Government may entrust any office or person to manage the MLA request with other countries and has designated the Attorney General's office to manage and conduct MLA requests sent or received. The assessment team considers that this system is not adequately supported by statute.

981. Bangladesh authorities were unable to provide statistics of MLA requests which they had received or made, or the outcome of any such requests. The Assessment Team was informed that over the past 3 years Bangladesh had received 10-12 requests from different countries, and had not refused any of them. Most related to narcotics investigations. Bangladesh authorities further advised that during this time Bangladesh had made 5-6 mutual legal assistance requests in drug trafficking and ML cases. Bangladesh had not received or made any requests in relation to terrorist financing.

982. The competent authorities for MLA within Bangladesh are the Ministry of Home Affairs and the Attorney-General's Chambers. Bangladesh authorities advised that the Ministry of Home Affairs had determined the above requests on a case-by-case basis. No information was available as to what factors had guided the Ministry in its decision to assist, or whether any conditions or restrictions had been imposed on the assistance.

983. Bangladesh laws make limited provision for giving and requesting mutual legal assistance.

984. In relation to ML offences, the MLPO contains only the following provisions:

- section 26(1) empowers the Government and Bangladesh Bank to sign MOUs, contracts and conventions with any foreign country or organisation 'by means of acceptance of international legislation'. At the time of the onsite visit Bangladesh had signed one mutual legal assistance treaty, with the UK.
- section 26(2) allows the Government or Bangladesh Bank to sign contracts with foreign countries or foreign organisations for the request and provision of 'relevant information'. At the time of the onsite visit Bangladesh Bank had entered a contract with the FIU of Malaysia.

- section 26(3) authorises a court to make orders on request from Bangladesh Bank to comply with an order for forfeiture of property made by a court of a foreign country.

985. The range of MLA authorised by the above provisions falls short of what is required under Criterion 36.1. In addition, there is a concern that the limited number of predicate offences available under the MLPO will inhibit Bangladesh's ability to provide information and assistance across the full range of money laundering matters. Whether this is the case depends on whether dual criminality is a requirement for giving assistance; however section 26 of the MLPO is silent on this point. This is discussed further at Recommendation 37 below.

986. Despite the above Bangladesh authorities were confident that Bangladesh would be able to provide foreign countries with a wide range of legal assistance in relation to ML investigations and prosecutions, because of Bangladesh's ratification of the UNCAC. Article 46(1) of the UNCAC requires parties to afford each other:

‘... the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

987. The UNCAC applies to a range of corruption-related offences. One of the offences is the laundering of proceeds of crime. It is the view of Bangladesh authorities that within the context of the UNCAC this offence is not restricted to conduct of laundering the proceeds of corruption-related offences, but is applicable to laundering the proceeds of all offences.

988. It is not explicitly provided within the UNCAC that the money laundering offence is restricted to the proceeds of corruption-related offences. Nevertheless the context indicates that this is the case. It is for this reason that the Assessment Team had concerns as to whether a requested country would be prepared to render assistance pursuant to the UNCAC where for example the laundered money was proceeds of a narcotics offence.

989. This concern aside, it is clear that the UNCAC is capable of providing the basis for mutual legal assistance in a wide range of economic crimes.

990. The types of legal assistance prescribed by Article 46(3) include evidence-gathering as well as action in relation to identifying, freezing and confiscating property. In addition Article 46 makes detailed provision for such matters as the grounds upon which parties are able to refuse assistance, the conditions of assistance and the type of material which is required to support a request.

991. In order for Bangladesh to execute an MLA request pursuant to UNCAC, Bangladesh would need to rely upon investigative powers contained within domestic legislation, such as the ACC Act (appropriately amended), the MLPO or the CPC. The ACC Act does not make any provision for international cooperation.

992. The Assessment Team noted that with the exception of the measures contained within section 26 of the MLPO, Bangladesh has not enacted MLA legislation to implement the terms of UNCAC Article 46. Nor has Bangladesh legislated to directly adopt UNCAC Article 46 as the basis for its provision and receipt of MLA in corruption and money laundering cases.

993. It is recommended that Bangladesh consider taking one of these two steps described above to ensure that it has a secure legal basis to implement its MLA obligations in this area.

994. In relation to terrorist financing, the Assessment Team noted that Bangladesh has ratified the UN Terrorist Financing and would rely on that as an international instrument for cooperation. Article 12 of the TF Convention requires parties to afford each other ‘the greatest measure of assistance’ in connection with criminal investigations, prosecutions or extradition proceedings arising out of terrorist financing offences.

995. Article 12 of the TF Convention does not make detailed provision for the grounds, terms and conditions of assistance. Nor does it make any provision regarding dual criminality. Article 12(5) merely provides that parties shall carry out their obligations in conformity with any treaties on MLA or other arrangements that may exist between them. If parties do not have MLA treaties or arrangements:

‘...they shall afford one another assistance in accordance with their domestic law’.

996. Section 38(1) of the ATO 2008 appears to have been drafted to implement the general intent of Article 12 of the TF Convention. It obliges Bangladesh to ‘render all necessary legal assistance’ as may be requested by a foreign state, where:

...a terrorist act is committed, abetted, attempted, conspired or financed in such a manner that the territory of foreign state is involved, or the terrorist act is so committed, abetted, attempted, conspired or financed in Bangladesh from another sovereign state or from Bangladesh in another foreign state.

997. If dual criminality is a requirement to the giving of assistance pursuant to section 38 (and the section is silent on this point), there is a concern that this mechanism will suffer from the defect underlying all provisions within the ATO 2008 which utilise the term ‘terrorist act’: that it will be restricted to circumstances where the terrorist act threatens the security of Bangladesh alone. This would significantly impede Bangladesh’s ability to provide MLA across the full range of terrorist financing offences.

998. Section 38 of the ATO 2008 does not prescribe the terms and conditions upon which it will render MLA in terrorist financing cases. These are to be settled on a case-by-case basis through formal agreements or exchange of letters: section 38(2). Due to the very recent passage of the ATO 2008, no such agreements have been entered into.

999. The Assessment Team was of the view that the approach prescribed by section 38(2) of settling terms and conditions on a case-by-case basis, lacks efficiency and is unlikely to support timely cooperation. For this reason the Assessment Team recommended that Bangladesh consider committing itself to measures which clearly prescribe the types of assistance it will provide in terrorist financing cases, the grounds upon which it is able to refuse assistance, the conditions of assistance, and the type of material which is required to support the request. This approach will have the additional benefit of allowing requesting countries a degree of certainty as to whether a request to Bangladesh is likely to be granted.

1000. As the ATO 2008 contains very few investigative provisions, officers executing an MLA request in a terrorist financing case would need to rely upon investigative powers contained within the CPC.

1001. Bangladesh ratified the SAARC Convention on Mutual Assistance in Criminal Matters on 9 March 2009. The SAARC Convention requires member states to provide a wide range of mutual assistance to fellow member States. In addition Article 3 of the SAARC Convention expressly requires member States Parties to assist whether or not the conduct the subject of the investigation or proceeding is an offence under the laws of the requested State Party.<sup>3</sup>

1002. At this stage the SAARC Convention has not entered into force, as ratification of all the State Parties has not been achieved.

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<sup>3</sup> As ratification of the SAARC Convention occurred outside of the cut-off date for this assessment, it has not been considered when finalising the compliance rating.

1003. As noted the Ministry of Home Affairs and the Attorney-General's Chambers have been designated as the competent authorities for mutual legal assistance and extradition. The Assessment Team was not able to obtain a clear description of the procedures which are followed by these agencies on receipt of an MLA request.

1004. The Assessment Team was informed that Bangladesh has not refused any MLA requests, and has dealt with them within a short timeframe. In the absence of statistics the Assessment Team was unable to verify this information. However as a general comment the Assessment Team considered that the absence of legislative provisions prescribing the terms and conditions of MLA was unlikely to promote the timely and efficient processing and execution of such requests.

1005. There are no unreasonable or restrictive conditions under existing provisions for MLA related to ML.

1006. In relation to terrorist financing offences, section 38(5) of the ATO 2008 permits Bangladesh to refuse to comply with a request for MLA or extradition if there is reason to believe that the request has been made:

...for the purpose of prosecuting or punishing [a] person only on account of his/her race, religion, nationality, or political opinion.

1007. The above restriction is not unreasonable. The Assessment Team was unable to find any other legislative restrictions on the giving of MLA.

1008. Both the UNCAC and the TF Convention permit State Parties to refuse MLA requests on specific grounds, such as where there is substantial basis for belief that the request has been made for purposes of religious, race or political persecution.

1009. As noted it appears that most MLA requests are determined on a case-by-case basis and not by reference to legislative provision. The Assessment Team was not able to obtain information as to what restrictions if any were placed on the assistance rendered by Bangladesh in previous cases.

### **Procedures for the execution of MLA requests**

1010. It did not appear to the Assessment Team that there are clearly-understood procedures within Bangladesh for the execution of MLA requests.

### **Grounds for refusal**

1011. There are no legislative restrictions for MLA requests to be refused on the grounds that the offence relates to fiscal matters, or on the basis of bank secrecy laws.

1012. Both the UNCAC and the TF Convention prohibit refusal of an MLA request on the ground of bank secrecy, or that the offence relates to fiscal matters.

1013. There are no legislative provisions which preclude competent authorities from using domestic investigative powers in response to MLA requests. Given the general absence of legislation governing MLA, the Assessment Team concluded that in responding to most MLA requests Bangladesh would be heavily reliant upon such domestic powers.

### **Venues for prosecution**

1014. There are no mechanisms for Bangladesh and a foreign jurisdiction to determine the best venue for prosecution.



## **Law enforcement powers available for direct MLA requests**

1015. Bangladesh authorities advised that Bangladesh Police work regularly with INTERPOL in the exchange of information. Also as noted there is provision within the MLPO for Bangladesh Bank to enter arrangements with foreign FIU's for sharing of information, although to date four such arrangement has been formalised.

## **Recommendation 32**

### **MLA Statistics – incoming and outgoing requests**

1016. Comprehensive statistics on MLA have not been kept and were not able to be shared with the assessment team, despite repeated requests. Bangladesh was unable to provide comprehensive statistics of MLA requests made or received. Authorities were able to indicate that in the past 3 years Bangladesh had received 10-12 requests from different countries, mostly relating to narcotics investigations. Authorities confirmed that Bangladesh had not refused any of the requests, but was unable to give any clearer details of the matters.

1017. Over the last three years, Bangladesh had made 5-6 mutual legal assistance requests in drug trafficking and ML cases. Further details were not provided by the relevant competent authorities.

1018. Bangladesh was unable to confirm whether it had received any requests in relation to TF.

1019. Bangladesh had not received or made any requests in relation to terrorist financing.

## **Recommendation 37**

1020. The Assessment Team was not able to determine whether Bangladesh considers dual criminality a requirement to the provision of MLA and if so, whether this extended to less intrusive measures. No legislation dealing with MLA within Bangladesh makes mention of dual criminality. In addition the lack of general or statistical information about how Bangladesh deals with MLA means that the Assessment Team was not able to determine whether in practice Bangladesh is able to demonstrate that it meets the requirements of this criterion.

1021. The Assessment Team noted that the UNCAC permits parties to decline to render MLA on the ground of absence of dual criminality, but requires that assistance be rendered where it does not involve coercive action 'where consistent with the basic concepts of its legal system'. Bangladesh authorities noted that 'dual criminality' is an important matter and they may consider it when providing or receiving assistance with other States pursuant to UNCAC.

1022. As noted, the TF Convention does not make any provision for dual criminality.

1023. Once the SAARC Convention has entered into force Bangladesh will be permitted to render MLA to other State Parties regardless of whether the conduct is an offence within Bangladesh.

1024. In the absence a comprehensive MLA regime, Bangladesh is providing assistance to the greatest extent possible, in the absence of dual criminality, in particular, for less intrusive and non compulsory measures.

1025. For the reasons mentioned above, the Assessment Team was not able to assess whether technical differences have imposed difficulties in previous MLA requests dealt with by Bangladesh.

1026. The UNCAC provides that where dual criminality is required, it shall be deemed to be fulfilled if the conduct underlying the relevant offence is a criminal offence in both States.

### **Recommendation 38**

1027. In the area of ML Bangladesh has made specific provision for responding to foreign requests for confiscating property, in the form of section 26(3) of the MLPO. This section empowers a court to order forfeiture of property in compliance with an order of a foreign court for forfeiture or handover of property.

1028. The MLPO does not make any corresponding provision for identifying or freezing property in response to foreign requests. It is presumed that were Bangladesh asked by a foreign country to take such action it would rely upon Article 54(2)(a) of the UNCAC, which requires parties to take such measures as are necessary to permit their competent authorities to freeze or seize property upon a freezing or seizing order being issued within a requesting party. Executing officers could rely upon the domestic freezing powers contained in section 14 of the MLPO.

1029. In relation to the proceeds and instruments of TF offences, the provisions of section 38 of the ATO 2008 are described above. It is presumed that ‘all necessary legal assistance’ includes the making of orders to identify, freeze and confiscate such property in response to requests from foreign countries.

1030. Both the ATO 2008 and the MLPO are silent as to whether Bangladesh is able to respond to foreign requests where they relate to property of corresponding value. It is unclear whether Section 38 of the ATO could extend to cover property of corresponding value.

1031. There are no general legislative provisions dealing with foreign requests for freezing and confiscation orders in relation to other types of offences. It is presumed that were Bangladesh to receive such a request in relation to a corruption-related offence it would seek to rely upon Article 54 of the UNCAC, in combination with the freezing and confiscation powers available under the ACC Act and the MLPO. Once it has entered into force, the SAARC Convention will oblige Bangladesh, in response to foreign requests, to take measures “...to locate, restrain or forfeit the proceeds or instruments of crime”, and to take similar actions in relation to funds or finances meant for the financing of all criminal acts in the territory of State Parties. The SAARC MACM Treaty will not enter into force until all SAARC members ratify the treaty.

1032. There are no arrangements in place in Bangladesh for co-ordinating seizure and confiscation actions with other countries, although Bangladesh is working with US authorities on some related matters.

1033. Bangladesh has not yet considered establishing an asset forfeiture fund into which all or a portion of confiscated property will be deposited and will be used for law enforcement, health, education or other appropriate purposes.

1034. There are not yet any arrangements in place to authorise the sharing of confiscated assets between them when confiscation is directly or indirectly a result of co-ordinated law enforcement actions with other jurisdictions.

### **Special Recommendation V**

1035. The measures available to Bangladesh for rendering MLA in terrorist financing cases have been discussed above at Recommendation 36. It is likely that for such requests Bangladesh would rely upon section 38 of the ATO 2008, which appears to have been enacted in response to Article 12 of the TF Convention.

1036. The weaknesses associated with this measure are discussed above, in particular the concern about the restricted scope of the terrorist financing offence in the ATO 2008. It is not clear whether this will inhibit Bangladesh’s ability to provide MLA across the full range of terrorist financing

offences. If dual criminality is not a mandatory requirement for the giving of assistance, the above limitations might not pose a problem. However the ATO 2008 is silent as to whether dual criminality is a pre-condition for assistance.

1037. An associated concern is that until the ATO 2008 came into force on 11 June 2008 Bangladesh had no offence of terrorist financing. The question arises whether Bangladesh will have legal difficulties providing assistance in cases where the conduct the subject of the foreign request took place prior to that date. Whether or not this will be a problem again depends upon whether dual criminality is required.

1038. With regard to Bangladesh's ability to freeze and confiscate terrorist-related property in response to foreign requests, it is presumed that the phrase in section 38(1) 'all such necessary legal assistance' encompasses the making of such orders. The above comments regarding legislative gaps in the ATO 2008 apply likewise to these orders.

1039. As Bangladesh has not received any MLA requests in relation to terrorist financing, the Assessment Team was not able to assess whether in practice these factors have imposed an impediment to the giving of assistance in such matters.

1040. The Assessment Team noted that once it has entered into force, the SAARC Convention will provide Bangladesh with some effective measures to render MLA in TF cases. Article 4(x) of the SAARC Convention will require Bangladesh to take measures to locate, freeze and confiscate any funds or finances meant for the financing of all criminal acts in the territory of either State Party. In addition Article 13 of the SAARC Convention will require Bangladesh to notify a member country if it has reason to believe that funds are being collected for terrorist acts to take place in that other country, and to take steps to search, seize or confiscate such funds and to prosecute relevant persons.

1041. Notably, the SAARC Convention will allow State Parties to render assistance without regard to whether the conduct would constitute an offence under the laws of the requested State Party. As a consequence, once the SAARC Convention has entered into force Bangladesh ought not to be impeded from rendering assistance to regional jurisdictions despite the legislative gaps within its ATO 2008.

### 6.3.2 RECOMMENDATIONS AND COMMENTS

1042. Bangladesh has very little legislation which deals with MLA. Despite this the impression received by the Assessment Team was that Bangladesh took a generally co-operative approach to MLA requests, dealing with them on a case-by-case basis. It appears that Bangladesh provides assistance by directly applying the relevant articles of international conventions in combination with domestic evidence-gathering and freezing/confiscation provisions.

1043. It is encouraging that Bangladesh shows willingness to provide assistance by whatever means are available to it. Other encouraging developments include Bangladesh's signing of the SAARC MLA Convention, which once ratified will significantly enhance Bangladesh's capacity to provide and receive regional international assistance.

1044. The Assessment Team strongly recommends that Bangladesh consider enacting comprehensive MLA legislation, to provide it with a legal basis for strong and effective international cooperation. Significant benefits of this approach would be to provide transparency to the process as well as giving competent authorities within Bangladesh, and requesting countries, a degree of certainty as to:

- the types of MLA available
- the offences in relation to which MLA will be provided
- the degree to which dual criminality is a requirement

- the bases for refusal of requests (mandatory and discretionary)
- the procedures that are to be followed.

1045. As an alternative Bangladesh might consider formalising its use of the above Conventions as a legal basis for MLA, by enacting enabling legislation which expressly provides that the terms of the relevant Articles apply. If Bangladesh adopts this approach it will need to ensure that the requirements of the Conventions are backed up with fully-effective domestic laws for evidence-gathering and for freezing and confiscation of property.

1046. In addition to the above, the Assessment Team strongly recommended that Bangladesh consider the following action:

- developing clear procedures for handling MLA requests to ensure that they are dealt with in a timely and efficient manner
- building a greater degree of coordination between the various agencies processing and executing MLA requests
- maintaining MLA statistics detailing the number and type of requests made and received, the nature of the predicate offences, the outcome of the requests and the time needed for execution.

1047. In meetings with The Assessment Team, Bangladesh authorities acknowledged that there was a need to build legal and administrative capacity in the MLA area. The Assessment Team agreed with this view, seeing in addition a need to develop a greater understanding within government and law enforcement agencies of the laws and procedures relating to MLA and of the benefits which effective use of MLA can bring to investigations, prosecutions and confiscation proceedings. The Attorney Generals' Office has received technical assistance and training from the U.S. Embassy in Bangladesh in relation to setting up an MLA unit.

1048. Though Bangladesh has not enacted any law concerning MLA but it is now under active consideration to legislate a specific law for the purpose.

### 6.3.3 COMPLIANCE WITH RECOMMENDATIONS 36 TO 38 AND SPECIAL RECOMMENDATION V

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
<b>R.32</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Statistics on MLA were poorly kept</li> </ul>
<b>R.36</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Legislation to implement MLA for ML and other offences is incomplete, meaning that Bangladesh must rely upon direct application of relevant Conventions</li> <li>• Limited predicate offences may impede effectiveness of MLA for ML offences</li> <li>• Lack of clear procedures for dealing efficiently with MLA requests</li> <li>• There is no evidence of effective implementation of the available provisions</li> </ul>
<b>R.37</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>• Satisfactory clarification was not provided to confirm that to the greatest extent possible, MLA has been rendered in the absence of dual criminality</li> </ul>
<b>R.38</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Limited provision within MLPO for giving effect to foreign freezing and confiscation orders in ML cases</li> </ul>

		<ul style="list-style-type: none"> <li>• Limited predicate offences in MLPO may impede effectiveness</li> <li>• There is no evidence of effective implementation of the available provisions</li> </ul>
<b>SR.V</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Legislation to implement MLA for TF offences is incomplete</li> <li>• Limited scope of TF offence may impede effectiveness of MLA for TF offences</li> <li>• There is no evidence of effective implementation of the available provisions</li> </ul>

## 6.4 EXTRADITION (R.37, 39, SR.V)

### 6.4.1 DESCRIPTION AND ANALYSIS

1049. Extradition matters in Bangladesh are governed by the *Extradition Act 1974*. Requests for extradition are received first by the Ministry of Foreign Affairs, which forwards them to the Ministry of Home Affairs and the Attorney General's Chambers for determination and execution.

1050. The *Extradition Act* permits extradition where Bangladesh has an extradition treaty with another country.

1051. Section 4(1) of the *Extradition Act* also allows Bangladesh to consider extradition requests from States with which Bangladesh has no treaty. If the Bangladesh Government 'considers it expedient' that persons accused or convicted within a foreign state should be surrendered to that foreign state, it is able by notification in the Gazette to direct that the provisions of the *Extradition Act* shall have effect.

1052. An 'extradition offence' is defined at section 2(1)(a) to mean:

...an offence the act or omission constituting which falls within any of the descriptions set out in the Schedule and, if it took place within, or within the jurisdiction of, Bangladesh would constitute an offence against the law of Bangladesh and also-

(i) in the case of a treaty State, an offence a person accused of which is, under the extradition treaty with that State, to be returned to or from that State; and

(ii) in the case of a foreign State not being a treaty State, an offence specified in a direction issued under section 4.

1053. The Schedule to the *Extradition Act* contains a number of serious offences such as homicide, people trafficking, bribery, fraud and drug trafficking. However the offences of money laundering and terrorist financing are not included.

1054. The Assessment Team had difficulty determining what the scope of 'extraditable offence' is under the *Extradition Act*, and in particular whether the Act permitted extradition in respect of offences not included in the Schedule.

1055. In discussions with the Assessment Team, Bangladesh authorities were adamant that the *Extradition Act* does not authorise extradition for any offences other than those which correspond to offences contained in the Schedule.

1056. Despite this view, it seems clear from the terms of section 2(1)(a) of the Act that a fugitive might be extradited in respect of a non-Schedule offence, if this is provided for either:

- within the terms of an extradition treaty. To date Bangladesh has concluded one such treaty, with Thailand; or
- within the terms of a Government Gazettal pursuant to the section 4 mechanism. Bangladesh authorities advised that this mechanism has only been used once, namely in 2007 to extradite a Bangladesh national to Oman to be tried on charges of homicide.

1057. In addition the Assessment Team gave consideration to the wording of the ‘extraditable offence’ definition and whether it indicated an intention to extend to conduct which would have constituted an offence if carried out within Bangladesh. If so, this would provide a legal basis for Bangladesh to extradite persons in respect of conduct which corresponded to ML and TF offences under the MLPO and the ATO 2008, despite these offences not being included in the Schedule. As noted, ‘extraditable offence’ means:

...an offence the act or omission constituting which falls within any of the descriptions set out in the Schedule and, if it took place within, or within the jurisdiction of, Bangladesh would constitute an offence against the law of Bangladesh...

1058. It is not clear to the Assessment Team whether the above describes two alternative bases for an offence to be an extraditable offence, the second one being based on the concept of dual criminality. Bangladesh authorities were unable to clarify the situation.

1059. In the above circumstances, and in light of the stated view of Bangladesh authorities that the Act does not authorise extradition for non-Schedule offences, the Assessment Team decided that it must regard ‘extraditable offences’ as restricted to:

- offences corresponding to offences contained in the Schedule; and
- offences provided for within the terms of an extradition treaty, or within the terms of a section 4 direction.

1060. section 2(2) of the *Extradition Act* indicates that a flexible approach is to be taken when determining whether a foreign offence corresponds with a Schedule offence. It provides that:

...any special intent or state of mind or special circumstances of aggravation which may be necessary to constitute that offence under the law shall be disregarded.

1061. Section 5(2) of the *Extradition Act* prohibits extradition where:

- the offence is of a political character
- the offence is punishable with prison for less than 12 months
- the prosecution is barred by time
- the requesting country has not prohibited prosecuting the fugitive for other offences besides the extradition offence committed prior to surrender
- the fugitive has already stood trial in Bangladesh for the extradition offence
- the fugitive is undergoing sentence in Bangladesh for other offences (in which case surrender will be postponed)
- it appears to the surrendering court that the fugitive’s trial will be prejudiced by reason of race, religion, nationality or political opinion.

1062. In the Assessment Team’s view, none of the above were unreasonable or unduly restrictive.

1063. The *Extradition Act* makes provision for surrender on the basis of endorsed warrant, but only where there is an extradition treaty in force which so provides. In all other cases there must be a Magisterial enquiry pursuant to section 7, in which the Court:

...shall take such evidence as may be produced in support of the surrender and on behalf of the fugitive offender.

### **Money laundering should be an extraditable offence**

1064. The offence of money laundering is not included in the offences listed in the Schedule to the *Extradition Act*. It follows from the discussion above at pars 944-946 that the *Extradition Act* cannot provide a legal basis for extradition in relation to ML offences.

1065. Despite this Bangladesh authorities were of the view that they would be able to surrender a person for a money laundering offence, by means of the UNCAC. Article 44(5) of the UNCAC provides that:

If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

1066. A precondition appears to be that the State Party inform the UN Secretary-General whether it will take the UNCAC as the legal basis for cooperation on extradition with other State Parties: Article 44(6). If a State Party elects not to recognise the UNCAC as its legal basis, it is required to implement the terms of Article 44 by concluding treaties where appropriate.

1067. It is not known whether Bangladesh has informed the UN that it will take the UNCAC as the legal basis for cooperation on extradition with other State Parties. Therefore it is not clear whether Bangladesh authorities are entitled to take the view that the UNCAC authorises Bangladesh to extradite in money laundering cases.

1068. The Assessment Team strongly recommends that Bangladesh put the issue beyond doubt by taking action in the following ways:

- notifying the UN Secretary-General in accordance with Article 44(6) (if it has not already done so);
- concluding treaties with other countries which specify that money laundering is an extraditable offence ; and
- adding the offence of money laundering to the Schedule of the *Extradition Act*. The Assessment Team noted that section 23 of the *Extradition Act* permits the Government to do this by notification in the Official Gazette.

1069. Bangladesh's *Extradition Act* makes no provision for surrender of its nationals; neither does it preclude this or make any provision for prosecution in lieu of surrender.

1070. Article 44(11) of the UNCAC requires that parties either agree to extradite their own nationals or submit the case for prosecution within their own countries.

1071. Bangladesh authorities pointed to the only recent case in which Bangladesh had been asked to surrender a fugitive. The subject of the request, which was made in 2007 by Oman, was a Bangladesh national whom Oman alleged had committed homicide. Bangladesh agreed to his surrender.

1072. There are no legislative or procedural mechanisms in place for this. Bangladesh authorities advised that if they were asked to prosecute a Bangladesh national in lieu of extradition, they would seek the cooperation of the requesting country to ensure the efficiency of the prosecution.

1073. Section 12 of the *Extradition Act* provides that the High Court may order discharge of a fugitive if:

...he has been taken into custody to await his surrender and is not conveyed out of Bangladesh within two months after such committal...

1074. It is not clear from the above whether the two-month timeframe commences upon arrest of the fugitive, or upon a finding from a Magisterial enquiry that there is a prima facie case for his or her surrender. If the former this would constitute a stringent timeframe, in light of the fact that Magisterial enquiries will be required in almost all cases due to the absence of treaties.

1075. Apart from the above, the *Extradition Act* does not prescribe any time limits to govern the processing or execution of an extradition request. Nor was the Assessment Team advised of any procedural guidelines which contained such timeframes.

1076. As noted there is provision within the *Extradition Act* for a streamlined process of extradition by means of endorsed warrant. However as the precondition is the existence of a treaty which makes allowance for this process, it is not in practice available in Bangladesh.

1077. The *Extradition Act* does not make provision for other simplified procedures such as:

- minister-to minister transmission of requests
- extradition on the basis of certificates of conviction
- extradition by consent.

### **Recommendation 37**

1078. It is unclear from the *Extradition Act* whether dual criminality is a requirement for considering extradition: see discussion above about the lack of clarity as to what an 'extraditable offence' is. In the view of the Assessment Team, there is an urgent need for clarification of the Act's scope in this regard.

1079. As noted the view of Bangladesh authorities was that there could be no extradition if the requested offence did not correspond to a Schedule offence. If this is correct then dual criminality is not a requirement, but the range of extraditable offences is nevertheless restricted in that an offence must correspond to a Schedule offence.

### **Special Recommendation V**

1080. The *Extradition Act* Schedule does not include the offence of terrorist financing. It is recommended that Bangladesh take action to include it as soon as possible.

1081. As noted Bangladesh has ratified the TF Convention and may be able to use Articles 11 and 12 as a legal basis for extradition in terrorist financing cases.

1082. Article 12 requires parties to give each other 'the greatest measure of assistance' in relation to criminal investigations or criminal or extradition proceedings in respect of terrorist financing offences. Article 11(2) provides that where a party makes extradition conditional on the existence of a treaty and receives a request from another party with which it has no extradition treaty:

...the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of [terrorist financing offences].'

1083. Section 38 of the ATO 2008 appears to provide for extradition for terrorism offences, including TF, despite the lack of inclusion of such offences in the Extradition Act. Section 38 obliges Bangladesh to 'render all necessary legal assistance in connection with criminal investigation, trial or extradition' as may be requested by a foreign state, where:



... a terrorist act is committed, abetted, attempted, conspired or financed in such a manner that the territory of foreign state is involved, or the terrorist act is so committed, abetted, attempted, conspired or financed in Bangladesh from another sovereign state or from Bangladesh in another foreign state.

1084. Section 38(2) indicates that the terms and conditions of MLA, which includes extradition, shall be mutually agreed upon between the requesting and the requested states on the basis of reciprocity through signing of formal agreement or exchange of letters.

1085. Section 38(3) precludes using this section to hand over a Bangladesh national accused of TF to a foreign state for trial. Section 38(4) provides for a Bangladeshi national, subject to his consent, to be handed over to a foreign state to render assistance as a witness in a relevant criminal prosecution or in the process of investigation.

1086. Bangladesh authorities seem to be unaware of the broad extradition provisions available in the ATO 2008.

1087. Whether Bangladesh chooses to extradite pursuant to the ATO and TF Convention, or to amended *Extradition Act*, concerns remain about the limited scope of the offence in the ATO 2008 and the ability of Bangladesh to extradite in the full range of terrorist financing cases. In addition there may be an issue as to whether Bangladesh is able to extradite where the conduct took place prior to the commencement of the ATO 2008.

### **Effectiveness**

1088. Bangladesh authorities advised that they had received only one request for extradition, which Bangladesh had agreed to. The details are provided above. The Assessment Team was not advised of any requests for extradition made by Bangladesh.

1089. On the basis of this information it appeared that Bangladesh was not utilising extradition as a mechanism for law enforcement. In addition the fact that only one request has been made to Bangladesh was perhaps indicative of a lack of confidence, on the part of regional countries, in Bangladesh's willingness or capacity to provide cooperation.

## **6.4.2 RECOMMENDATIONS AND COMMENTS**

1090. Bangladesh's *Extradition Act* provides a basis for extradition and incorporates some requirements of Recommendation 39. However its definition of 'extraditable offences' lacks clarity. In addition it appears that the offences of money laundering and terrorist financing are not included, with the result that the only possible legal basis for extradition for ML offences lies in direct application of the UNCAC.

1091. Bangladesh should make use of extradition tools available for TF under the ATO 2008 and should raise awareness amongst competent authorities of provisions under this statute.

1092. The Assessment Team recommends that Bangladesh consider as a matter of priority including money laundering and terrorist financing offences in the Schedule to the *Extradition Act*. Other amendments to make the *Extradition Act* a more effective mechanism for extradition are recommended for consideration, as follows:

- adoption of a threshold approach to extraditable offences, in place of the existing list-based approach
- clear provision as to whether or not dual criminality is a requirement

- clear provision as to whether Bangladesh will permit extradition of its own nationals
- adoption of procedures to streamline requests and proceedings.

1093. In addition it is recommended that so far as possible, Bangladesh build capacity in this area by increasing financial, human and training resources.

#### 6.4.3 COMPLIANCE WITH RECOMMENDATIONS 37 & 39, AND SPECIAL RECOMMENDATION V

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
<b>R.32</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Statistics on mutual legal assistance, including extradition, were poorly kept</li> </ul>
<b>R.37</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>• Satisfactory clarification was not provided to confirm that to the greatest extent possible, MLA, including extradition, has been rendered in the absence of dual criminality</li> </ul>
<b>R.39</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• Money laundering not included in list of extraditable offences, meaning that Bangladesh must rely on direct application of UNCAC</li> <li>• No provision as to whether Bangladesh will extradite own nationals</li> <li>• Lack of measures to ensure requests and proceedings are handled without delay</li> </ul>
<b>SR.V</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Terrorist financing is not included in the list of extraditable offences</li> <li>• Awareness of and effective implementation of extradition provisions in the ATO could not be demonstrated</li> </ul>

### 6.5 OTHER FORMS OF INTERNATIONAL CO-OPERATION (R.40 & SR.V)

#### 6.5.1 DESCRIPTION AND ANALYSIS

1094. Bangladesh Bank has taken the lead and is working with other agencies to pursue international cooperation through various multilateral bodies related to AML/CFT. Bangladesh is a member of the APG and has served as South Asia's representative on the APG Steering Group.

1095. Bangladesh FIU is now actively pursuing international cooperation. Under the MLPA 2002, Section 18 provided general powers for the government to enter into an agreement with any foreign state for carrying out the purposes of the Act. Few steps were taken to implement that provision. With the passage of the MLPO in 2008, greater powers were given to share information and enter into agreements with foreign states.

1096. Exchange of information between the Bangladesh FIU and other FIUs is not subject to disproportionate or unduly restrictive conditions. Section 24 of MLPO permits the FIU to share STRs and other data with foreign FIUs "on the basis of any contract signed or arrangements". This enables the FIU to share information in a rapid manner. The FIU is able to cooperate by searching other databases to which the FIU may have direct or indirect access, including law enforcement databases, public databases, administrative databases and commercially available databases.

1097. Section 26 of the MLPO provides for Contracts with Foreign Countries and allows the FIU or the Government to sign MOUs, bilateral or multilateral contracts or conventions to prevent ML. This provision does not extend to sharing information in relation to terrorist financing.

1098. At the time of the onsite visit, the FIU had signed an MOU with the FIU of Malaysia and was pursuing other MOUs. As of April 2009, Bangladesh had signed MOUs with Malaysia, Philippines, Nepal and Indonesia and is working toward signing MOUs with South Korea, U.A.E. Myanmar, Sri Lanka and other FIUs.

1099. The ATO 2008 is silent on a role for the FIU in sharing intelligence and information outside of mutual legal assistance channels. It is not clear that the FIU to FIU information exchange solely for the purpose of TF is clearly supported in the absence of an MLA request.

1100. Bangladesh police makes use of INTERPOL for sharing intelligence and to support police to police cooperation. No statistics were available to show that INTERPOL channels have been used in relation to ML or TF investigations by the police.

1101. The ACC has established international cooperation with other anti-corruption bodies, but this is limited to investigations of predicate offences and the laundering of proceeds of corruption. The ACC is working closely with the FIU to pursue the proceeds of corruption and together with other agencies, the ACC has been active in cooperating with other countries under the umbrella of the UN/World Bank Stolen Assets Recovery (StAR) Initiative.

1102. The ACC does not appear to have established a regular channel for cooperation with the designated INTERPOL contact in Bangladesh police to support the ACC's role of ML investigation agency, including pursuing international cooperation through INTERPOL channels.

1103. Bangladesh Customs is a member of RILO and regularly makes use of RILO channels for exchanging information with foreign counterparts. This cooperation has not yet extended to sharing intelligence in relation to ML investigations, but RILO offers a clear gateway for potential exchange of information.

1104. Bangladesh Bank is active in cooperating and sharing information with central bank counterparts in the region. Bangladesh Bank is a member of the SEACEN, which helps to promote cooperation and information sharing between central banks in the region, including in relation to AML/CFT.

1105. The SEC is a member of IOSCO, which assists its efforts to share information with other securities regulators. Bangladesh has not yet become party to the IOSCO Multilateral MOU which supports information exchange between securities regulators. Given that it is outside of the AML/CFT framework at present, the SEC has not yet become involved in international cooperation on AML matters.

1106. In relation to cooperation between insurance regulators, Bangladesh is not yet a member of the IAIS, so is limited in sharing regulatory information relating to insurance.

1107. The NGO Affairs Bureau is the recognised point of contact for international cooperation and information sharing in relation to NPOs operating in Bangladesh.

1108. There are no statutes in Bangladesh that would bar agency to agency cooperation solely on the grounds that they may involve fiscal matters.

## **Effectiveness**

1109. Statistics of other forms of international cooperation were not readily available.

## 6.5.2 RECOMMENDATIONS AND COMMENTS

1110. There is not yet a well developed culture of international cooperation outside of formal mutual legal assistance channels, but the FIU and other relevant agencies are taking significant steps to support enhanced cooperation.

1111. There are a number of structural impediments to information sharing, including a lack of resources and capacity and a lack of experience in making and responding to international requests for assistance.

1112. Bangladesh should continue to actively pursue international cooperation outside of MLA channels, including designating points of contact for cooperation and promoting mechanisms including bilateral and multilateral MOUs, agreements and contracts to support rapid and constructive information sharing.

1113. Clear legal powers should be given the FIU, police and other competent authorities to share information and intelligence related to CFT with foreign counterparts.

1114. The securities and insurance regulators should be better supported to increase their involvement in international cooperation related to AML/CFT.

## 6.5.3 COMPLIANCE WITH REC 40 AND SPECIAL RECOMMENDATION V

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
<b>R.32</b>	<b>PC</b>	<ul style="list-style-type: none"><li>Statistics of other forms of international cooperation were not readily available.</li></ul>
<b>R.40</b>	<b>PC</b>	<ul style="list-style-type: none"><li>No clear legal basis for the FIU and other competent authorities to cooperate with foreign counterparts in relation to CFT</li><li>Securities and insurance regulators are not yet closely involved in international cooperation related to AML/CFT.</li><li>Existing channels for cooperation with foreign counterparts between law enforcement agencies are not yet being utilised for AML/CFT purposes.</li><li>Effective implementation of measures could not be demonstrated beyond the efforts made by the FIU and Bangladesh Bank.</li></ul>
<b>SR.V</b>	<b>PC</b>	<ul style="list-style-type: none"><li>No clear legal basis for the FIU and other competent authorities to cooperate with foreign counterparts in relation to CFT</li><li>Statistics do not demonstrate effective cooperation for CFT</li></ul>

## 7 OTHER ISSUES

### 7.1 RESOURCES AND STATISTICS

1115. Bangladesh lacks capacity and resources across a number of areas of government which are responsible for developing and implementing AML/CFT policy. There is a significant need for international cooperation, including possible technical assistance and training to work with Bangladesh authorities to identify and respond to ML and TF risks.

1116. Bangladesh does not maintain comprehensive statistics to review the effective operation of the AML/CFT system. There is no framework for data collection and analysis, and institutional fragmentation hinders the review of the effectiveness of the regime.

	Rating	Summary of factors relevant to Recommendations 30 and 32 and underlying overall rating
<b>R.30</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Endemic corruption in Bangladesh undermines capacity and integrity of all key agencies in Bangladesh and impedes effective implementation of AML/CFT measures.</li> <li>• There is a need for greater resources for the FIU, including equipment and software</li> <li>• ACC and police lack capacity and technical experience to investigate ML, predicate and TF offences</li> <li>• Customs maintains staff at the Border Points, Airports and Ports but did not produce any specifics as to the units and numbers of employees</li> <li>• Customs did not provide any information in respect to their training they receive, the maintaining professional standards, integrity, etc</li> <li>• Securities, Insurance sector supervisors are not adequately funded and staffed for combating ML and TF.</li> <li>• Operational independence of the Insurance supervisor is not clear</li> <li>• Capacity and integrity of the Office of the Controller of Insurance as the supervisor of insurance sector is weak.</li> <li>• Staff of the Securities Exchange and Controller of Insurance office have not received training for AML/CTF</li> </ul>
<b>R.32</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Unconsolidated statistics relating to investigation and prosecution of the ML offence</li> <li>• Comprehensive statistics were not available in relation to provisional measures and confiscation</li> <li>• No clear statistics are kept on implementing SRIII</li> <li>• Comprehensive statistics were not available in relation to provisional measures and confiscation</li> <li>• Customs does not maintain statistics on cross border transportation of currency and bearer negotiable instruments.</li> <li>• Statistics for supervisory actions, including sanctions are not used by regulators beyond the Bangladesh Bank to review effectiveness of AML/CFT systems.</li> </ul>

		<ul style="list-style-type: none"> <li>Statistics on mutual legal assistance, including extradition, were poorly kept</li> <li>Statistics of other forms of international cooperation were not readily available.</li> </ul>
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## 7.2 OTHER RELEVANT AML/CFT MEASURES OR ISSUES

1117. Bangladesh presents several features that constitute both a ML/TF risk and important challenges in the design and implementation of an effective AML/CFT regime, notably the importance of the informal sector and the cash-based economy. The significance of hundi / hawalla is a key issue and there is a need for authorities pay high attention to incentive structures, so as to properly balance the need for formalization with the risk of overregulation which may further drive customers to the informal sector.

1118. Bangladesh continues to face pervasive corruption. In addition to constituting a significant ML risk, this situation creates structural weaknesses which may impede the effectiveness of the AML/CFT regime.

1119. Bangladesh authorities and the financial sector lack good information on ML and TF risks facing the country. There is a need to undertake as soon as possible, a ML/TF risk-assessment in Bangladesh, involving all Bangladeshi stakeholders. This would include any typology identified in ML/TF cases in Bangladesh. This risk-assessment should also seek inputs from Bangladesh's main international partners to integrate Bangladesh-related typologies that they may have been developed.

### 7.2.1 RECOMMENDED ACTIONS

- Ensure national counter-corruption efforts include strategies to address structural weaknesses which pervasive corruption brings to the effectiveness of the AML/CFT regime.
- Undertake a ML/TF risk-assessment in Bangladesh, involving all Bangladeshi stakeholders.

## 8 TABLES

**Table 1: Ratings of Compliance with FATF Recommendations**

**Table 2: Recommended Action Plan to improve the AML/CFT system**

**Table 3: Authorities' Response to the Evaluation (if necessary)**

**TABLE 1 RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS**

The ratings of compliance with each of the FATF Recommendations are made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (NA). These ratings are based only on the essential criteria, and defined as follows:

Compliant (C)	The Recommendation is fully observed with respect to all essential criteria.
Largely compliant (LC)	There are only minor shortcomings, with a large majority of the essential criteria being fully met.
Partially compliant (PC)	The country has taken some substantive action and complies with some of the essential criteria.
Non-compliant (NC)	There are major shortcomings, with a large majority of the essential criteria not being met.
Not applicable (NA)	A requirement or part of a requirement does not apply, due to the structural, legal or institutional features of a country e.g. a particular type of financial institution does not exist in that country.

Forty Recommendations	Rating	Summary of factors underlying rating <sup>4</sup>
<b>Legal systems</b>		
<b>1. ML offence</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Incomplete coverage of predicate offences</li> <li>• Proceeds do not include property indirectly acquired from predicate offence</li> <li>• Predicate offence conduct occurring in another country is not fully covered</li> <li>• Effective use of the new ML offence cannot be established</li> </ul>
<b>2. ML offence – mental element and corporate liability</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Penalty for ML offences committed by legal persons is not proportionate or dissuasive</li> <li>• Concerns about effectiveness of new arrangements for investigation and prosecution of ML offences</li> </ul>

<sup>4</sup> These factors are only required to be set out when the rating is less than Compliant.

<b>3. Confiscation and provisional measures</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>Freezing and confiscation action in ML offences requires finding that Bangladesh State has an interest in the property</li> <li>It is not clear that the law allows forfeiture of property indirectly derived from ML offences</li> <li>No comprehensive powers to identify and trace property suspected of being linked to ML offences</li> <li>In relation to corruption offences, scheme for freezing and confiscation is not comprehensive</li> <li>Freezing and confiscation of terrorist related funds is not comprehensively covered.</li> <li>Overall implementation of provisional and confiscation measures is weak</li> </ul>
<b>Preventive measures</b>		
<b>4. Secrecy laws consistent with the Recommendations</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>There are some minor limitations on Bangladesh Bank's powers to share information with local authorities and foreign counterparts</li> <li>No clear legal provisions that allows to share information between financial institutions where this is required by R7, R9, or SR.VII</li> </ul>
<b>5. Customer due diligence</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>Securities Companies are not included in the MLPO, regulatory instructions or enforceable guidelines and are not obliged to conduct CDD.</li> <li>Various key requirements covering anonymous accounts, timing and scope of CDD and ongoing CDD are not covered in law and regulation, but are set out in Other Enforceable Means (OEM).</li> <li>Detailed CDD requirements set out in the enforceable guidelines have not been extended to insurance companies and postal money remitting services.</li> <li>There are no obligations on verification of legal arrangement such as trustee.</li> <li>Overall the implementation of identification and CDD requirements are weak in those sectors that are covered by the framework, due to a poor culture of compliance with the existing obligations.</li> <li>The concept of beneficial ownership is poorly understood and not well implemented in practice.</li> </ul>
<b>6. Politically exposed persons</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>Requirements for PEPs do not extend to securities companies, insurance companies, money changers and money remitters.</li> <li>AML Circular 14 on PEPs has not been updated to reflect the MLPO 2008, so the obligations previously issued under the MLPA were not in force at the time of the onsite visit</li> <li>PEP provisions appear to be poorly understood in practice by the covered sector.</li> </ul>
<b>7. Correspondent banking</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>No clear requirement to assess adequately of correspondent's AML/CFT controls</li> </ul>



		<ul style="list-style-type: none"> <li>• No clear requirement to assess the existing correspondent relationships existing prior to the issuing of Circular No. 7.</li> <li>• No requirement on banks to satisfy themselves about the respondent's CFT controls.</li> <li>• Correspondent banking controls are poorly implemented in practice.</li> </ul>
<b>8. New technologies &amp; non-face-to-face business</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Controls are inadequate when dealings with non-face to face customers</li> <li>• No provision for banks to have a policy to prevent misuse of technological developments in terrorist financing schemes</li> <li>• No provision for Securities Companies, Insurance Companies, Money Changers and Money Remitters to have a policy to prevent misuse of technological developments in money laundering or terrorist financing schemes</li> </ul>
<b>9. Third parties and introducers</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• Securities Companies are not included in AML Regime and there is no provision on third party reliance for CDD.</li> <li>• No legal requirement for all reporting parties to have adequate procedures with respect to use of third parties for services that involve CDD</li> </ul>
<b>10. Record keeping</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>• Obligations for retaining transaction records is new and is not yet fully implemented, and does not yet apply to securities companies.</li> <li>• There appear to be relatively limited ability to obtain information swiftly due to the limited number of computerized data bases</li> </ul>
<b>11. Unusual transactions</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Securities Companies are not included in AML Regime and are not obliged to monitor for unusual transactions.</li> <li>• Insurance companies, money remitters and money changers have not been provided with guidance on what constitutes unusual transactions.</li> <li>• Effective implementation of the requirements has not been demonstrated.</li> </ul>
<b>12. DNFBP – R.5, 6, 8-11</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• As DNFBPs are not yet included in the AML/CFT regime in Bangladesh, CDD requirements do not extend to DNFBPs</li> </ul>
<b>13. Suspicious transaction reporting</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• Securities Companies have not been included in AML requirements to report STRs to the FIU</li> <li>• It is not clear whether the definition of STR is related to all proceed of crime or money laundering</li> <li>• The scope of proceeds of crime subject to STR reporting falls short of the FATF standard.</li> <li>• The obligation of sending STR does not cover funds provided for a terrorist organizations or an individual terrorist</li> <li>• While there is a Bangladesh Bank circular addressing attempted transactions for TF, there is no explicit requirement for financial institutions to report to the FIU on attempted transactions related to ML</li> <li>• It is too early to judge the effectiveness of the STR</li> </ul>

		<p>obligation for TF.</p> <ul style="list-style-type: none"> <li>The very low number of STRs submitted and the very limited range of institutions submitting them shows a lack of effective implementation of the STR obligation</li> </ul>
<b>14. Protection &amp; no tipping-off</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>Securities Companies are not included in AML regime for safe harbour protections.</li> <li>Safe harbour does not include directors; others related officers and employees (permanent or temporary) of the financial institution.</li> </ul>
<b>15. Internal controls, compliance &amp; audit</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>No mandatory requirements for independent audit function for insurance and securities sectors.</li> <li>No guidance or direction provided on employees screening.</li> <li>The securities and insurance sectors were not subject to requirements for an internal AML/CFT controls and staff training.</li> <li>Implementation of existing obligations is weak.</li> </ul>
<b>16. DNFBP – R.13-15 &amp; 21</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>DNFBPs are not yet included under the AML/CFT regime</li> </ul>
<b>17. Sanctions</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>Available monetary fines are very low and are not proportionate or dissuasive.</li> <li>SEC regulated entities are not subject to AML-related sanctions</li> <li>Very weak implementation of available sanctions in relation to AML/CFT.</li> <li>Most of the sanctions and penalties that have been implemented by the authorities are not relevant to AML/CFT cases.</li> </ul>
<b>18. Shell banks</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>There is no requirement for banks to establish that their respondent banks are not undertaking business with shell banks.</li> </ul>
<b>19. Other forms of reporting</b>	<b>C</b>	<ul style="list-style-type: none"> <li>Fully Observed</li> </ul>
<b>20. Other DNFBP &amp; secure transaction techniques</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>There are still gaps with effective measures to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering</li> <li>Bangladesh has not yet undertaken a formal risk assessment of vulnerabilities to non-financial businesses and professions other than DNFBPs</li> </ul>
<b>21. Special attention for higher risk countries</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>There is no requirement for all reporting parties to give special attention and conduct appropriate counter-measures to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries which do not or insufficiently apply the FATF Recommendations</li> <li>There is no information from relevant authorities regarding countries which do not or insufficiently apply the FATF Recommendations</li> </ul>
<b>22. Foreign branches &amp; subsidiaries</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>No clear guidance to include foreign subsidiaries of banks although there is some coverage from prudential regulations</li> </ul>

		<ul style="list-style-type: none"> <li>There is no obligation for financial institutions to inform Bangladesh Bank when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures.</li> </ul>
<b>23. Regulation, supervision and monitoring</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>The securities sector is not subject to AML/CFT regulation or supervision</li> <li>The insurance sector has is not subject to adequate AML/CFT regulation and supervision</li> <li>Market entry controls do not prevent criminals from controlling financial institutions.</li> <li>Limited inspection has gone on for AML beyond banks and the supervision that has taken place has not been effective in improving compliance with AML controls.</li> <li>Not all natural and legal persons providing a money or value transfer service are licensed or registered.</li> <li>Not all natural and legal persons providing a money or value transfer service are subject to effective systems for monitoring and ensuring compliance with national AML/CFT requirements.</li> </ul>
<b>24. DNFBP - regulation, supervision and monitoring</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>There is no regime for AML\CFT regulation and supervision of designated non –financial business and professions.</li> </ul>
<b>25. Guidelines &amp; Feedback</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>Securities companies, money changers, insurance and remittance have not received detailed guidance on AML/CFT preventative measures</li> <li>No regular case specific feed back relating to STRs to financial institutions</li> </ul>
<b>Institutional and other measures</b>		
<b>26. The FIU</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>The FIU does not have timely access to information required to effectively analyse STRs, which undermines effective analysis.</li> <li>Capacity of server (power generation) undermines effective access to FIU database.</li> <li>The office of the AMLD is not secure as it is not fully enclosed.</li> <li>The FIU and AMLD require better storage material for classified material.</li> <li>Statistics of analysis and dissemination indicates decreasing effectiveness over recent years</li> </ul>
<b>27. Law enforcement authorities</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>Formal designation of the ACC as the sole investigation agency for ML has not been implemented in practice.</li> <li>Predicate offence investigations are pursued at the expense of ML investigations</li> <li>ACC investigate ML cases only in relation to corruption and not the other predicate offences</li> <li>The newness of provisions has meant that it is too early to judge the effectiveness of implementation of TF provisions to investigate financial aspects of terrorism in Bangladesh.</li> <li>Recent changes in the designation of investigation agency has resulted in a sharp decrease in effectiveness of ML investigations.</li> </ul>

<b>28. Powers of competent authorities</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>Under the ACC Act 2004 Special investigation powers available to the ACC to investigate corruption are not available in relation to ML.</li> <li>Effective use of the available powers was not demonstrated by statistics of cases and investigations.</li> </ul>
<b>29. Supervisors</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>Supervisors do not have adequate powers to monitor and ensure compliance by the securities sector with AML/CFT requirements</li> <li>ATO does not clearly provide for CFT-related regulation and supervision in relation to insurance.</li> <li>MLPO contains powers for regulation and supervision, however there has been a lack of effective implementation in relation to AML/CFT supervision</li> <li>There are gaps in available sanctions for regulators to ensure effective compliance with AML/CFT requirements</li> <li>Limited implementation of MLPO powers by the Bank of Bangladesh over reporting organizations other than banking institutions.</li> </ul>
<b>30. Resources, integrity and training</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>Endemic corruption in Bangladesh undermines capacity and integrity of all key agencies in Bangladesh and impedes effective implementation of AML/CFT measures.</li> <li>There is a need for greater resources for the FIU, including equipment and software</li> <li>ACC and police lack capacity and technical experience to investigate ML, predicate and TF offences</li> <li>Customs maintains staff at the Border Points, Airports and Ports but did not produce any specifics as to the units and numbers of employees</li> <li>Customs did not provide any information in respect to their training they receive, the maintaining professional standards, integrity, etc</li> <li>Securities, Insurance sector supervisors are not adequately funded and staffed for combating ML and TF.</li> <li>Operational independence of the Insurance supervisor is not clear</li> <li>Capacity and integrity of the Office of the Controller of Insurance as the supervisor of insurance sector is weak.</li> <li>Staff of the Securities Exchange and Controller of Insurance office have not received training for AML/CTF</li> </ul>
<b>31. National co-operation</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>ACC, as the sole investigation agency for ML, has not sought to be included in inter-agency coordination mechanisms</li> <li>There is a lack of effective coordination to implement key CFT provisions</li> <li>There is a lack of coordination to support the inclusion of key agencies in AML controls, in particular the SEC</li> </ul>
<b>32. Statistics</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>Unconsolidated statistics relating to investigation and prosecution of the ML offence</li> <li>Comprehensive statistics were not available in relation to</li> </ul>

		<p>provisional measures and confiscation</p> <ul style="list-style-type: none"> <li>• No clear statistics are kept on implementing SRIII</li> <li>• Comprehensive statistics were not available in relation to provisional measures and confiscation</li> <li>• Customs does not maintain statistics on cross border transportation of currency and bearer negotiable instruments.</li> <li>• Statistics for supervisory actions, including sanctions are not used by regulators beyond the Bangladesh Bank to review effectiveness of AML/CFT systems.</li> <li>• Statistics on mutual legal assistance, including extradition, were poorly kept</li> <li>• Statistics of other forms of international cooperation were not readily available.</li> </ul>
<b>33. Legal persons – beneficial owners</b>	NC	<ul style="list-style-type: none"> <li>• Records held by Company registers and the central registration agency [RFJSC] do not include sufficient information about beneficial ownership</li> <li>• Accuracy and currency of RFJSC's records is limited</li> <li>• Company formation agents do not have to maintain information about beneficial ownership</li> <li>• Capital market intermediaries do not have to maintain information about beneficial ownership of company accounts</li> <li>• No mechanism to mitigate the risks posed by bearer shares</li> <li>• Above factors inhibit effectiveness of law enforcement powers to obtain information about beneficial ownership</li> </ul>
<b>34. Legal arrangements – beneficial owners</b>	NC	<ul style="list-style-type: none"> <li>• Information on the ultimate beneficiaries of trusts is not required to be determined and made available to authorities on request, which undermines effectiveness.</li> <li>• Registration of information on parties to a trust is held in decentralized manual registers and is very difficult for law enforcement agencies to access in practice.</li> </ul>
<b>International Co-operation</b>		
<b>35. Conventions</b>	PC	<ul style="list-style-type: none"> <li>• Has not yet become a party to nor implemented the requirements of the Palermo convention</li> </ul>
<b>36. Mutual legal assistance (MLA)</b>	PC	<ul style="list-style-type: none"> <li>• Legislation to implement MLA for ML and other offences is incomplete, meaning that Bangladesh must rely upon direct application of relevant Conventions</li> <li>• Limited predicate offences may impede effectiveness of MLA for ML offences</li> <li>• Lack of clear procedures for dealing efficiently with MLA requests</li> <li>• There is no evidence of effective implementation of the available provisions</li> </ul>
<b>37. Dual criminality</b>	LC	<ul style="list-style-type: none"> <li>• Satisfactory clarification was not provided to confirm that to the greatest extent possible, MLA has been rendered in the absence of dual criminality</li> </ul>
<b>38. MLA on confiscation and freezing</b>	PC	<ul style="list-style-type: none"> <li>• Limited provision within MLPO for giving effect to foreign freezing and confiscation orders in ML cases</li> </ul>

		<ul style="list-style-type: none"> <li>Limited predicate offences in MLPO may impede effectiveness</li> <li>There is no evidence of effective implementation of the available provisions</li> </ul>
<b>39. Extradition</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>Money laundering not included in list of extraditable offences, meaning that Bangladesh must rely on direct application of UNCAC</li> <li>No provision as to whether Bangladesh will extradite own nationals</li> <li>Lack of measures to ensure requests and proceedings are handled without delay</li> </ul>
<b>40. Other forms of co-operation</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>No clear legal basis for the FIU and other competent authorities to cooperate with foreign counterparts in relation to CFT</li> <li>Securities and insurance regulators are not yet closely involved in international cooperation related to AML/CFT.</li> <li>Existing channels for cooperation with foreign counterparts between law enforcement agencies are not yet being utilised for AML/CFT purposes.</li> <li>Effective implementation of measures could not be demonstrated beyond the efforts made by the FIU and Bangladesh Bank.</li> </ul>
<b>Nine Special Recommendations</b>	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>SR.I Implement UN instruments</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>Has not yet taken steps to fully implement the TF convention</li> <li>Has not yet taken steps to fully implement UNSCRs 1267 and 1373.</li> </ul>
<b>SR.II Criminalise terrorist financing</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>No coverage of providing or collecting funds with intention they will be used by terrorist group or terrorist individual</li> <li>No coverage of terrorist financing where terrorist acts threaten security of States other than Bangladesh</li> <li>Terrorist financing is not a predicate offence for ML</li> <li>Not evident that TF offence applies to legal persons</li> <li>No basis as yet to evaluate effectiveness of implementation</li> </ul>
<b>SR.III Freeze and confiscate terrorist assets</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>While Bangladesh has taken steps to implement its legal obligation to the UN under UNSCR 1267 using the MLPO and ATO, MLPO does not clearly extend to freeze terrorist funds and the ATO is only apparently able to cover funds of terrorist entities which threaten the security of Bangladesh</li> <li>The control of terrorist property not comprehensively covered</li> <li>No legal basis to issue freezing orders to insurance or securities entities</li> <li>No criminal sanction for non-complying organisations</li> <li>No clear guidance has been provided to financial institutions that may be holding funds.</li> <li>Beyond taking a writ to the High Court, there is a lack of publicly known procedures for unfreezing funds or appropriate procedures for authorizing access to funds, nor appropriate procedures through which a person whose funds are frozen to</li> </ul>

		<p>challenge the measure.</p> <ul style="list-style-type: none"> <li>Freezing and confiscation of terrorist-related funds in other contexts is not comprehensively covered</li> </ul>
<b>SR.IV Suspicious transaction reporting</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>The obligations of sending STR on terrorist financing is indirectly laid out in law, with supporting details set out in other enforceable means</li> <li>No obligation to file STRs on funds provided for a terrorist organizations or an individual terrorist</li> <li>Awareness of the TF-related STR reporting obligation appears to be low amongst institutions, which undermines effectiveness</li> <li>The recent issuing of Circular 19 on TF related STRs means it is too early to judge effectiveness of the TF STR reporting obligation.</li> </ul>
<b>SR.V International co-operation</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>Legislation to implement MLA for TF offences is incomplete</li> <li>Limited scope of TF offence may impede effectiveness of MLA for TF offences</li> <li>There is no evidence of effective implementation of the available provisions</li> <li>Terrorist financing is not included in the list of extraditable offences and awareness of and effective implementation of extradition provisions in the ATO could not be demonstrated</li> <li>No clear legal basis for the FIU and other competent authorities to cooperate with foreign counterparts in relation to CFT</li> <li>Statistics do not demonstrate effective cooperation for CFT</li> </ul>
<b>SR VI AML requirements for money/value transfer services</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>Large scale unregulated informal remittance channels continue to operate without inclusion in national AML/CFT measures, with a continuing need for structures or strategies to support increased uptake of remittance through formal channels;</li> <li>Bangladesh has not ensured that all MVT service operators are subject to applicable FATF Recommendations</li> <li>Limitations identified under Recommendations 4-11, 13-15, 17, 21-23 and SR.VII also effect compliance with SR.VI</li> </ul>
<b>SR VII Wire transfer rules</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>Collection and transmission of required originator information is not mandatory in the case of all wire transfers.</li> <li>Beneficiary/recipient has to fill the form only in occasions of US\$ 2000 or more.</li> <li>Beneficiary financial institutions are not clearly required to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information.</li> </ul>
<b>SR.VIII Non-profit organisations</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>No overall strategy to identify and address AML/CTF risks within NPO sector</li> <li>Limited outreach to the NPO sector or awareness raising on CFT risks</li> <li>Supervision of NPOs is inadequate and compliance with registration and financial reporting obligations is very low</li> <li>A significant portion of the NPO sector remains outside of</li> </ul>

		formal regulation and supervision
<b>SR. IX Cash couriers</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• The cross border declaration system is not targeted to detect cash couriers related to ML and TF</li> <li>• Cross border declarations or reports of false declarations or failure to declare are not forwarded to the FIU</li> <li>• There is inadequate coordination among customs immigration and other related authorities on issues related to the implementation of SR IX</li> <li>• There are inadequate sanctions available to implement the FERA and Customs Act obligations</li> <li>• International cooperation is not clearly pursued in relation to SR IX.</li> <li>• Statistics were not available to show effective implementation of measures to implement SR IX.</li> </ul>



**TABLE 2: RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM**

AML/CFT System	Recommended Action (listed in order of priority)
<b>2. Legal System and Related Institutional Measures</b>	
Criminalisation of Money Laundering (R.1 & 2)	<p>In relation to the MLPO it is recommended:</p> <ul style="list-style-type: none"> <li>• utilise section 2(q)(xvi) to expand the list of predicate offences to include the missing categories of offences;</li> <li>• amend the relevant part of section 2(k), so that it covers the proceeds or properties directly or indirectly acquired through commission of a predicate offence;</li> <li>• amend the definition of ‘predicate offences’ within the MLPO, so that they extend to conduct that occurred in another country;</li> <li>• expressly provide that conviction of a predicate offence is not a pre-requisite to proof that property is proceeds of crime;</li> <li>• expressly provide that criminal liability for money laundering extends to legal persons;</li> <li>• provide a proportionate and dissuasive penalty for offences committed by legal persons.</li> <li>• extend the ML offence to those who counsel or procure its commission.</li> <li>• vigorously pursue implementation of the ML offence to prosecute ML offences.</li> </ul>
Criminalisation of Terrorist Financing (SR.II)	<ul style="list-style-type: none"> <li>• criminalise the provision or collection of funds with the intention that they should be used, or are to be used, by a terrorist organisation or terrorist individual;</li> <li>• extend the scope of the terrorist act to include acts which threaten the security of other States;</li> <li>• include terrorist financing in the list of predicate offences for money laundering;</li> <li>• include in the definition of property in the ATO 2008, legal documents or instruments evidencing title to the types of property set out therein; and</li> <li>• making clear provision for the extension of criminal liability to legal persons, and providing an effective penalty for legal persons convicted of terrorist financing.</li> <li>• Vigorously pursue the implementation of the ATO 2008 to prosecute TF in Bangladesh</li> </ul>
Confiscation, freezing and seizing of proceeds of crime (R.3)	<ul style="list-style-type: none"> <li>• Enact comprehensive measures to establish powers and mechanisms to identify, freeze and confiscate proceeds and instruments of all serious offences.</li> <li>• Consider enacting a single and comprehensive Proceeds of Crime statute to deal with the identification, freezing and confiscation of proceeds and instruments of all serious offences.</li> <li>• amend section 17 to ensure that it permits forfeiture of property indirectly derived from money laundering offences;</li> <li>• amend sections 14 and 17 to allow a court to consider freezing or confiscation action in relation to property linked to the commission of a ML offence, regardless of whether it might be regarded as property in which the State of Bangladesh has an interest; and</li> <li>• ensure comprehensive powers to identify and trace property suspected of being linked to the commission of ML.</li> </ul>

	<p>In relation to the AC Act Bangladesh should:</p> <ul style="list-style-type: none"> <li>• providing a definition of property which incorporates all the necessary types of property, including property which is the indirect proceeds of corruption offences;</li> <li>• inserting a specific provision allowing for freezing of property suspected of being linked to the commission of corruption offences;</li> <li>• expanding section 27 to include confiscation of instruments of corruption offences; and</li> <li>• making provision for the rights of bona fide third parties.</li> </ul> <p>AC Act should be amended to give a proper statutory basis for the ACC to use its powers in ML investigations.</p>
Freezing of funds used for terrorist financing (SR.III)	<p>Amend the ATO 2008 so as to:</p> <ul style="list-style-type: none"> <li>• provide a clear legal basis for the consideration of requests from foreign countries for the initiation of freezing orders;</li> <li>• comprehensively define 'terrorist 'property to include all the types of property and all the types of owning and controlling entities required by SR 1267 and SR 1373;</li> <li>• provide a clear legal basis for the issue of directions to banks and other organisations to freeze terrorist property in response to SR 1267 and SR 1373 orders;</li> <li>• provide for the protection of third parties;</li> <li>• provide a criminal sanction for non-complying organisations;</li> <li>• make clear provision for the freezing of property which is a proceed or instrument of a terrorist financing offence;</li> <li>• amend section 34 to allow forfeiture of the instruments of terrorist financing offences.</li> </ul>
The Financial Intelligence Unit and its functions (R.26, 30 & 32)	<ul style="list-style-type: none"> <li>• Implement a facility for online reporting</li> <li>• enhance the overall quality and depth of analysis through greater understanding of ML and TF risks/typologies, improved analytical tools, further staff training, and timely access to all available government and open source information.</li> <li>• Provide FIU direct access to external databases such as the police, customs, and other government agencies and/ or as they become automated.</li> <li>• Enhance inter-agency cooperation to understand ML and TF risks, techniques and to develop methodologies to analyse STRs.</li> <li>• develop further MOUs to support domestic and international information sharing.</li> <li>• conduct an independent IT assessment for database and analytical tools</li> <li>• ensure a continuous power supply for FIU servers and equipment.</li> <li>• ensure physical security of information for the core FIU functions</li> <li>• ensure autonomy in staff selection and retention within the FIU.</li> <li>• improve the system of keeping statistics to better review effectiveness of systems.</li> </ul>
Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)	<ul style="list-style-type: none"> <li>• Assign sufficient resources to investigate ML offense under the MLPO;</li> <li>• Expand the designated investigation agencies for ML to include police and other law enforcement agencies in addition to the ACC.</li> <li>• Increase cooperation and coordination and sharing of information between ACC, Police and partner agencies (domestic and international) to</li> </ul>

	<p>support ML, TF and predicate offence investigations.</p> <ul style="list-style-type: none"> <li>• ensure additional training for financial investigations, including ML investigations, predicate offences and TF.</li> <li>• support the retention of trained and experienced investigators through specialist ML/TF/proceeds of crime investigation teams.</li> <li>• formulate policies to avoid unnecessary administrative /bureaucratic complexity to collect necessary information and documentary evidence.</li> <li>• A specialized unit and/or training should be provided to the Bangladesh Police with respect to the seizing of property derived from or used in predicate, ML and TF offences.</li> <li>• Enhanced legal tools to support investigation of cases that involve cross border elements.</li> <li>• Use all available powers to vigorously pursue ML and TF offences.</li> </ul>
Cross-border declaration or disclosure (SR.IX)	<ul style="list-style-type: none"> <li>• There is a need for increased capacity and procedural support to effectively plan for and implement measures related to SR.IX.</li> <li>• Bangladesh should implement a comprehensive declaration or disclosure system designed to address ML and TF risks in keeping with the FATF standards.</li> <li>• Customs should increase its information sharing information with the FIU and law enforcement agencies such as the Bangladesh Police and the ACC;</li> <li>• Data obtained from the current FERA declaration forms should be entered into a database for easy access and retrieval and made available to the FIU;</li> <li>• Customs require further training on ML, TF and other predicate activities, as well as trade-based money laundering to allow customs to develop better intelligence on ML and TF;</li> <li>• While the definition of ‘currency’ includes bearer negotiable instruments, FERA reporting forms should clearly explain to passengers their requirements to report include bearer negotiable instruments.</li> </ul>
<b>3. Preventive Measures – Financial Institutions</b>	
Customer due diligence, including enhanced or reduced measures (R.5 to 8)	<p>Bangladesh should include Securities Companies in CDD requirements Bangladesh should require all reporting parties to:</p> <ul style="list-style-type: none"> <li>• not keep anonymous accounts or accounts in fictitious names</li> <li>• undertake customer due diligence (CDD) measures when a) establishing business relations b) carrying out occasional transactions above the applicable designated threshold c) carrying out occasional transactions that are wire transfers d) there is a suspicion of money laundering or terrorist financing e) the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data</li> <li>• to identify the customer (whether permanent or occasional, and whether natural or legal persons or legal arrangements) and verify that customer’s identity using reliable, independent source documents, data or information (identification data)</li> <li>• verify that any person purporting to act on behalf of the customer is so authorised, and identify and verify the identity of that person</li> <li>• identify the beneficial owner, and take reasonable measures to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source such that the financial institution is</li> </ul>

	<p>satisfied that it knows who the beneficial owner is</p> <ul style="list-style-type: none"> <li>• determine whether the customer is acting on behalf of another person, and should then take reasonable steps to obtain sufficient identification data to verify the identity of that other person</li> <li>• determine who are the natural persons that ultimately own or control the customer</li> <li>• conduct ongoing due diligence on the business relationship</li> </ul> <p>Issue CDD instructions for insurance companies, money changers and money remitters.</p> <p>Issue instructions for all covered parties on verification of legal arrangement such as trusts.</p> <p>Ensure effective implementation of core CDD measures, in particular verification on partnership; verification on shareholders of legal entities; Obtaining purpose and intended nature of business relationship for non bank financial institutions; Enhanced due diligence of high risk customers on the basis that source of fund come from illegal sources (not credit risk); and Timing of verification for new customer according to the guideline notes.</p> <ul style="list-style-type: none"> <li>• Bangladesh should issue a PEPs requirement for Securities Companies, Insurance Companies, Money Changers and Money Remitters</li> <li>• issue a new circular AML Circular for PEP based on MLPO 2008</li> <li>• provide guidelines on how bank and financial institutions identify PEP and how to obtain the source of wealth and source of funds of the PEP</li> <li>• introduce clear requirements to cover respondent's controls over AML/CFT.</li> <li>• introduce requirements to apply circular 7 measures to pre-existing respondent relationships</li> <li>• introduce and implement clear policy relating to shell banks.</li> <li>• ensure securities companies, insurance companies, money changers and money remitters implement policies to prevent misuse of technological developments in ML or TF schemes.</li> </ul>
Third parties and introduced business (R.9)	<ul style="list-style-type: none"> <li>• Include Securities Companies into AML Regime, establish and implement explicit legal requirement for all reporting parties to have adequate procedures with respect to use of third parties for services that involve CDD.</li> <li>• Establish and implement explicit legal requirement for all reporting parties to have adequate procedures with respect to use of third parties for services that involve CDD.</li> </ul>
Financial institution secrecy or confidentiality (R.4)	<ul style="list-style-type: none"> <li>• Extend the scope of section 25 and 23 of MLPO 2008 to explicitly include information sharing to avoid the possible legal impediments to sharing information with other agencies. Further clarification should be brought to the MLPO to ensure authorities have the ability to access information they require to properly perform their functions.</li> <li>• issue exemptions for financial institutions to undertake information sharing in particular relation of FATF R7 R9 and SR VII.</li> </ul>
Record keeping and wire transfer rules	<p>Bangladesh should issue clear binding instructions on all relevant institutions, including the SEC, to:</p>

(R.10 & SR.VII)	<ul style="list-style-type: none"> <li>• maintain all necessary records on transactions, both domestic and international, at least five years following completion of the transaction and records should be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity.</li> <li>• maintain records including account files and business correspondence for at least five years following the termination of an account or business relationship or longer if requested by a competent authority in specific cases upon proper authority.</li> <li>• issue instructions and support programs to fully implement all elements of SRVII, including making collection and transmission of required originator information mandatory in the case of all wire transfers and also providing guidance on the course of action that a financial institution should take if the originator information has not been provided in the inward wire transfers.</li> </ul>
Monitoring of transactions and relationships (R.11 & 21)	<ul style="list-style-type: none"> <li>• include Securities Companies into AML requirements to monitor unusual transaction;</li> <li>• Give specific instructions and guidelines for unusual transaction for non bank financial institutions, insurance companies, money remitters and money changers;</li> <li>• establish and implement requirements for all reporting parties should be required to give special attention and conduct appropriate counter-measures to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries which do not or insufficiently apply the FATF Recommendations.</li> <li>• Issue information regarding countries which do not or insufficiently apply the FATF Recommendations.</li> </ul>
Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	<ul style="list-style-type: none"> <li>• establish and implement a direct obligation in law or regulation for financial institutions to report STR on ML and TF in keeping with international standards</li> <li>• undertake comprehensive education and awareness raising with reporting parties on the new MLPO STR obligations to encourage higher rates of quality STR reporting.</li> <li>• expand the scope of predicates offences in the MLPO to ensure the proceeds of crime subject to STR reporting is in keeping with the FATF standard.</li> <li>• expand the obligation of filing STR to cover funds provided for a terrorist organizations or an individual terrorist</li> <li>• include securities companies into AML/CFT requirements to report STRs and safe harbor provisions</li> <li>• issue explicit requirement for financial institutions to report STRs for ML-related attempted transactions</li> <li>• Safe harbour provisions should include directors; others related officers and employees (permanent or temporary) of the financial institution.</li> </ul>
Internal controls, compliance, audit and foreign branches (R.15 & 22)	<ul style="list-style-type: none"> <li>• Extend obligations for internal controls to the Securities sector and ensure proper implementation in the other sectors.</li> <li>• Extend obligations for independent audit to include AML/CFT to all sectors covered by the FATF standards.</li> <li>• Further encourage, support and enforce AML/CFT training obligations and take supervisory action to support effective implementation of</li> </ul>

	<p>internal training programs.</p> <ul style="list-style-type: none"> <li>• Support improved accessibility to customer identification data and other CDD information by supporting increased computerization in the banking sector.</li> <li>• Financial institutions should be obliged to inform Bangladesh Bank when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures.</li> </ul>
Shell banks (R.18)	<ul style="list-style-type: none"> <li>• ensure that controls on correspondent banking relationship are effectively implemented to ensure that correspondent banks ensure that correspondent banks do not permit their accounts to use by shell banks.</li> <li>• ensure that the enforceable prohibition on financial institutions from entering into or continuing, correspondent banking relationship with shell banks is fully enforced.</li> <li>• introduce an enforceable obligation financial institutions to satisfy themselves that respondent financial institutions in a foreign county do not permit their accounts to be used by shell banks.</li> </ul>
<p>The supervisory and oversight system - competent authorities and SROs</p> <p>Role, functions, duties and powers (including sanctions)</p> <p>(R. 23, 30, 29, 17, 32, &amp; 25).</p>	<ul style="list-style-type: none"> <li>• Increase the available monetary sanctions to proportionate and dissuasive levels and use available sanctions in response to AML/CFT breaches</li> <li>• All supervisors should integrate AML/CFT requirements into their directions, regulations to the supervised institutions.</li> <li>• Include inspection of CFT measures across all sectors as well as AML</li> <li>• Logistic support and man power is inadequate for effective supervision of the insurance sector. Bangladesh authorities should focus special attention to establish division to implement and monitor the compliance of AML &amp; CFT requirements relating to Insurance sector.</li> <li>• SEC should be fully integrated into the AML/CFT framework and should be responsible for AML/CFT supervision of the securities sector.</li> <li>• SEC should be fully integrated into the AML/CFT framework and should have a clear role in AML/CFT supervision of the securities sector.</li> <li>• Market entry controls should be designed and implemented to prevent criminals from controlling financial institutions.</li> <li>• Comprehensive AML/CFT inspection should be undertaken beyond the banking sector</li> <li>• Guidance should be issued to insurance, securities, remittance and money changer sectors to enhance levels of AML/CFT compliance.</li> <li>• AML/CFT guidance should be formulated and issued for each industry in the DNFBP sector to reflect specific ML/TF risks in each sector.</li> <li>• Amend ATO 2008 to clearly provide for CFT-related regulation and supervision powers beyond the banking sector.</li> <li>• Effectively implement MLPO powers for regulation and supervision</li> <li>• Securities and insurance sector supervisors should be adequately funded and staffed for combating money laundering and terrorist financing.</li> <li>• Capacity and operational independence of the Insurance supervisor should be established</li> <li>• AML/CFT training should be extended to supervisory staff of the SEC and insurance regulator</li> <li>• Statistics for supervisory actions, including sanctions are should be properly kept.</li> <li>• Bangladesh should include Securities Companies and DNFBP into AML requirement and issues specific guidance to them.</li> </ul>

	<ul style="list-style-type: none"> <li>• Bangladesh should issue specific guideline for insurance companies, money changer and money remitters;</li> <li>• Bangladesh should regularly providing case specific feed back relating to STRs to financial institutions.</li> </ul>
Money value transfer services (SR.VI)	<ul style="list-style-type: none"> <li>• Include the non-bank remittance operator (post office) in the AML/CFT framework, including requiring checks against the UNSCR 1267 lists.</li> <li>• ensure that all remittance business is conducted through formal channels regulated for AML/CFT.</li> <li>• Maintain statistics on the migration of remittance transfers from informal to formal channel.</li> <li>• undertake a study of the nature of informal remittance business carried out and consider additional measures to build incentives that encourage a shift of remittance from informal to regulated channels.</li> </ul>
<b>4. Preventive Measures – Non-Financial Businesses and Professions</b>	
Customer due diligence and record-keeping (R.12)	<ul style="list-style-type: none"> <li>• Take steps to extend CDD measures to the full range of DNFBPs as soon as possible, taking into account the level of risk from different DNFBP sectors</li> </ul>
Suspicious transaction reporting (R.16) (applying R.13-15, 17 & 21)	<ul style="list-style-type: none"> <li>• Take steps to extend STR measures to the full range of DNFBPs.</li> </ul>
Regulation, supervision and monitoring (R. 24-25)	<ul style="list-style-type: none"> <li>• Consider which of the DNFBPs should be given priority to introduce AML/CFT requirements.</li> <li>• Discussions should be undertaken with the regulators and SROs of the DNFBP sectors to determine the extent of their role in monitoring and ensuring compliance.</li> </ul>
Other Non-Financial Businesses And Professions – Modern Secure Transaction Techniques (R.20)	<ul style="list-style-type: none"> <li>• Continue to develop and use modern and secure techniques for conducting financial transactions that are less vulnerable to ML.</li> <li>• Implement measures to reduce the reliance on cash and to encourage the development and use of modern and secure techniques</li> </ul>
<b>5. Legal Persons and Arrangements &amp; Non-Profit Organisations</b>	
Legal Persons – Access to beneficial ownership and control information (R.33)	<ul style="list-style-type: none"> <li>• Require the RFJSC and company registers to maintain information as to whether shares of registered entities are held beneficially and if so, to maintain details of the beneficial owner</li> <li>• Require companies to maintain beneficial ownership information in relation to bearer shares where these are permitted</li> <li>• extend AML obligations to the capital market so as to require intermediaries to maintain information about beneficial ownership of company accounts</li> <li>• increase the capacity of the RFJSC to monitor and enforce Companies Act obligations.</li> </ul>
Legal Arrangements – Access to beneficial ownership and control information (R.34)	<ul style="list-style-type: none"> <li>• ensure that trust deed information registered with the various district and city registrars contains information on beneficial ownership and is readily accessible to law enforcement and other competent authorities.</li> <li>• raise awareness on where trust deed information is held and how to access such information for AML/CFT purposes.</li> </ul>
Non-profit	<ul style="list-style-type: none"> <li>• review the NPO sector for the purpose of identifying those NPOs which</li> </ul>

organisations (SR.VIII)	<p>are at risk of abuse by terrorist financiers and money launderers (the Committee noted that such a review is currently underway)</p> <ul style="list-style-type: none"> <li>• review existing laws and regulations with a view to identifying gaps in coverage</li> <li>• work with the NPO sector and the public to raise awareness among regulators and NPOs of the vulnerability of NPOs to abuse for TF</li> <li>• increase the financial, personnel and technical resources available to regulators, to allow them to develop and implement more effective supervision programs</li> <li>• enhance domestic coordination between NPO regulators and various other competent authorities involved in AML/CFT</li> <li>• ensure clear mechanisms of international cooperation between NPO regulators to respond to international requests.</li> </ul>
<b>6. National and International Co-operation</b>	
National co-operation and coordination (R.31)	<ul style="list-style-type: none"> <li>• ensure that the ACC is closely involved with other agencies in policy and operational level structures to coordinate implementation of the MLPO.</li> <li>• include key AML/CFT-relevant agencies in policy-level coordination for AML/CFT (eg SEC &amp; the Insurance Regulatory Authority).</li> <li>• Establish a policy level coordination structure to lead and oversee implementation of the CFT provision as set out in the ATO 2008.</li> <li>• Enhance AML/CFT cooperation and coordination between regulators, in particular Bangladesh Bank, SEC and the new insurance regulator.</li> </ul>
The Conventions and UN Special Resolutions (R.35 & SR.I)	<ul style="list-style-type: none"> <li>• become a party to and fully implement the Palermo Convention as a matter of urgency.</li> <li>• take steps to fully implement the TF convention</li> <li>• take steps to fully implement UNSCRs 1267 and 1373.</li> </ul>
Mutual Legal Assistance (R.32, 36-38, SR.V)	<ul style="list-style-type: none"> <li>• consider enacting comprehensive MLA legislation, to provide it with a legal basis for strong and effective international cooperation.</li> <li>• Consider formalising use of the UN Conventions as a legal basis for MLA by enacting enabling legislation which expressly provides that the terms of the relevant Articles apply. If Bangladesh adopts this approach it will need to ensure that the requirements of the Conventions are backed up with fully-effective domestic laws for evidence-gathering and for freezing and confiscation of property.</li> <li>• develop clear procedures for handling MLA requests to ensure that they are dealt with in a timely and efficient manner</li> <li>• build a greater degree of coordination between the various agencies processing and executing MLA requests</li> <li>• maintain MLA statistics detailing the number and type of requests made and received, the nature of the predicate offences, the outcome of the requests and the time needed for execution.</li> </ul>
Extradition (R.32, 37 & 39, & SR.V)	<ul style="list-style-type: none"> <li>• make use of extradition tools available for TF under the ATO 2008 and raise awareness amongst competent authorities of the provisions.</li> <li>• Include ML and TF offences in the Schedule to the Extradition Act.</li> <li>• Consider adoption of a threshold approach to extraditable offences, in place of the existing list-based approach</li> <li>• Clarify in statute as to whether or not dual criminality is a requirement</li> <li>• Clarify in statute whether Bangladesh will permit extradition of its own</li> </ul>



	<p>nationals</p> <ul style="list-style-type: none"> <li>• Adopt procedures to streamline requests and proceedings.</li> <li>• Build capacity in this area by increasing financial, human and training resources.</li> </ul>
Other Forms of Co-operation (R.32 & 40, & SR.V)	<ul style="list-style-type: none"> <li>• Continue to actively pursue international cooperation outside of MLA channels, including designating points of contact for cooperation and promoting mechanisms including bilateral and multilateral MOUs, agreements and contracts to support rapid and constructive information sharing.</li> <li>• Clear legal powers should be given the FIU, police and other competent authorities to share information and intelligence related to CFT with foreign counterparts.</li> <li>• The securities and insurance regulators should be better supported to increase their involvement in international cooperation related to AML/CFT.</li> </ul>
<b>7. Other Issues</b>	
Other relevant AML/CFT measures or issues	<ul style="list-style-type: none"> <li>• Undertake a ML/TF risk-assessment in Bangladesh, involving all Bangladeshi stakeholders.</li> </ul>
General framework – structural issues	<ul style="list-style-type: none"> <li>• Ensure national counter-corruption efforts include strategies to address structural weaknesses which pervasive corruption brings to the effectiveness of the AML/CFT regime.</li> </ul>

**Table 3      Authorities' Response to the Assessment**

## 4 ANNEXES

### ANNEX 1: LIST OF ABBREVIATIONS

ACC	Anti Corruption Commission
AML/CFT	Anti-Money Laundering/Combating the Financing of Terrorism
AMLDD	Anti-Money Laundering Department of Bangladesh Bank
BDT	Bangladesh Taka
CDD	Customer Due Diligence
DFIs	Development Financial Institutions
DNFBP	Designated Non-Financial Businesses and Professions
FCB	Foreign Commercial Banks
KYC	Know Your Customer
MFIs	Micro-Finance Institutions
ML	Money Laundering
MLA	Mutual Legal Assistance
NBR	National Board of Revenue (includes Customs)
NCBs	Nationalized Commercial Banks
NGOAB	Non-Governmental Organisation Affairs Bureau
PCBs	Private Commercial Banks
REHAB	Real Estate Association of Bangladesh (REHAB)
RJSC	Register of Joint Stock Companies
RAB	Rapid Action Battalion
SAARC	South Asian Association for Regional Cooperation
SEC	Securities and Exchange Commission
StAR	Stolen Asset Recovery Initiative
Tk	Bangladesh Taka
TF	Terrorist Financing
UNCAC	United Nations Convention Against Corruption
UNSCR	United Nations Security Council Resolution

**ANNEX 2: DETAILS ALL BODIES MET ON THE ON-SITE MISSION - MINISTRIES, OTHER GOVERNMENT AUTHORITIES OR BODIES, PRIVATE SECTOR REPRESENTATIVES AND OTHERS.**

- Bangladesh Bank
- Ministry of Finance
- Ministry of Law, Justice and Parliamentary Affairs
- Attorney General's Office
- Anti Corruption Commission (ACC)
- Ministry of Foreign Affairs
- Bangladesh Police
- National Board of Revenue / Customs
- NGO Affairs Bureau
- Securities and Exchange Commission (SEC)
- Controller General of Insurance Office
- Ministry of Social Welfare
- Ministry of Religious Affairs
- Ministry of Postal and Telecommunications
- Board of Investment
- Chittagong Sea Customs
- Registrar of joint stock Companies
- Bangladesh Association of Bankers
- Chittagong Stock Exchange
- Bar Council
- Real Estate Association
- BRAC
- Various individual financial institutions and private sector representatives

## ANNEX 3: COPIES OF KEY LAWS, REGULATIONS AND OTHER MEASURES

### Money Laundering Prevention Ordinance, 2008, Ordinance No-12 of 2008

Published in the Bangladesh Gazette April 15, 2008

Whereas it is expedient and necessary to re-enact the Money Laundering Prevention Act 2002 (Act 7 of 2002) with several amendments on cancellation of it; and

As the parliament has been dissolved and the President considers that the prevailing situation requires immediate action;

The President is pleased to enact and notify the following ordinance by the power conferred at para 93 (i) of the Constitution of People's Republic of Bangladesh.

#### 1. Short title and commencement:

(1) This ordinance may be called the Money Laundering Prevention (amendment) Ordinance, 2008  
This ordinance shall come into force immediately

#### 2. Definition: Unless there is anything repugnant to the subject or context in this Act;

(a) **"Financial institution"** means financial institutions as defined under section 2 (b) of the Financial Institution Act, 1993 (Act No. XXVII of 1993)

(b) **"Court"** means the court of Special judges ;

(c) **"Investigating Organization"** means Anti-Corruption Commission established as per Anti-Corruption Commission Act, 2004 (Act V of 2004) and it also includes any officer empowered by the Commission for the purpose;

(d) **"Currency"** means all coins, currency notes accepted as appropriate currency by the country, and it also includes travelers' cheques, postal notes, money orders, cheques, bank drafts, bearer bonds, letter of credit, bills of exchange and promissory notes.

(e) **"Disposal of properties"** includes the power to sell in case of a degradable, perishable or rapidly depreciating property or the power to destroy or to transfer legally by an open tender a property which is required to destroy under any other law ;

(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 in section 2(8) of Insurance Act, 1938 (Act 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 the bank company as defined under the section 5(o) of the Bank Company Act, 1991 (Act No. XIV of 1991);

(j) **"Money Changer"** means persons or institutions licensed by Bangladesh Bank to deal in foreign currency;

(k) **"Money Laundering"** means :

i) transfer, conversion, remitting abroad or remit or bring from abroad to Bangladesh the proceeds or properties acquired through commission of a predicate offence for the purpose of concealing or disguising the illicit origin of the property or illegal transfer of properties acquired or earned through legal or illegal means.

ii) to conduct, or attempt to conduct a financial transaction with an intent to avoid a reporting requirement under this ordinance.

iii) to do or attempt to do such activities so that the illegitimate source of the fund or property can be concealed or disguised or knowingly assist to perform or conspire to perform such activities.

(l) **"Reporting organisation"** means the following organizations:

i) Banks

ii) Financial Institutions

iii) Insurance companies

iv) Money changers

v) companies or organizations remitting or transferring money

vi) Other business organizations approved by Bangladesh Bank

vii) Such other organizations as the Bangladesh Bank with the approval of Government may notify from time to time.

(m) **"High Court"** means the High Court Division of the Supreme Court.

(n) **“Suspicious or unusual transaction”** means

- i. a transaction that substantially deviates from the usual norm by which that transaction is usually conducted, or
- ii. there is reasonable cause to believe that the transaction is related to any proceeds of crime.

(o) **“Property”** means

- i. any kind of assets, whether tangible or intangible, movable or immovable, however acquired; or
- ii. cash, legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets

(p) **“Special Judge”** means the special Judge appointed under the Criminal Law Amendment Act, 1958 (Act XL of 1958);

(q) **“Predicate Offence”** means the offences, the proceeds derived from committing those offences are laundered or attempt to be laundered and will include the following offences:

- i. corruption and bribery;
- ii. counterfeiting currency;
- iii. counterfeiting documents;
- iv. extortion;
- v. fraud;
- vi. forgery;
- vii. illicit arms trafficking;
- viii. illicit dealing in narcotic drugs and psychotropic substances;
- ix. illicit dealing in stolen and other goods;
- x. kidnapping, illegal restraint, hostage-taking;
- xi. murder, grievous bodily injury;
- xii. woman and child trafficking;
- xiii. smuggling and unauthorized cross-border transfer of domestic and foreign currency
- xiv. robbery or theft; trafficking in human beings and migrant smuggling;
- xv. dowry and
- xvi. any other offence which Bangladesh Bank with the approval of the Government and by notification in the Official gazette declares as predicate offence for the purpose of this ordinance.

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

#### **4. The Offence of Money Laundering and Punishment:**

(1) For the purpose of this ordinance Money laundering shall be treated as an offence

(2) Any person engaged in money laundering or abetting or aiding or conspiring in the commission of such offence shall be punished with imprisonment for a term not less than six months but which may extend to seven years and in addition to this property involved with the offence shall be forfeited in favor of the state.

**5. Punishment for violation of freezing / attachment order.** - Whoever contravenes the freezing order or an order of attachment passed under this ordinance shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, which may extend to taka five thousand taka, or with both.

#### **6. 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 agent or news media.

(2) Any person, organization, agent or entity authorized under this ordinance during the period of his/her service contract period or after retirement will refrain himself/herself from using, publishing or divulging information collected, received, retrieved and known by himself/herself except for the purpose of the ordinance.

(3) Whoever contravenes the provision of sub-section (1) and (2), shall be liable on conviction to imprisonment of either description for a term, which may extend to two years, or to fine which may extend to Taka ten thousand or to both.

#### **7. Obstruction or non co-operation in investigation, failure to report or supply of information:-**

(1) whoever

- i.* obstructs or refuses to assist the concerned officer engaged in investigation under this Ordinance or
- ii.* fails to comply without reasonable ground with a reporting obligation or fails to supply information contemplated under this Ordinance, shall be guilty of an offence under this Section.

(2) Whoever contravenes the provision of sub-section (1) shall be liable on conviction to imprisonment for a term which may extend to one year, or to a fine which may extend to Taka five thousand or with both.

#### **8. Providing False Information to Banks / Financial Institutions**

(1) Nobody knowingly shall provide false information concerning the source of funds or the identity of any account holder or the beneficial owner or nominee.

(2) A person who contravenes the provision of Sub-section (1) shall be liable on conviction for an imprisonment of either description which may extend to 1 year and / or a fine which may extend to Taka fifty thousand or with both

#### **9. Investigation, Prosecution etc.:**

Under this Act,

- i.* The offences under this ordinance considered as the scheduled offences of Anti-Corruption Commission Act, 2004 (Act V of 2004), will be investigated by Anti-Corruption Commission or by an officer empowered by Anti-Corruption Commission for this purpose.
- ii.* The Offences will be prosecuted by the special judge court as appointed under Criminal Law Amendment Act. 1958 (Act XL of 1958).
- iii.* If any conflict arises regarding investigation, prosecution and other related provisions, etc. of this ordinance, the provision of Anti-Corruption Commission Act, 2004 and Criminal Law Amendment Act. 1958 shall prevail.

#### **10. Jurisdiction and power of special Judge:-**

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

(2) While passing 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 stipulated time not exceeding 6 months.

**11. Cognizance, compoundability and nonbailability of offence:-** All offences under this ordinance shall be cognizable, non compoundable and non-bailable.

#### **12. Inevitability of the approval of ACC**

(1) Notwithstanding anything contained in code of criminal procedure or any other laws, no court shall take cognizance of any offence punishable under this Ordinance except on a complaint in writing by ACC or any law enforcement agencies authorized by ACC in its behalf

(2) Under this ordinance after completing the investigation the investigating officer shall take prior approval from ACC before submitting his report before court and attach an approval letter with the report.

**13. Provision for Bail:-** A person arrested for commission of any offence under this ordinance shall not be released on bail

(a) If the complainant is not given an opportunity of being heard in the application of bail

(b) If the court is satisfied that there are reasonable grounds for believing that the accused shall be convicted of the charges brought against him; and

(c) If the complainant is not a woman, child or physically disabled and the court is not satisfied that justice will not be hindered on his release on bail.

#### **14. Freezing and Attachment order:-**

(1) The court may give an order for freezing or attachment of property wherever situated, within or outside Bangladesh, in which the state has interest under this ordinance upon written application of the investigating organisation

(2) An application under subsection (1) by the investigating organisation for an order to freeze or attach a property shall be made in writing and be accompanied with the following information:-

- (a) description of the property sought to be freeze or attached;
- (b) the grounds/preliminary evidence for believing that the property is involved in Money laundering;

(c) that the prosecution is likely to succeed in the proceedings pending before the court;  
(d) that there is substantial likelihood that the property will be unavailable even before the conclusion of the proceedings if the order as prayed is not passed.

(3) If any order of freezing / attachment under sub-section (1) is passed- (a) the court shall, for general information, publish the matter with every detail of the property by notification in the Bangladesh Gazette and at least in a much circulated national daily newspaper;

(4) In the freezing / attachment order passed under this section, the name, designation, name of the parents, name of the spouse address (present and permanent), profession, TIN etc. of the accused shall, as far as possible, be mentioned.

(5) A freeze / attachment order passed under this section may prohibit any person from disposing of, or otherwise dealing with any interest in that property other than as may be specified in the order.

(6) So long as the freezing order in respect of bank account/s of any person is in force, notwithstanding anything contrary is contained in the said order, all money receivable by the said person shall be deposited to his frozen bank account/s.

#### **15. Return of freezed or attached property**

(1) If the court passes an order to freeze or attach the property any other person other than the person convicted, *who* has interest in the property may make an application to the court for an order for return of the property within 30 days of the date of publishing the notice of freezing /attachment of the property in a much circulated national daily newspaper.

(2) any person making an application under subsection (1) shall include the following information with the application

(a) the property was not involved in the commission of a money laundering offence;

(b) the convicted person has no title, interest or ownership in the freezed or attached property.

(c) the person making the application has title, interest and ownership in the property.

(3) notwithstanding anything contained in subsection 14(5) any application received by the court from applicant, the investigating organization, convicted person to get back the property, the court will take the following action;

i. the applicant, investigating organization and the convicted person will be given an opportunity for hearing by the court.

ii. after hearing the court will analyze the required papers/documents and if the court is satisfied by the application submitted under subsection(1), the court shall cancel the order to freeze or attach and pass an order to return the property in favor of the applicant/petitioner within the stipulated time mentioned in the order.

#### **16. Appeal against the order for freezing or attachment of the property**

(1) Any person aggrieved against an order of freezinge or attachment of a property, may within 30 days from the date of such order make an appeal to the High Court division.

(2) if any appeal is filed under subsection (1) the appellate division shall give reasonable time for hearing, and after the hearing the court shall give an order as the court deems proper.

(3) if any person aggrieved by an order to freeze or attach a property under section (14) make an appeal, unless otherwise directed by the appellate division, the order for freezing or attachment shall remain effective until the disposal of appeal.

#### **17. Procedure in Forfeiture Proceeding**

(1) If any person is accused of the offence of money laundering under this ordinance the court shall give an order to be passed for forfeiture of the property involved with the offence wherever situated, within or outside Bangladesh if the people of the country/state have interest in it.

(2) If any person accused of the offence of money laundering has absconded or died, the court may pass an order of forfeiture against any property involved with the offence of that person

Explanation: A person may be deemed to have absconded when reasonable attempts have been made to arrest the person pursuant to a warrant for a period of 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 and for proper value had purchased the property before the order of forfeiture passed by the court 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 order the convicted person to deposit the sold value of the said property in the government treasury within a timeframe determine 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 Govt. gazette and at least two well circulated national daily mentioning every details of the property.

(5) If the court gives an order for forfeiture of any property the ownership of the property shall be vested on the state and the custodian or the owner of the said property on the date of the forfeiture will handover the title of the property in favor of the state as soon as possible.

#### **18. Return of Forfietured property--**

(1) If the court passes an order of forfeiture of a property under section (17), any person other than the convicted one who has title, interest or right in the property may apply to the court to get back the property within 30 days of the date of publishing the notice of forfeiture of the property in 2 daily newspapers.

(2) after receiving an application under subsection (1) the court will give reasonable time to the, convicted person and the applicant (third party who have a legal interest in the property being forfeited) for hearing. After hearing the court shall give necessary order considering the following matters

(a) whether the contesting person (applicant) or the forfeited property was involved in the commission of the offence;

(b) whether the *applicant* has legal right for the forfeited property .

(c) The length of *time* between the ownership of the property involved in an offence and the commission of the offence charged; and

(d) any additional information that the Court may consider relevant .

#### **19. Appeal against the order to forfeiture the property**

(1) Any person aggrieved against an order for forfeiture of property, may within 30 days from the date of such order prefer an appeal to the High Court division.

(2) if an appeal is filed under subsection (1) the appellate division shall give both the parties reasonable time for hearing, and after the hearing the court shall give an order as the court deems proper.

**20. Disposal of Forfeited Property:-** Whenever property is forfeited under this Ordinance, the government, will dispose of such assets, in the manner prescribed below:

(1) sell forfeited property, other than *that which is required by a law to be destroyed, by public auction or any other commercially feasible means;*

(2) *shall deposit proceeds of forfeited property into the government treasury*

**21. Appointment of Manager or caretaker for the freezed, attached or forfeited property:-** If a property is freezed, attached or forfeited under this ordinance then on an application, made by investigating organization or any person authorized by it in this behalf, the court may appoint a person or entity to take control of and manage or otherwise deal with, all or any part of a seized/attached/forfeited property under such terms and conditions as the court may deem fit and proper.

**22. Appeal:-** Notwithstanding anything contained in any other existing law any person aggrieved by an order, verdict, decree or punishment imposed by the court, may within thirty days from the date of such judgment or order of sentence, prefer an appeal to the High Court Division of the Supreme Court.

#### **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 the Bangladesh Bank is empowered and authorized to

(a) 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) call for and receive 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) issue an order to any bank or financial-institution to suspend a transaction or freeze an account for a period of 30 days where the Bangladesh Bank has reasonable grounds to suspect that the transaction involves proceeds of crime. Provided that the order so passed may be extended for another 30 days for the purpose of further investigation.

- (d) issue, from time to time necessary directions to reporting organizations for taking counter measures to combat money laundering activities.
- (e) 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 organisation physically.
- (f) for the purpose of the proper implementation of this ordinance, provide training to the staffs and officers of the reporting organization any other organization or institution as Bangladesh Bank considers necessary and arrange meeting, seminar, etc.
- (g) carry out any other related functions to meet the objectives of this ordinance.
- (2) If the investigating organization request for information related to money laundering or suspicious transaction, Bangladesh Bank shall provide, 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 ordinance there shall be a financial intelligence Unit (FIU) in the Bangladesh Bank.
- (2) Under the provision of this ordinance if the Financial Intelligence Unit of a country on the basis of any contract signed or arrangements seek information regarding Money Laundering Or Suspicious Transaction Report the FIU shall provide requested information and can seek any kind of information about any Suspicious Transaction from any other country.

#### **25. Responsibility of reporting organizations in preventing money laundering.**

- (1) For the purpose of preventing and identifying money laundering reporting organizations shall -
  - (a) keep, during the operation of accounts, the correct and full information of identification of its clients and
  - (b) in case of closed account of any client, keep previous records of transactions of such account for at least five years from the date of closure.
  - (c) provide, from time to time, the records kept under clause (a) and (b) to Bangladesh Bank time to time on demand from Bangladesh Bank ;
  - (d) inform proactively and immediately Bangladesh Bank, facts on suspicious / unusual / doubtful or transactions likely to be related to money laundering.
- (2) If any reporting organizations violate the directions mentioned in sub-section (1) Bangladesh Bank shall take the following actions
  - (a) Bangladesh Bank may impose a fine of not less than Taka ten thousand and such fine may extend to Taka five Lac upon the defaulting reporting organizations
  - (b) Bangladesh Bank may cancel the registration of the company or cancel the license in addition to the fine mentioned in sub section (a) .The Bangladesh Bank shall inform the permit or license authority of the reporting organizations regarding their failure to keep and furnish information under subsection (1) so that the concerned authority may, in accordance with the relevant law or rule or regulation framed there under, take necessary action against the concerned reporting organizations for their failure or negligence.
  - (3) Bangladesh Bank will collect the penalty money imposed under subsection (2) in its self determined manner and shall deposit the collected money into the government treasury.

#### **26. Contract with Foreign Countries**

- (1) For the purpose of the ordinance Government or in some cases Bangladesh bank can sign MOU, Bilateral or multilateral contract, convention or can sign contract with any foreign country or organization by means of acceptance of international legislation.
- (2) Under this section after signing a contract by Government or Bangladesh Bank with foreign country or agency to prevent Money Laundering government or in some cases Bangladesh bank :
  - (a) shall request that foreign country or organization to provide relevant information; and
  - (b) shall provide information to that foreign country or organization if requested information is not vulnerable to national security.
- (3) for the purpose of this ordinance court can order whatever it deems appropriate upon application by Bangladesh Bank to comply an order made by a court of a foreign country of forfeiture or handover of a property existing in Bangladesh ;Likewise request can be made to signing country under MOU/contract to comply court order of forfeiture or asset recovery .

#### **27. Offence committed by company, etc:-**

(1) If any offence under this ordinance committed by a company, every proprietor, director, manager, secretary, or other officer or representative who is directly involved with the offence shall be deemed to be guilty of such offence:

Provided that if any person as aforesaid is not able to prove that such offence has been committed without his knowledge or he has used due diligence to prevent such offence,

Explanation:- In this section-

(a) "Company" means any statutory body, partnership concern, association, commercial organization or organization formed with one or more than one person;

(b) "Director" means any partner or member of the Board of Directors, by whatever name it is called.

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

**28. Protection against proceedings undertaken in good faith:-** No suit, prosecution either civil or **criminal or other legal proceedings shall lie against government or any government officials or any** reporting organizations if any person is affected or likely to be affected due to the proceedings done in good faith under this ordinance.

**29 Power to make rules:-** Bangladesh Government may through Government Gazette Notification make rules for carrying out the purpose of this ordinance

**30. Publish an English version of the ordinance:**

(1) After enactment of this ordinance government will publish an authentic English text of the Bangla ordinance within shortest possible time by gazette notification

(2) However if any conflict arises between Bangla ordinance and its English text the Bangla text shall get priority.

**31. Repeal and Savings:-**

i. Money Laundering Prevention Act, 2002 is repealed, as soon as the ordinance shall have effect

ii. the cases and proceedings already pending in any court under the said Act will continue as if the law has not been repealed.

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## Anti-Terrorism Ordinance (ATO), 2008

Bangladesh Gazette Wednesday, June 11, 2008 No 28(--)- The following ordinance made by the president on 26 Jaistha, 1415, 09 June 2008, is hereby published for general information

An Ordinance to provide for prevention and effective punishment of certain terrorist acts and matters connected therewith Whereas it is expedient and necessary to provide for prevention and effective punishment of certain terrorist acts and matters connected therewith; and

As the parliament has been dissolved and the President considers that the prevailing situation requires immediate action;

The President is pleased to enact and notify the following ordinance by the power conferred at Para 93 (I) of the Constitution of People's Republic of Bangladesh.

### Chapter 1

#### Preamble

#### Section 1: Short title, extent and commencement;

(1) This Ordinance may be called the Anti-Terrorism Ordinance-2008.

(2) It extends to the whole of Bangladesh

(3) It shall come into force immediately.

Section-2; Definitions: Unless there is anything repugnant to the subject or context in this Ordinance,

(1) "Offence" means an offence punishable under this Ordinance.

(2) "Fire-arms" includes pistol, revolver, rifle, gun or canon of any description, and any other fire-arm;

- (3) “Court” means the Court of Sessions Judge or Additional Sessions Judge, as the case may be;
- (4) “Imprisonment” means imprisonment of any description as defined in the Article 53 of Penal Code.
- (5) Criminal Procedure or the Code means Code of Criminal Procedure, 1898(Act V of 1898);
- (6) Schedule means Schedule under this Ordinance;
- (7) “Penal Code” means the Penal Code, 1860 (Act XLV of 1860);
- (8) “Inflammable substance” means any substance that has high propensity to be set on fire, or to intensify or spread fire such as octane, petrol, diesel, compressed natural gas(CNG), gunpowder and also includes any other inflammable substance;
- (9) “Bangladesh Bank” means the Bangladesh Bank established under the Bangladesh Bank Order, 1972(P. O. No. 127 of 1972)
- (10) “Bank” means any Banking Company established under the Bank Companies Act, 1991(Act No. 14 of 1991) and any financial or commercial institutions authorized by any other law to take or disburse loan, or to exchange money shall also include;
- (11) “Judge” means a Sessions Judge, an Additional Sessions Judge or, as the case may be the Judge of an Anti-Terrorism Special Tribunal;
- (12) “Special Tribunal” means an Anti-Terrorism Special Tribunal established under section 28;
- (13) “Explosive Substance” – means
- (a) gunpowder, nitro-glycerin, dynamite, gun-cotton, blasting powders, fulminate of mercury or of other metals, coloured fires and every other substance, whether similar to those above-mentioned or not, used or manufactured with a view to producing a practical effect by explosion, or a pyrotechnic effect; and
- (b) includes any materials for making any explosive substance; also any apparatus, machine implement or material used, or intended to be used, or adapted for causing, or aiding in causing any explosion in or with any explosive substance; also any part of any such apparatus, machine or implement; and fuses, rockets, percussion caps, detonators, cartridges, ammunition of all descriptions;
- (14) “Property” means property of every description, whether corporeal or incorporeal, moveable or immoveable, tangible or intangible and profit derived from such property, and includes money or negotiable instruments capable of being converted into money;
- (15) “Evidence Act” means Evidence Act, 1872(Act 1 of 1872).

### **Section-3: Interpretations;**

- (1) Words and expressions used but not defined in this Ordinance , but defined in the Code or Penal Code, shall have the meaning respectively assigned to them in the Code or Penal Code , as the case may be.
- (2) The general provisions of Penal Code regarding punishments and criminal liability shall apply to offences under this Ordinance, so far as not inconsistent with the relevant expressed provisions of this Ordinance

### **Section-4: Ordinance to over-ride all other laws.**

- The provisions of this Ordinance shall have effect notwithstanding anything contained in the Code or in any other law for the time being in force.

### **Section-5: (1) Extra-territorial application of the Ordinance;**

Whoever commits an offence beyond Bangladesh against any national or property of Bangladesh, which , if committed in Bangladesh would have punishable under this ordinance, shall be dealt with according to the provisions of this Ordinance in the same manner as if such offence had been committed in Bangladesh.

(2) Whoever commits an offence within Bangladesh from beyond Bangladesh shall be dealt with according to the provisions of this Ordinance in the same manner as if the whole process of such offence had been committed in Bangladesh.

(3) Whoever commits an offence beyond Bangladesh from within Bangladesh, shall be dealt with according to the provisions of this Ordinance in the same manner as if the whole process of such offence had been committed in Bangladesh

## **Chapter 2**

Crime and Punishment

### **Section 6:**

1) Terrorist acts mean striking terror in the people or any section of the people in order to compel the Government of Bangladesh or any other person to do or abstain from doing any act with intent to threaten the unity, solidarity, security or sovereignty of Bangladesh through

a) Killing, injuring grievously, abducting a person or causing damage to the property of a person; or  
b) Possessing or using explosives, inflammable substance, firearms, or any other chemical to achieve the purpose of sub section (a)

2) Whoever commits terrorist act shall be punished with death or imprisonment for life or to a maximum 20 years and not less than 3 years rigorous imprisonment, to which fine may be added.

#### **Section-7:**

1) Whoever provides or incites to provide money, service or property and intends that it should be used, or has reasonable ground to suspect that it will or may be used for the purpose of terrorist acts; commits an act of terrorist financing.

2) Whoever receives money, service or property and intends that it should be used, or has reasonable ground to suspect that it will or may be used for the purpose of terrorist acts; commits an act of terrorist financing.

3) Whoever arranges money, service or property and intends that it should be used, or has reasonable ground to suspect that it will or may be used for the purpose of terrorist acts; commits an act of terrorist financing.

4) A person guilty of the offence as described in the subsections from 1 to 3 shall be punished with imprisonment for a term which may extend to twenty years and it shall not be less than three years , to which fine may also be added.

#### **Section -8:**

Membership of a proscribed organization: Whoever belongs or professes to belong to an organization proscribed under section 18, will be guilty of offence, and shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

#### **Section-9: Support for proscribed organization:**

1) whoever solicits or invites support for proscribed organization or arranges, conducts or assists in conducting meeting or addresses a meeting to further and encourage the activities of the proscribed organization commits an offence.

2) Whoever addresses a meeting seeking support for a proscribed organization or disseminates information through radio, television or print or electronic media to activate the organization's activities commits an offence.

3) A person guilty of an offence under sub section 1or 2 shall be punished with imprisonment which may extend to maximum seven years and not less than two years and in addition to this fine may also be imposed.

#### **Section-10: Punishment for conspiring to commit offence.**

Whoever makes conspiracy to commit offence under this ordinance shall be punished with imprisonment of any description provided for the offence, for a term which may extend to two thirds of the longest term of imprisonment provided for that offence, or with fine, or with both; and if punishment of death is provided for that offence, the punishment may extend to imprisonment for life or imprisonment for a term extending up to fourteen years, but not less than five years.

#### **Section-11: Punishment for attempting to commit offence.**

Whoever attempts to commit offence under this ordinance shall be punished with imprisonment of any description provided for the offence, for a term which may extend to two thirds of the longest term of imprisonment provided for that offence, or with fine, or with both; and if punishment of death is provided for that offence, the punishment may extend to imprisonment for life or imprisonment for a term extending upto fourteen years, but not less than five years.

#### **Section-12: Punishment for abetment of offence.**

Whoever abets committing any offence punishable under this ordinance shall be punished with the punishment fixed for that offence.

#### **Section-13: Punishment for instigating to commit terrorist acts.**

Whoever by his voluntary acts or participation instigates any terrorist act by providing any equipment, input or technology or training to any person or organization knowing that such person or organization shall, or will try to, use that equipment, input, technology or training for commission of any terrorist act, shall be deemed to

have attempted to instigate a terrorist act, and shall be punished with imprisonment of any description provided for the offence of terrorist act, as may be relevant, for a term which may extend to two thirds of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both; and if punishment of death is provided for that offence, the punishment may extend to imprisonment for life or imprisonment for a term extending upto fourteen years, but not less than five years.

#### **Section-14: Harboursing of offenders:**

- 1) Whoever harbours or conceals a person whom he knows or has reason to believe to be the offender under this ordinance, with an intention to protect him from punishment, shall,-
  - A) if the offence is punishable with death, be punished with not more than five years, and in addition to that fine may also be imposed; or
  - B) If the offence is punishable with imprisonment for life or with any description of imprisonment, be punished with maximum three years imprisonment, and to which fine may also be added.
- 2) This offence of harbouring or concealing the offender under subsection (1) shall not extend to the husband, wife, son, daughter, father or mother of the offender

### **Chapter -3**

#### **Section 15: Power of Bangladesh Bank:-**

- 1) The Bangladesh Bank shall have the power and authority to take necessary measures to prevent and detect transaction intended to commit offence under this ordinance through any banking channel, and for that matter is empowered and authorized to
  - a) Call for reports about suspicious transactions from a bank and shall keep such report confidential if law does not allow disclosure.
  - b) Compile and preserve all statistics and records.
  - c) Create and maintain a database of all suspicious transaction reports.
  - d) Analyze the suspicious transaction reports.
  - e) Issue an order in writing to any bank to suspend a transaction for a period of 30 days where it has reasonable grounds to suspect that the transaction involves connection with terrorist acts, and extend the order so passed for another 30 days.
  - f) Monitor and observe the activities of the banks;
  - g) Issue instructions to banks directing them to take preventive measures against terrorist financing activities.
  - h) Inspect banks for the purpose of detection of suspicious transactions connected with terrorist financing;
  - i) Provide training to staffs and officers of banks for the purpose of detection and prevention of suspicious transactions as may be connected with terrorist financing.
- 2) As soon as Bangladesh Bank will detect any suspicious transaction connected with terrorist financing of a bank or its customers, it shall inform the appropriate law enforcement authorities of that and shall extend all necessary cooperation to that agency regarding enquiry and investigation
- 2) No law enforcement authority shall have any access to the documents or files of a bank without approval from the chief executive of the concerned bank or from Bangladesh Bank.

#### **Section -16: Duty of Banks –**

- 1) Every bank shall take necessary measures with due vigilance and diligence to detect and prevent transactions connected with offence under this ordinance through banking channel.
- 2) The Board of Directors of every Bank shall approve and issue instructions to be observed by the officers of the bank, and shall also ensure the compliance of the instructions issued by the Bangladesh Bank under section 15 of this ordinance
- 3) Any bank failing to comply with any instruction issued by Bangladesh Bank under section 15 shall be liable to pay such fine as may be determined directed by Bangladesh Bank not exceeding taka 10 lac.

### **Chapter 4**

#### **Terrorist Organization**

#### **Section-17: Organization involved in terrorist acts:**

For the purpose of this ordinance, an organization is involved in terrorist acts, if it

- a) commits or participates in terrorist acts;
- b) prepares for terrorist acts;
- c) Abets or encourages terrorist acts;
- d) Supports or assists any organization concerned with terrorist acts;
- e) Is otherwise concerned in terrorist acts.

**Section-18:**

- 1) Proscription of organization; To meet the objectives of this ordinance, the Government, having reasonable ground to believe that an organization is involved in terrorist acts, may proscribe the organization listing it in the schedule.
- 2) The Government may, by order, add or remove an organization from the schedule or amend it in any other way.

**Section- 19: Review;**

- 1) Where any proscribed organization is aggrieved by the order of the Government made under section 18, it may, within thirty days of such order, file an application for review in writing before the Government, stating the grounds on which it is made, and the Government shall, after hearing the applicant, decide the matter within ninety days of receipt of the application.
- 2) An organization whose application for review has been refused under subsection (1) may file an appeal to the High Court Division within thirty days of the order of refusal.
- 3) The Government shall, through Gazette Notification, appoint a three member Review Committee to determine applications for review under subsection (1).

**Section-20:**

- (1) When an organization is proscribed, Government shall, besides other steps described in the ordinance,
  - a) Seal its offices, if any.
  - b) Freeze its bank account and seize its other accounts, if any.
  - c) Seize all sorts of leaflets, posters, banners, or printed, electronic, digital or other materials;
  - d) Prohibit publication, printing or dissemination of any press statements, press conferences or addressing the public by or on behalf of or in support of a proscribed organization.
- (2) The proscribed organization shall submit all accounts of its income and expenditure and disclose all the sources of income to the competent authority designated for the purpose by the Government.
- (3) Funds and assets of the proscribed organization shall be confiscated in favour of the state if found to be obtained illegally or used for offence under this ordinance.

**Chapter -5**

Investigation of the offences.

**Section-21: Special provisions regarding examination of witness by police.**

- (1) If a police officer, while investigating an offence under this ordinance, finds it necessary to interrogate a person acquainted with the facts and circumstances of the case and if such person is known or believed to be sufficiently able to state facts in writing, then that police officer may receive statement from that person in writing.
- (2) Such person shall write his statement by his own hand with pen and sign.

**Section-22: Special provisions regarding recording of statements of witness by Magistrate. –**

If a Metropolitan Magistrate, Magistrate of the First Class, or Magistrate of the second class specially empowered for this purpose is informed or has reasonable ground to believe that a person acquainted with the facts and circumstances of the case is sufficiently able to state facts in writing, he (Magistrate) may require that person to write down the statements by his own hand with pen.

**Section 23: special provisions regarding recording of confession of the accused.**

Any Metropolitan Magistrate, Magistrate of the First Class, or Magistrate of the second class specially empowered for this purpose, while recording any confession made to him by an accused, shall permit him to make the confessional statements by his own hand with pen, if such person is able and interested.

**Section-24:**

- (1) Time for investigation; the police officer shall conclude investigation of a case under this ordinance within thirty days of receipt or recording of the information under section 154 of the Code.
- (2) If the police officer can not conclude investigation within the time specified in subsection (1), he may, recording the reason in writing in the diary of the case, extend the time not exceeding fifteen days.
- (3) If the police officer can not conclude the investigation within the extended time specified in sub-section (2), he may, with written approval of the Superintendent of Police of the district, or, as the case may be, the concerned Deputy Police Commissioner in a metropolitan area, further extend the time not exceeding thirty days.
- (4) If the police officer can not conclude the investigation within the further extended time specified in sub-section (3), he shall immediately report the fact stating the reason, to the Superintendent of Police of the district, or in the applicable case, the concerned Deputy Police Commissioner in the metropolitan area, and if the mentioned reasons are not found to be satisfactory, departmental disciplinary action will be taken against him.

**Section-25: Time to extend for investigation in certain cases;**

- (1) The failure of the police officer to conclude investigation within the further extended time under sub-section (3) of section 25/24, on account of failure to disclose the identity of the offender in the FIR and to detect the offender, shall not be deemed to be a bar to the submission of the police report or a fresh or further police report at any subsequent time beyond the aforesaid further extended time.
- (2) The failure of the police officer to conclude investigation within the further extended time under subsection 3 of section 25/24 on account of failure of any medical, forensic, fingerprint, chemical or any other expert witness, to provide to him any report or evidence relating to the offence, on whom he does not have any control and without which he can not make any effective report in respect of the case, shall not be deemed to be a bar to the submission of the police report beyond the aforesaid further extended time.

**Section-26: Remand;**

- (1) Where a person is arrested and detained for investigation, the investigation officer may apply to the competent Magistrate for remand of the accused to police custody.
  - (2) The Magistrate may allow remand as sought under sub-section (1) for a period not exceeding at a time or in total thirty days;
- Provided that the Magistrate may extend the period not exceeding five days, if the investigation officer can satisfactorily prove that further evidence may be available by such further remand of the accused.

**Chapter 6**

Trial by Sessions Judge

**Section-27: Session Judges or additional Session Judges to try the offences. –**

- (1) Notwithstanding anything contained in the Code or any other law for the time being in force, so long as Special Tribunal is not established for the purpose, the offences under this ordinance shall be tried by the Sessions Judge or by an Additional Sessions Judge when transferred to him by the Sessions Judge.
- (2) While trying an offence under this ordinance a Sessions Judge or an Additional Sessions Judge shall follow the procedures laid down in chapter XXIII of the Code for Trial of Offences before the Courts of Sessions.
- (3) For the purpose of this Chapter, offences under this ordinance shall be deemed to be offences triable by the Court of Sessions, and proceedings in respect of such an offence alleged to have been committed by any person may be taken before the Sessions Judge within the jurisdiction of whose sessions division the offence or any part thereof was committed.

**Chapter 7**

Trial by Special Tribunal

**Section-28: Establishment of Anti-Terrorism Special Tribunal.**

The Government may, by notification in the Official Gazette, establish one or more Anti-Terrorism Special Tribunals for effective and speedy trial of offences under this ordinance.

- (2) A special Tribunal established under sub-section (1) shall consist of a Sessions Judge or an Additional Sessions Judge to be appointed therein by the Government in consultation with the Supreme Court; and a Judge, so appointed, shall be designated as “Judge, Anti-Terrorism Special Tribunal”.



(3) A Special Tribunal established under this section may be assigned territorial jurisdiction for the whole of Bangladesh, or any part thereof consisting of one or more sessions division; and shall try only such cases involving offences punishable under this ordinance as shall be filled in or transferred to it for trial.

(4) On account of the Government's assigning to a Special Tribunal the territorial jurisdiction for the whole of Bangladesh, or any part thereof consisting of one or more sessions divisions, a Sessions Judge or Additional Sessions Judge of that territorial jurisdiction shall not cease to have jurisdiction in respect of trial of offences under this ordinance,

Pending cases shall not be transferred to such Special Tribunal according to territorial jurisdiction, unless Government, by order notified in the official Gazette so directs.

(5) There shall not be any bar for a Special Tribunal, unless it otherwise decides, to recall or rehear any witness whose evidence has already been recorded or to reopen proceedings already held under subsection (4), but may act on the evidence already recorded or produced and continue the trial from the stage the case has reached.

(6) A special Tribunal may sit and conduct proceedings at such times and places as the Government may, by order, specify in that behalf.

#### **Section-29: Procedure of Special Tribunal;**

(1) A Special Tribunal shall not take cognizance of any offence except on a report in writing made by a police officer not below the rank of Sub-Inspector.

(2) Special Tribunal trying an offence under this Ordinance shall follow the procedure laid down in Chapter-XXIII of the Code for trial of offences before the Courts of Sessions, subject, however, to not being consistent with the special provisions of this Ordinance.

(3) A Special Tribunal shall not adjourn any trial unless such adjournment is necessary in the interest of justice and for reasons to be recorded in writing.

(4) Where a special tribunal has reasons to believe that an accused person has absconded or is concealing himself so that he can not be arrested and produced before it for trial and there is no immediate prospect of arresting him, it shall, by order published in at least two Bengali Daily newspapers having wide circulation, direct such person to appear before it within such period as may be specified in the order, and if such person fails to comply with such direction, he shall be tried in his absence.

(5) Where in case after the appearance of an accused person before the Special Tribunal, or his release on bail, the accused person absconds or fail to appear before it, the procedure, as laid down in subsection (4) shall not apply and the Tribunal shall, after recording its decision, try such person in his absence.

(6) A Special Tribunal may, on an application made to it, or of its own motion, direct a police officer to make further investigation in any case relating to an offence under this Ordinance and report within such time as may be specified by it.

**Section-30: Application of the Code to proceedings of Special Tribunals-** (1) The provisions of the Code, so far as they are not inconsistent with the provisions of this Ordinance, shall apply to the proceedings of Special Tribunals, and such Special Tribunals shall have all the powers conferred by the Code on a Court of Session exercising original jurisdiction,

(2) The person conducting prosecution on behalf of the Government before the Special Tribunal shall be deemed to be a public prosecutor.

#### **Section-31: Appeal and approval of death sentences-**

(1) An Appeal from any order, judgment or sentence passed by a Special Tribunal may be preferred to High Court Division within thirty days from the date of delivery or passing thereof.

(2) Where a death sentence is passed under this Ordinance by a Special Tribunal, the proceedings shall be submitted forthwith to the High Court Division and the sentence shall not be executed unless it is approved by that Division.

#### **Section-32: Provision regarding bail;**

No person accused of an offence punishable under this Ordinance shall be granted bail by a Magistrate or a Judge, unless-

(a) Public prosecutor has the opportunity of being heard in respect of bail order.

(b) The Judge is satisfied that there are reasonable grounds for believing that the accused may not be found guilty of the offence at the trial and records in writing his reasons of the grounds for being so satisfied.

**Section 33: Time limit fixed for disposal of cases by Special Tribunal.**

- (1) A Judge of a Special Tribunal shall conclude the trial of a case within six months from the date on which charge is framed in respect of the case.
- (2) If the Judge fails to conclude the trial within the time specified in sub-section (1), he may, for reasons to be recorded in writing, extend the time not exceeding three months.
- (3) If the Judge fails to conclude the trial within the time specified in sub-section (2), he may, after informing the High Court Division and the Government in writing as to the reasons for such failure, further extend the time not exceeding three months.

**Section-34: Holding of proceeds of terrorist acts;**

- (1) No person shall hold, or be in possession of, any proceeds of any proceeds of terrorist acts.
- (2) Proceeds of terrorist acts, whether held by a terrorist or by any other person and whether or not such person is prosecuted or convicted under this ordinance, shall be liable to be forfeited in favour of the Government.

Explanation—Proceeds of terrorist acts means any money, property or assets earned or obtained/derived through commission of any offence under this Ordinance.

**Section-35: Forfeiture of proceeds of terrorist acts.**

Where any property is seized or attached on the ground that it constitutes proceeds of terrorist acts and the Judge is satisfied in this regard, he may order forfeiture of such property, whether or not the person from whose possession it is seized or attached, is prosecuted under this Ordinance.

**Section-36: Issue of show cause notice before forfeiture of proceeds of terrorism.-**

- (1) No order of forfeiture of proceeds of terrorist activities/acts shall be made unless, before forfeiture, the person holding, or in possession of such proceeds is given a notice in writing informing him of the reasons of such forfeiture and such person is given an opportunity of making a representation in writing within such time as may be specified in the notice against the grounds of forfeiture and is also given a reasonable opportunity of being heard in the matter.
- (2) No order of forfeiture shall be made under sub-section
- (1), if such person can establish that he had knowledge of those property representing proceeds of terrorist acts and that he has bought it for appropriate value.

**Section-37: Appeal**

- 1) Any person aggrieved by an order of forfeiture under section 35 may, prefer appeal to the High Court Division within a month from the date of the receipt of such order.
- (2) Where an order under section 35 is modified or annulled by the High Court Division or wherein a prosecution instituted for the contravention of the provisions of this Ordinance, the person against whom an order of forfeiture has been made under section 35 is acquitted, such property shall be returned to him, and if it is not possible for any reason to return the forfeited property, such person shall be paid the price thereof as if the property had been sold to the Government with reasonable interest calculated from the day of seizure of the property and such price shall be determined reasonably.

**Chapter 9****Mutual Legal Assistance****Section -38: Mutual legal assistance;**

- (1) When a terrorist act is committed, abetted, attempted, conspired or financed in such a manner that the territory of foreign state is involved, or the terrorist act is so committed, abetted, attempted, conspired or financed in Bangladesh from another sovereign state or from Bangladesh in another sovereign state, the Government of Bangladesh shall, upon satisfaction, render all such necessary legal assistance in connection with criminal investigation, trial or extradition as may be requested by the Government of that foreign state in respect of the following provisions of this section.
- (2) The terms and conditions of mutual legal assistance to be rendered shall be mutually agreed upon between the requesting and the requested states on the basis of reciprocity through signing of formal agreement or exchange of letters.

- (3) Nothing in this section shall be deemed to authorize to hand over a national of Bangladesh accused for an offence under this Ordinance to a foreign state for trial.
- (4) To meet the objectives of mutual legal assistance under this section a Bangladeshi national may be, subject to his consent, handed over to a foreign state to render assistance as a witness in a relevant criminal prosecution or in the process of investigation.
- (5) Bangladesh being a requested country, may refuse to comply with a request for extradition or mutual legal assistance in a particular case, if the Government has substantial grounds to believe that the request for extradition of any offender or mutual legal assistance with respect to any offence has been made under this section for the purpose of prosecuting or punishing that person only on account of his/her race, religion, nationality, or political opinion.

## **Chapter -10**

### **General Provisions**

#### **Section -39:**

- (1) Offences to be cognizable and non-bail able; All offences under this Ordinance shall be cognizable.
- (2) All offences under this Ordinance shall be non-bail able.

#### **Section-40: Inevitability of prior approval regarding investigation and trial:**

- (1) No police officer shall investigate any offence under this Ordinance without prior approval of District Magistrate
- (2) No Court shall take any offence under this Ordinance into cognizance without Government sanction.

#### **Section-41: Transfer of cases to and from Special Tribunal;**

The Government may, at any stage of trial before closure of evidence, transfer any case or cases involving any offence under this Ordinance from a Court of Sessions to a Special Tribunal or from a Special Tribunal to a Court of Sessions on reasonable grounds.

#### **Section-42: Power to amend the scheduled.**

The Government may, by order notified in the Official Gazette, amend the schedule to this Ordinance.

#### **Section-43: Power to make rules.**

To meet the objectives of this ordinance the Government may, by notification in the official Gazette, make rules.

#### **Section-44: Main Text and its English Version**

The main Text of this Ordinance shall be the Bangla Text, and there will be an authentic English version, provided that if any conflict arises between Bangla ordinance and its English text the Bangla text shall get priority.

#### **Schedule**

(N.B- Section-18)

Serial No.	Name of the Organization	Address of the Organization
Date of the proscription of the Organization	Remarks	

## **ANNEX 4: LIST OF ALL LAWS, REGULATIONS AND OTHER MATERIAL RECEIVED**

See website of Ministry of Law, Justice and Parliamentary Affairs for copies of relevant laws and links to other agencies: <http://bdlaws.gov.bd/>

See Bangladesh Bank website for copies of regulations, circulations and guidelines and links to other regulators: <http://www.bangladesh-bank.org/>

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