



Legal Counsel

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NEWS BULLETIN



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TACKLING ILLICIT FINANCE: THE LEGAL LANDSCAPE OF MONEY LAUNDERING IN BANGLADESH

EDITORIAL

We are glad to embark into the 6th year of publication of the quarterly 'The Legal Counsel News Bulletin' and bring out the twenty-first issue with some interesting legal analysis and information. Your continuing feedback about the Newsletter has tremendously encouraged us over the years and we look forward to your ongoing advice to stay relevant to your needs.

ON A SERIOUS NOTE:

“Why did the money launderers bring a washing machine to the meeting?”

Because they wanted to make sure everything was “clean” before the big reveal!”



As per an estimation of the United Nations Office on Drugs and Crime (UNODC), each year between 2 and 5% of global GDP is laundered, which is between \$800 billion and 2 trillion. Despite having ever-increasing legal mechanisms to curb money laundering, the number of money laundering cases worldwide has increased in the recent past. Launderers cunningly exploit the loopholes and employ sophisticated methods to launder money including the misuse of evolving digital technologies. According to the Basel AML Index, countries such as Haiti, Chad, Myanmar, the Democratic Republic of the Congo, and the Republic of the Congo are ranked among the highest-risk countries for money laundering activities. The United States tops the list of countries with the highest rates of Anti-Money Laundering (AML) events per capita. With more than 11,472 events that is almost 3.5 events for every 100,000 people. The UK is the second worst-offending country, with 1,664 recorded AML events – almost 2.5 events per every 100,000 people. Bangladesh is also hit hard by ever increasing laundering events. There is no accurate and real-time data to reflect the same. According to Global Financial Institute (GFI) – an US-based organization – \$61.6 billion was siphoned out of Bangladesh between 2005 and 2014. In 2015, about \$5.9 billion was laundered. On an average, \$7.53 billion is laundered each year and accordingly from 2016 to 2020, around USD 37.65 billion has been laundered out of the country. It is perceived that the actual amounts will be even much higher. Money illegally taken out has caused unimaginable miseries to the growing economy of Bangladesh.

Money laundering in Bangladesh takes place through various means, including over-invoicing, under-invoicing, and using *hundi* system (transferring money and valuables outside of traditional banking channels system), among other methods.

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In the wake of emerging concerns on money laundering, it is imperative to explore the legal framework of the same and to address the pivotal question of whether money laundered abroad can be brought back to Bangladesh.

The prevailing legislation on money laundering is the Money Laundering Prevention Act, 2012. The Act defines money laundering with a broad scope. Knowingly moving, converting, or transferring proceeds of crime or property involved in an offence for concealing or disguising the illicit nature, source, location, ownership or control of the proceeds of crime, smuggling money or property earned through legal or illegal means to a foreign country are defined as money laundering. Smuggling money or property earned through legal or illegal means to a foreign country or knowingly transferring or remitting the proceeds of crime to a foreign country or remitting or bringing them into Bangladesh from a foreign country with the intention of hiding or disguising its illegal source is also money laundering under the Act. Additionally, when a financial transaction is made in a manner that bypasses the reporting requirements under the Act is said to be money laundering. Acquiring, possessing or using any property, knowing that such property is the proceeds of a predicate offence is also money laundering. The list of predicate offence is quite long and includes, bribery and corruption, forgery, cheating, smuggling of currency, terrorist funding, insider trading and capital market manipulation, criminal intimidation and organized crimes. Further, participating in, associating with, conspiring, attempting or abetting to commit any such offences is also money laundering.

Section 4(2) of the Act states that money laundering or assisting money laundering is punishable by imprisonment for a term of minimum four years to a maximum of twelve years and a fine equal to twice the value of the asset concerned, or BDT 1 million, whichever is the higher. Furthermore, section 4(3) allows the court to order the forfeiture of any assets in connection with money laundering in favour of the state. Section 4 (4) states that any entity which commits an offence shall be punished with a fine of a minimum of twice of the value of the property or BDT 2 million, whichever is higher and in addition the registration of the said entity shall be liable to be cancelled. The 2012 Act illustrates a number of other offences related to money laundering and dictates their applicable punishments.

Money laundering offences are investigated by the Anti-Corruption Commission of Bangladesh (ACC) as per section 9 of the 2012 Act. In addition, the central bank of Bangladesh, namely, the Bangladesh Bank is empowered to restrain and prevent the offences of money laundering through the especially constituted Bangladesh Financial Intelligence Unit ('BFIU').

The Act empowers the government of Bangladesh to enter into contract with any foreign state for and exchange necessary information with the foreign state the purpose of prevention of money laundering. The typical international method for returning laundered money is through mutual legal assistance ('MLA'), a system that allows countries to request and offer help to each other in criminal cases. Bangladesh is a signatory to the United Nations Convention against Corruption (UNCAC), which is a multilateral MLA treaty, including for the purpose of asset recovery. The UNCAC has 140 signatory states as of now, including countries like USA, UK, UAE, Singapore, Switzerland, Malaysia, Canada where most of the money from Bangladesh has been perceived to be laundered. Under the UNCAC, the following forms of requests can be made or received by Bangladesh – a) identifying and locating persons and objects; b) taking evidence and obtaining statements; c) assisting in the availability of person in custody or others to give evidence or assist in investigations or appear as a witness; d) effecting service of judicial documents; e) executing searches and seizures;

f) providing information, documents, records and other evidentiary items; g) taking measures to identify, locate, attach, freeze, restrain, confiscate or forfeit the proceeds and instrumentalities of crime; h) taking measures to retribute the embezzled public funds; i) delivery of property including lending exhibits; j) protecting and preserving computer data; k) examining objects and sites; l) providing information, evidentiary items and expert evaluation. Bangladesh is also a signatory of other relevant international conventions such as United Nations Convention Against Transnational Organized Crime, International Convention for the Suppression of the Financing of Terrorism etc. and a member of Asia/Pacific Group on Money laundering, Egmont Group.

As per StAR Asset Recovery Watch database, a database of the World Bank Group on how many stolen assets are actually returned internationally by States parties under the UNCAC, in over 550 cases, over USD 10 billion in assets have been returned to another country between 1997 and 2023. Among these cases, notably, there were a few cases of Bangladesh in which assets in connection with money laundering were either confiscated and/or returned. In one of the cases, namely the Siemens case, assets worth \$956,387.00 were returned by Singapore in response to a Mutual Legal Assistance (MLA) request made jointly by Bangladesh and the United States of America. Although, there are channels in place for Bangladesh to recover money laundered abroad, the process of doing so is not straight-forward and requires a great deal of investigation and assistance by the country in which money has been laundered to.

“Those who laundered money will not be allowed to have a peaceful sleep. Even if it appears too tough to recover the money, we will keep them on the run, as per the law” – a recent statement by the newly appointed governor of Bangladesh Bank is keeping the hope of the countrymen alive.

CURRENT AFFAIRS



Bangladesh FOREX reserve increases

The Bangladesh Bank announced that the country's foreign exchange reserves have seen an increase and gained stability, attributed to a significant rise in remittance inflows. Currently, the central bank holds \$24 billion in reserves, a testament to the vital contributions of expatriates who continue to send substantial amounts of money to Bangladesh.



Bangladesh Army's Magistracy Powers

On September 17, Bangladesh's interim government via gazette notification granted magisterial powers to the commissioned officers (officers starting from the rank of Second Lieutenant) of the Bangladesh Army for 60 days to improve law and order situation and prevent subversive acts. The notification allows army officials a plethora of powers and responsibilities under various sections of the Code of Criminal Procedure, 1898. Some of the noteworthy ones are:

Sections 64, 105, and 107 grant the authority to arrest, conduct searches and issue warrants during investigations, and maintain peace. Sections 127, 128, 130, 133, and 142 empower officials (in this case, the Bangladesh Army) to tackle illegal assemblies and local disturbances, allowing them to disperse gatherings, employ civilian forces, and use military force if necessary, along with issuing immediate orders to manage public disturbances.

DID YOU KNOW ?



The 'Magna Carta', or 'Great Charter', was signed on June 15, 1215, at Windsor, England. It established the principle that everyone, including the king, is subject to the law. Key clauses addressed rights related to justice, fair trial, and due process. The Magna Carta came about during a time of great turmoil and disorder, making it remarkable that such an important document could be created amid the chaos!

While most of its clauses have been repealed, the Magna Carta laid the groundwork for constitutional law and inspired future documents like the U.S. Constitution and the Universal Declaration of Human Rights.

Today, only four original copies from 1215 exist, held in various institutions: two in Lincoln and Salisbury cathedrals and two in the British Library. The Magna Carta remains as a powerful symbol of liberty and justice.

NEW IMPORTANT LEGISLATIONS (JULY 2024 - SEPTEMBER 2024)

1. The Bangladesh Bank (Amendment) Ordinance, 2024
2. The Bangladesh Trade and Tariff Commission (Amendment) Act, 2024
3. The Payment and Settlement System Act, 2024
4. The National Primary Education Academy Act, 2024
5. The Zilla Parishad (Amendment) Ordinance, 2024
6. The Upazila Parishad (Amendment) Ordinance, 2024
7. The Local Government (City Corporation) (Amendment) Ordinance, 2024
8. The Local Government (Municipalities) (Amendment) Ordinance, 2024
9. The Sheikh Hasina National Youth Development Institute (Amendment) Ordinance, 2024
10. The Bangladesh Energy Regulatory Commission (Amendment) Ordinance, 2024
11. The Special Security Force (Amendment) Ordinance, 2024
12. The Protection of Family Members of the Father of the Nation (Repeal) Ordinance, 2024

LEGAL COUNSEL NEWS



- ✓ Legal Counsel is delighted to share that it has been conferred with the prestigious award of **“Best Foreign Investment & Corporate Law Firm 2024 – Bangladesh”** by APAC Insider as part of the APAC Insider Legal Awards!

APAC Insider awards program recognizes firms that stand out through their innovative practices and contributions to legal excellence. As technology transforms the industry, the awards highlight the importance of responsible tech adoption and the commitment to social justice. The APAC Legal Awards offer a platform for legal professionals to showcase their successes and navigate the evolving marketplace. This award recognizes Legal Counsel's achievement and contribution to the legal industry. We are grateful to our clients for their continuing support and wishes.

- ✓ Legal Counsel conducted a number of training programs during this quarter of the year and wish to conduct some more in the last quarter of 2024. A notable session was on Bangladesh Labour Laws, organized by International Federation of Red Cross & Red Crescent Societies (IFRC) at Dhaka!

PRO-BONO WORKS : PUBLICATIONS AND TV SHOWS (JULY 2024 - SEPTEMBER 2024)

PUBLICATIONS AND INTERVIEWS

- ✓ What can be the punishment for destroying state property? | Barrister Miti Sanjana, Partner Legal Counsel | The Daily Prothom Alo | August 10, 2024; <https://legalcounselbd.com/destroying-state-property/>
- ✓ CEDAW has not been fully implemented even in 40 years | Barrister Miti Sanjana, Partner of Legal Counsel | September 3, 2024; <https://legalcounselbd.com/cedaw/>
- ✓ Our Dower has not been set due to both sides not giving importance to it | Barrister Miti Sanjana, Partner of Legal Counsel | The Daily Prothom Alo | September 18, 2024; <https://legalcounselbd.com/our-dower/>
- ✓ How far is the rule of law established? | Barrister Miti Sanjana, Partner of Legal Counsel | Deutsche Welle (DW) | September 21, 2024; <https://legalcounselbd.com/law-established/>
- ✓ Blackmail | Barrister Miti Sanjana, Partner of Legal Counsel | The Daily Prothom Alo | September 25, 2024; <https://legalcounselbd.com/blackmail/>

TV SHOWS AND INTERVIEWS

- ▶ There is no government policy in the f-commerce sector, the exact number of entrepreneurs is not known | Barrister Miti Sanjana, Partner of Legal Counsel | Ekattor News | September 11, 2024; <https://youtu.be/lyvTAmAFTAs>

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