

## **‘Guidelines for Trust Fund management in payment and settlement services’**

### **1. Introduction**

Bangladesh Bank, under clause 5 of Bangladesh Payment and Settlement Systems Regulations 2014, issues licenses to nonbank entities desirous of providing payment and settlement services in Bangladesh. In the process of facilitating payment and settlement services, these entities hold money that does not belong to them rather belongs to their customers and, or payment participants. A Trust Fund, within the scope of these guidelines, will comprise of any such money that creates a liability of the service providing entity to its customers and, or participants in the process of mutual business arrangement. Hence, these guidelines are aimed at protecting the interest of actual owners of the fund, who have a lawful claim on such fund at any point in time.

### **2. Mandate**

These Guidelines have been issued in exercise of the power conferred by clause 7A (e) of the Bangladesh bank Order 1972, clause 49(1) (Uma) of the Bank Company Act 1991 and clause 13(2) of Bangladesh Payment and Settlement Systems Regulations (BPSSR) 2014.

### **3. Scope**

These guidelines shall be applicable for MFS, PSP, PSO, and any other nonbank entity authorized by Bangladesh Bank to provide payment services that require to hold Trust Fund against the payment obligation created by the entity to its customers and, or participants. The relevant clauses of these guidelines shall also be applicable for scheduled banks that open and maintain Trust Cum Settlement Account for the Trustee.

### **4. Definitions**

**Company** means an entity established under the Companies Act, 1994 which can be liquidated following the same Act.

**Customer** means a person or an organization-

- a) who has a business relationship with a Payment Service Provider or a Payment Systems Operator or a Payment Systems Participant;
- b) for whom a bank or a Payment Service Provider or a Payment Systems Operator or a Payment Systems Participant is assigned to or willing to provide service;
- c) who is interested in conducting transactions using a bank account, a debit or credit card, e-wallet, or any other approved means.

**Electronic Money** means electronically stored monetary value issued against or as an alternative to legal tender money; which can be used as a deposit as well as a mode of payment; and is

accepted by any person including its issuer.

**E-Wallet** is a virtual store/wallet where electronic money is preserved.

**Legal Tender** means the paper notes and coins issued by Bangladesh Bank or by the Government, and that is legally accepted as a means of payment for goods, services, and to repay debt.

**Payment** means the process of transferring the obligation by the payer to a third party acceptable by the receiver. This transfer may be done through fiat money, electronic money, or through Central bank Digital Currency.

**Payment Instrument** is an electronic or paper-based instrument through which the customer provides instruction for transfer of funds to its Payment System Operator or Payment Service Provider or Payment System Participant.

**Payment Services** include deposit & withdrawal of cash, transfer of funds, issuance of payment instruments, issuance of electronic money, and other related services.

**Payment System Operator** means an entity licensed by Bangladesh Bank to operate a payment system for the participants or assist otherwise to ease the payment function of its customers.

**Payment System Participants** are entities who participate or in cases operate a payment and settlement system to exchange, clear and settle funds and government securities for themselves or on behalf of its customers.

**Payment Service Provider** means an entity licensed by Bangladesh Bank to provide electronic money services to its customers and keep the aggregate balance of the issued e-money to a Trust Cum Settlement Account in a scheduled bank.

**Trust cum Settlement Bank** means a scheduled commercial bank that opens trust cum settlement account for the participant of a system to hold funds and to settle transactions between participants in the systems.

**Trust cum Settlement Account** means a custody account where the legal tender shall be stored against the issuance of e-money by a Payment Service Provider, or where the legal tender that received from the service recipient of the payment system operator or any other authorized entity for maintaining such account, and the balance of the account shall not be used for any purpose other than the approved ones.

**Trust Fund**, within the scope of these guidelines, will comprise of any fund held by a payment service participants or any entity authorized by Bangladesh Bank to do so, that creates a liability of the service providing entity to its customers and, or participants.

## **5. Establishment of the Trust Fund**

**5.1** The money received by MFS, PSP, PSO, or any other nonbank entity from its customers and, or participants for issuing e-money/ payment instrument and, or settlement of transactions or sales proceeds or any other fund directed by Bangladesh Bank shall be held in the Trust Fund.

**5.2** The MFS, PSP, PSO, or the nonbank entity that holds the Trust Fund, or any other person or entity authorized by Bangladesh Bank, shall be the Trustee.

**5.3** The customers and, or participants who have lawful payment and settlement claims on the fund shall be the beneficiary of the Trust Fund;

**5.4** Bangladesh Bank shall be the Overseer of the Trust Fund on behalf of the beneficiaries. Without limiting the powers that the Overseer may have in law or otherwise, the powers shall include the following:

- (a) The Overseer may, if requires, enforce the terms of the Trust on behalf of the Beneficiaries.
- (b) The Overseer, if requires, may ask for documents from Bank or Trustee and may conduct offsite/onsite inspection related to the Trust Fund;
- (c) The Overseer may direct Bank or Trustee to amend any part(s) of the Trust Cum Settlement Account Agreement that may be deemed necessary to protect beneficiaries' interests within the scope of the applicable laws;
- (d) The Overseer may remove existing Trustee(s) and appoint a new Trustee(s) to protect beneficiaries' interests; and
- (e) The Overseer may take any other lawful measures to protect beneficiaries' interests.

## **6. Instances of the establishment of Trust Fund**

**6.1** Payment Service Providers (PSPs) are authorized to issue e-money and, or payment instruments in exchange for an equal amount of legal tender. The e-money and, or payment instrument creates a liability of the issuer to the bearer. Hence, the issuer holds the legal tender on trust against its liability arises from the issuance of e-money and, or payment instrument.

**6.2** Payment System Operator (PSO) providing merchant acquiring services holds merchants' sale proceeds on trust for an agreed-upon time before settlement. Therefore, the money reflects a liability of the PSO to its actual owner i.e. the merchants.

**6.3** Any other nonbank entity that facilitates payment and, or settlement services and is required to hold fund of its customers and, or participants on trust in accordance with the approval of Bangladesh Bank.

## **7. Establishment of Trust Cum Settlement Account (TCSA)**

**7.1** The MFS, PSP, PSO, or any other nonbank entity that holds the Trust Fund shall open and maintain, subject to the prior approval of Bangladesh Bank, Trust Cum Settlement Account(s) with the scheduled commercial bank(s) in Bangladesh.

**7.2** The title of the account shall include “Trust Cum Settlement Account (TCSA)”.

**7.3** There shall be a Trust Cum Settlement Account Agreement between the Trust Cum Settlement Bank and the Trustee mentioning operational procedures of the account along with the roles and responsibilities of each party.

**7.4** The Trust Cum Settlement Account Agreement shall empower Bangladesh Bank as the Overseer of the Trust Fund on behalf of the beneficiaries.

**7.5** No Trust Cum Settlement Account to be closed or transferred by either party without prior approval of Bangladesh bank.

## **8. The balance between outstanding liability and the Trust Fund**

**8.1** The Trustee shall ensure that the Trust Fund is greater than or equal to the outstanding liability to its customers and, or participants for issuing e-money/ payment instrument and, or settlement of transactions or sales proceeds.

**8.2** If there is any shortfall in the Trust Fund, the Trustee shall deposit the required amount to correct the mismatch immediately.

**8.3** The Trustee and the Trust Cum Settlement Bank should share information about the outstanding liability of the Trustee and the Trust Fund recurrently to avoid any day end mismatch.

## **9. Investment of Trust Fund**

A certain portion, as instructed and, or approved by Bangladesh Bank from time to time, of the Trust Fund has to be invested in government securities and/or Fixed Deposit Receipt (FDR). In the event of investment:

- (a) The securities/FDR shall be kept lien in favor of the Trust Cum Settlement Bank. Trust Cum Settlement Bank shall act as a custodian of the securities/ FDRs.
- (b) The principal amount of the investment in government securities/ FDRs shall always be credited back to the Trust Cum Settlement Account (TCSA) upon maturity or sale.

## **10. Interest on Trust Fund**

The MFS, PSP, PSO or any other entity authorized to hold Trust Fund shall maintain separate Operational Account linked to Trust Cum Settlement Account(s) for receiving interest and service charges. Any interest earned on the Trust Fund should be applied in the following way and following order of priority:

- a) Shall be used to pay any operating expenses of the Trust Fund including any government and/or bank fees;
- b) Pay expenses of the customer awareness and loyalty programs;
- c) The remaining balance may be paid as operating fees to the Trustee.

## **11. Operation of Trust Cum Settlement Account (TCSA)**

The operation of the Trust Cum Settlement Account(s) shall be subjected to the following conditions:

**11.1** The Trust Cum Settlement Account(s) shall be used for collecting, disbursing, holding, settling and, or investing the Trust Fund received from customers and, or participants in the process of payment and settlement services.

**11.2** No loan is permissible against the Trust Fund. Therefore, the bank shall not issue any deposit certificate/guarantee for taking a loan or using the fund as collateral.

**11.3** The Trust Cum Settlement Account and the Trust Fund cannot be used for /co-mingled with other day-to-day company operations of the Trustee.

**11.4** The Trust Cum Settlement Account shall be maintained in local currency with the scheduled bank(s) in Bangladesh.

**11.5** The Trustee may share the list of customers/merchants/aggregators and, or any other participants in its system with the Trust Cum Settlement Bank for mutual safety and security and update the same from time to time.

**11.6** All parties shall follow AML/CFT related policies and procedures issued by Bangladesh Bank, Bangladesh Financial Intelligence Unit, and other related government agencies.

**11.7** The Bank and Trustee should monitor transaction Caps (if any) for transactions through Trust Cum Settlement Account.

**11.8** The Trustee shall monitor debit/credit entries in the Trust Cum Settlement Account carefully and ensure compliance with relevant rules and regulations.

**11.9** In any circumstances, the Trust Fund shall be kept secured for the beneficiaries from other liabilities of the service provider.

## **12. Disclosure**

The Trust Fund and the outstanding liability of the Trustee to its customers and, or participants should be presented separately in the audited Financial Statement of the Trustee.

## **13. Audit & Oversight**

**13.1** The Trustee shall have an effective internal audit mechanism to monitor its outstanding liability and the Trust Fund.

**13.2** The Trustee must ensure that the financial affairs of the Trust Fund are audited by an external auditor at least once each financial year.

**13.3** The Trustee must provide Bangladesh Bank:

- a) The audited annual report; and
- b) Financial statements and, or reports as prescribed by Bangladesh Bank.

## **14. Penalties for violation of condition**

Bangladesh Bank reserves the right of imposing financial penalties, withholding, suspending and cancelling the approval/NOC, if the activities of a service provider seem to be detrimental to public interest.

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