

**THE UNIVERSITY OF THE WESTERN CAPE**

**FACULTY OF LAW**

**An Assessment of Ghana's Legal and Institutional Anti-Money Laundering  
Framework**



**Research Paper submitted in partial fulfilment of the requirements for the LLM  
degree**

**Nancy Aku ADADE**

**Student Number: 3691266**

**SUPERVISOR**

**Prof Lovell Fernandez**

**Date: 12 January 2017**

DECLARATION

I, **Nancy Aku Adade**, declare that **An Assessment of Ghana’s Legal and Institutional Anti-Money Laundering Framework** is my own work, that it has not been submitted for any degree or examination in any other University, and that all the sources used or quoted have been indicated and acknowledged by complete references.

Signature: .....

Date: .....

Supervisor: Prof Lovell Fernandez



Signature: .....

Date: .....

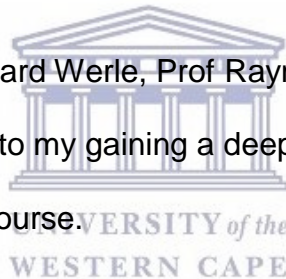
## ACKNOWLEDGEMENT

It is by God's Grace that I have completed this LLM successfully. I would like to acknowledge a few people without whose combined efforts, this research paper wouldn't have been a success.

My sincere gratitude goes to DAAD for the financial support it offered me to study in the University of the Western Cape, Cape Town South Africa and Humboldt-Universität zu Berlin, Germany respectively.

To my lecturer and supervisor, Prof Lovell Fernandez for his guidance and valuable criticism during the writing of this research paper.

To my other lecturers, Prof Gerhard Werle, Prof Raymond Koen and Dr Moritz Vormbaum for their contribution to my gaining a deep understanding in the Transnational Criminal Justice course.



To my sisters Ellen, Justine and Belinda for their encouragement throughout my stay abroad.

God bless you all.

## KEY WORDS

Bank of Ghana

Economic Community of West African States

Financial Action Task Force

Financial Intelligence Centre

Ghana

Inter-Governmental Action Group against Money Laundering in West Africa

Money Laundering

Serious Fraud Office



## TABLE OF CONTENTS

DECLARATION.....	ii
ACKNOWLEDGEMENT.....	iii
KEY WORDS.....	iv
DEDICATION.....	viii
LIST OF ACRONYMS.....	ix
CHAPTER ONE	
INTRODUCTION.....	1
1. General Country History and Economy.....	3
1.2 Theoretical Basis for the Research.....	5
1.3 General Overview of Money Laundering In Ghana.....	7
1.4 Significance of Effective Anti-Money Laundering Laws.....	10
1.5 Methodology.....	11
1.6 Structure of the Study.....	11
CHAPTER TWO	
THE LEGAL HISTORY OF MONEY LAUNDERING, INTERNATIONAL EFFORTS TO COMBAT IT AND UNDERSTANDING THE LAUNDERING PROCESS.....	12
2. Introduction.....	12
2.1 The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (The Vienna Convention).....	13

2.1.2 The United Nations Convention against Transnational Organised Crime and the Protocols Thereto (The Palermo Convention).....	16
2.1.3 United Nations Convention against Corruption (UNCAC).....	18
2.2 Financial Action Task Force (FATF).....	20
2.3 The Basel Committee on Banking Supervision.....	23
2.4 The Egmont Group of Financial Intelligence Units.....	24
2.5 The Wolfsberg Group.....	25
2.6 Definition of Money Laundering.....	25
2.6.1 Placement.....	26
2.6.2 Layering.....	27
2.6.3 Integration.....	28
2.7 Conclusion.....	28



CHAPTER THREE

ASSESSING GHANA'S LEGAL AND INSTITUTIONAL ANTI-MONEY LAUNDERING FRAMEWORK.....29

3. Introduction.....	29
3.1 The Legal Framework on Money Laundering In Ghana.....	29
3.1.2 The Criminalisation of Money Laundering .....	31
3.1.3 Criminal Penalties.....	34
3.1.4 The <i>Mens Rea</i> of Money Laundering.....	35
3.1.5 Confiscation, Freezing and Seizure.....	35
3.1.6 Customer due Diligence and Record-Keeping.....	38
3.1.7 International Co-operation.....	41
3.1.8 Cross-Border Transportation of Currency.....	43

3.2 The Institutional Framework on Money Laundering In Ghana.....	44
3.2.1 The Financial Intelligence Centre (FIC).....	45
3.2.2 Narcotics Control Board (NACOB).....	47
3.2.3 Economic and Organised Crime Office (EOCO).....	48
3.2.4 Ghana Police Service (GPS).....	48
3.2.5 Ministry of Justice and Attorney-General's Office.....	49
3.2.6 Bank of Ghana.....	50
3.2.7 Designated Non-Financial Businesses and Professions (DNFBPS).....	51
3.3 Analysing the Effectiveness of Ghana's Legislative and Institutional Anti-Money Laundering Framework.....	52
3.4 Conclusion.....	53
CHAPTER FOUR	
GENERAL CONCLUSION AND RECOMMENDATIONS.....	55
4. Concluding Comments.....	55
4.1 General Recommendations.....	57
4.1.1 The Need for Training and Capacity Building.....	57
4.1.2 Improving the Address System.....	57
4.1.3 The Need to Regulate the Underground or Informal Remittance System.....	58
4.1.4 The Need for the Supervision of Foreign Exchange (Forex) Bureaux.....	58
4.1.5 The Need to Regulate DNFBPS.....	58
4.1.6 Inclusion of the Informal Sector in the Lawful Financial System.....	59
LIST OF REFERENCES.....	60



## DEDICATION

This research paper is dedicated to the two most important people in my life. My mother, Miss Victoria Amehame for her unceasing prayers, love and encouragement throughout my studies and to my loving husband, Mr. Theophilus RMK Donkor for his insightful contribution towards this research paper and his love, support and patience during my studies.





## LIST OF ACRONYMS

AML	Anti-Money Laundering
AU	African Union
BOG	Bank of Ghana
CDD	Customer Due Diligence
CID	Criminal Investigations Department
DNFBPs	Designated non-Financial Businesses and Professions
ECDD	Enhanced Customer Due Diligence
ECOWAS	Economic Community of West African States
EOCO	Economic and Organised Crime Office
FATF	Financial Action Task Force
FIC	Financial Intelligence Centre (Ghana)
GIABA	Inter-Governmental Action Group against Money Laundering in West Africa
GHC	Ghanaian Cedi
GPS	Ghana Police Service
KYC	Know Your Customer
MLA	Mutual Legal Assistance

ML	Money Laundering
NACOB	Narcotics Control Board
PEP	Politically Exposed Person
RBA	Risk-Based Approach
STRs	Suspicious Transaction Reports
UNCAC	United Nations Convention against Corruption
USD	United States Dollars



## CHAPTER ONE

### INTRODUCTION

The primary aim of an individual who engages in criminal activity, particularly at an organised level, is to make profit. However, criminals are not merely bent on gaining financial profit, but are especially desirous of enjoying the proceeds of the crimes that they perpetrate and reinvesting the illicit proceeds in other criminal schemes.<sup>1</sup> Such reinvestments have to be made carefully, without drawing attention to their criminal provenance. Financial institutions, such as banks, are used to launder the illegally obtained monies.<sup>2</sup> Money laundering and the financing of terrorism are transnational crimes which constitute a great economic, social and political threat to national economies and political stability. The devastating effects of money laundering and the financing of terrorism have activated the international community to develop a comprehensive anti-money laundering legal framework at both the international and regional level. Most countries in the world today have adopted anti-money laundering laws and policies.

In its response to the global fight against money laundering and the financing of terrorism, Ghana, among many other states in West Africa, has enacted anti-money laundering legislation. Ghana is a member of the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA). GIABA is the West Africa Regional Body established in 2000 by the Economic Community of West African States (ECOWAS) in response to the fight against money laundering in the region.<sup>3</sup>

---

<sup>1</sup> Asmal K 'Forward' in Muller, Kälin, Goldsworth (eds) *Anti-Money Laundering International Law and Practice* (2007) xix.

<sup>2</sup> Parkman T *Mastering Anti-Money Laundering And Counter Terrorist Financing* (2012) 2.

<sup>3</sup> GIABA Inter-Governmental Action Group against Money Laundering in West Africa 'About GIABA' available at [http://www.giaba.org/about-giaba/index\\_656.html](http://www.giaba.org/about-giaba/index_656.html) (accessed 4 April 2016).

Ghana enacted the Anti-Money Laundering Act in 2008 and amended it in 2010 to meet international standards. The Act also established the Financial Intelligence Centre (FIC).<sup>4</sup> The FIC is mandated by law to request, receive, analyse, interpret and disseminate financial intelligence in Ghana and abroad.<sup>5</sup> Before 2008, Ghana did not regard money laundering as a crime. Instead it concentrated on combating drug trafficking, internet fraud, smuggling of persons and goods, corruption and tax fraud. The Criminal Offences Act 29 of 1960 is the main law used to punish these crimes, while law enforcement bodies such as the Ghana Police Service, the Serious Fraud Office (now called the Economic and Organised Crime Office), the courts, the Ghana Revenue Authority (GRA), the Narcotics Control Board (NACOB), and the Bureau of National Investigation (BNI) were in place to help combat these economic crimes. Ghana was the hub for drug trafficking and smuggling in West Africa. Criminals used to resort to concealing the drugs in fresh fruit and vegetables such as yam and garden eggs<sup>6</sup>, in wigs for women, and in a variety of artefacts<sup>7</sup>. This was due to the weak and porous country borders and corrupt customs and security officials at the border control posts. Crimes such as drug trafficking, internet fraud, smuggling of persons and goods, corruption and tax fraud are still very prevalent in Ghana due largely to youth unemployment. These criminal activities generate huge sums of money and people who engage in these illegal activities flaunt their ill-gotten money by driving flashy cars, purchasing showy houses and living luxurious lifestyles. The courts are flooded with cases of corruption, drug trafficking, smuggling and other

---

<sup>4</sup> Anti-Money Laundering Act 749 of 2008.

<sup>5</sup> Financial Intelligence Centre available at <http://www.fic.gov.gh/about-us/> (accessed 6 April 2016).

<sup>6</sup> An egg-like looking vegetable with a pleasantly bitter taste common in the temperate and tropical regions used for food and medicinal purposes, also called eggplant.

<sup>7</sup> Gyamfi J A 'Drugs and Drug Control in Ghana' in Kalunta-Crumpton A (ed) *Pan-African Issues in Drugs and Drug Control: An International Perspective* (2016) 40 available at <http://www.books.google.co.za> (accessed 5 April 2016).

predicate offences for money laundering, the incidence of which is increasing, causing economic instability in the country.

No state can fight the convoluted crime of money laundering unless it has an adequate and effective legal and institutional framework to determine and prohibit the trends, mechanisms and methods used by launderers. As these crimes are becoming more organised and complex, they are difficult to detect and make it hard to prosecute perpetrators before the courts. Ghana is presently devoting much attention to the fight against money laundering and terrorist financing<sup>8</sup> and will certainly need to intensify its efforts to come to grips with these crimes. The enactment of the Anti-Money Laundering Act 749 of 2008, which established the FIC, which will, *inter alia*, assist in the identification of the proceeds of unlawful activity and the combating of money laundering activities.<sup>9</sup> The Anti-Money Laundering (Amendment) Act 874 of 2014, the Anti-Money Amendment Regulations 2011( L.I 1987), the Anti-Terrorism Act 762 of 2008, and the Anti-Terrorism (Amendment) Act 875 of 2014 represent a firm resolve on the part of Ghanaian legislature to complement global efforts to fight money laundering and terrorist financing. The legal provisions dealing with the fight against money laundering and the financing of terrorism are scattered over several laws. This paper will look at their adequacy and effectiveness.

## 1. General Country History and Economy

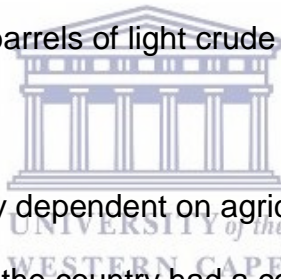
'Ghana' derived its name from the rich ancient Ghana Empire in Western Sudan, which fell in eleventh century. In 1957, the Gold Coast (now Ghana) became the first

---

<sup>8</sup> Bank of Ghana and Financial Intelligent Centre '*Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) Guideline*' (2011) xi.

<sup>9</sup> Section 4 Anti-Money Laundering Act 749 of 2008.

country in sub-Saharan Africa to attain independence from the British colonial rule. It was renamed in honour of the defunct ancient empire because of its wealth and trade in gold and also because the ancestors of the Akan people (modern day Ashanti Region of Ghana) are thought to have migrated to the country.<sup>10</sup> Ghana gained independence on 6 March 1957 and became a Republic on 1 July 1960. After independence the country was plagued by decades of coup d'états until democratic rule was restored in January 1993. Although elections have been marred by tension and few cases of violence, efforts have been made by successive governments to sustain the democracy. Ghana, as at 2010, had a population of 24,658,823.<sup>11</sup> New discoveries of oil and gas in commercially viable quantities were made at the Jubilee Field by Kosmos Energy and Tullow in 2003. These deposits have a reserve capable of generating about 800 million barrels of light crude oil.<sup>12</sup> Other oil discoveries have since been made.



The economy of Ghana is mostly dependent on agriculture, with cocoa as the main crop of export. At independence the country had a considerable financial infrastructure and about \$481 million in foreign reserves. Its gross domestic product (GDP) was about the same as that of South Korea and Malaysia.<sup>13</sup> The first Prime Minister and President of Ghana, Kwame Nkrumah, developed the infrastructure and made vital public investments in the industrial sector. With aid from the United

- 
- <sup>10</sup> GhanaWeb 'Pre-Colonial Period' available at <http://www.ghanaweb.com/GhanaHomePage/history/pre-colonial.php> (accessed 22 August 2016).
- <sup>11</sup> Ghana Statistical Service '2010 Population & Housing Census Summary Report of Final Results' (2012) available at [http://www.statsghana.gov.gh/docfiles/2010phc/Census2010\\_Summary\\_report\\_of\\_final\\_results.pdf](http://www.statsghana.gov.gh/docfiles/2010phc/Census2010_Summary_report_of_final_results.pdf) (accessed 13 April 2016).
- <sup>12</sup> Anan B 'Oil Discovery in Ghana: a blessing or a curse' available at <https://www.theseus.fi/bitstream/handle/10024/39303/thesis%20doc%202.pdf?sequence=1> (accessed 22 August 2016).
- <sup>13</sup> Dovi E 'Ghana's Economy: hope rekindled' available at <http://www.un.org/africarenewal/magazine/august-2010/ghana%E2%80%99s-economy-hope-ekindled> (accessed 22 August 2016).

States, United Kingdom and the World Bank, Ghana constructed the Akosombo Dam in 1966 which, until date, is the major source of hydroelectric power for the country and some neighbouring West African States.<sup>14</sup> Volta Aluminium Company, which is the largest aluminium smelter in Africa and the main source of foreign exchange for Ghana, was also built and it used power generated from the Akosombo Dam. Ghana experienced a high growth rate and low inflation until the mid-1970s, when the economy faced a sharp decline in agricultural output due to covert production and marketing activities.<sup>15</sup> Since then the economy has been facing challenges. The agricultural sector continues to revolve around subsistence farming, which, accounts for 50% of the GDP, with about 85% of the work force consisting mainly of small land owners.<sup>16</sup> Despite the challenges, Ghana remains one of the most the economically stable countries in West Africa.



## 1.2 Theoretical Basis for the Research

Despite Ghana's rapidly growing population, there is still a paucity of infrastructure to support the growing population. After 59 years of independence from Britain, the country continues to have deprived communities and high levels of poverty, inequality, unemployment and underemployment, predominantly among the urban youth. These deprivations are a breeding ground for the commission of economic crimes. Economic criminality, such as corruption and money laundering, is taking its

---

<sup>14</sup> GhanaWeb 'History of Akosombo Dam' available at [http://www.ghanaweb.com/GhanaHomePage/history/akosombo\\_dam.php](http://www.ghanaweb.com/GhanaHomePage/history/akosombo_dam.php) (accessed 22 August 2016).

<sup>15</sup> Mutual Evaluation Report Executive Summary Anti-Money Laundering and Combating the Financing of Terrorism Ghana available at [http://www.giaba.org/media/f/341\\_Ghana%20Executive%20Summary%20-%20Eng-1](http://www.giaba.org/media/f/341_Ghana%20Executive%20Summary%20-%20Eng-1) (accessed 22 August 2016).

<sup>16</sup> Mutual Evaluation Report Executive Summary Anti-Money Laundering and Combating the Financing of Terrorism Ghana available at [http://www.giaba.org/media/f/341\\_Ghana%20Executive%20Summary%20-%20Eng-1](http://www.giaba.org/media/f/341_Ghana%20Executive%20Summary%20-%20Eng-1) (accessed 22 August 2016).

toll on society, rapidly eroding the economic fabric of the country. Although Ghana holds fairly good positions on various indices of corruption and governance when compared to other African Countries, (Transparency International's Corruption Perception Index 2015 ranked Ghana the 7<sup>th</sup> African country with high corruption index with a score of 47 out of 100<sup>17</sup>), corruption is widely prevalent. Sectors such as the police, the customs administration, the judiciary, tax administration, the extraction and natural resources industry, the real estate sector and the public sector are perceived to be vulnerable to corruption.<sup>18</sup>

In August 2015, a corruption scandal hit the Ghanaian judiciary following revelations by an undercover investigative journalist, Anas Aremeyaw Anas. The journalist conducted a two-year investigation into the judiciary of Ghana and produced a video titled 'Ghana in the eyes of God; epic of injustice'. It revealed how bribery and corruption has eaten into the judicial service. In all, 20 judges in the High Courts, Circuit Courts and the District Courts were implicated. Investigations were made and these judges were found guilty and dismissed.<sup>19</sup> Banks, insurance companies, trust companies and other financial institutions are also susceptible to money laundering, because they are easy channels for criminals to hide, transfer money and disguise their ill-gotten wealth. These crimes have a direct and an indirect impact on the economy, society and politics. A major indirect effect of money laundering on Ghana's economy is manifested in the increase in prices of assets and goods.

---

<sup>17</sup> Transparency International *Corruption Perception Index 2015 Ghana* available at <https://www.transparency.org/country/#GHA> (accessed on 13 April 2016).

<sup>18</sup> Transparency International Overview of Corruption in Ghana available at [https://www.transparency.org/files/content/corruptionqas/Country\\_profile\\_Ghana\\_2014.pdf](https://www.transparency.org/files/content/corruptionqas/Country_profile_Ghana_2014.pdf) (accessed on 13 April 2016).

<sup>19</sup> BBC News 'Ghana dismisses judges guilty of bribery charges' available at <http://www.bbc.com/news/world-africa-35037318> (accessed 22 August 2016).



Launderers are willing to pay exorbitant prices on assets, which leads to artificial increases in prices, leaving the average Ghanaian frustrated.

In addition to the above effects of money laundering, Ghana loses billions of tax revenue needed for development every year due to inefficient tax collection. This robs the country of much-needed revenue to grow the economy.<sup>20</sup> In its investigation of some multinational companies in Ghana, a UK-based civil society group ActionAid says Ghana loses Ghc 2.2million due to tax evasion.<sup>21</sup> Owing to the challenges these economic crimes of money laundering and corruption pose, there is a need for an effective and efficient legal regime to prevent and detect the techniques used to commit these crimes. The ability of Ghana to detect and respond to the infiltration of organised crime will depend largely on the strengths of its legal structures.

### 1.3 General Overview of Money Laundering In Ghana

The main areas and activities prone to money laundering activities in Ghana are cash courier businesses and physical trans-border cash movements. As the economy is a mainly cash-based economy, huge sums of money are transported physically across the borders to do business or to invest in the rapidly booming real estate sector. The foreign exchange bureau is poorly regulated and operates largely without a supervising authority. This drawback manifests itself in the existence of 'black markets' around the Kotoka International Airport, bus stations and markets where both old men and young boys change large sums of money for travelers and for foreigners who travel to and from the country.

---

<sup>20</sup> Cornelius Osei Fosu 'Tax Evasion Stifles Ghana's Development' *The Ghanaian Times* 12 December 2014 available at <http://www.ghanaiantimes.com.gh/tax-evasion-stifles-ghanas-development/> (accessed on 13 April 2016).

<sup>21</sup> Dogbevi E 'Ghana loses Ghc 2.2m in revenue from SABMiller tax dodging-ActionAid available at <https://www.ghanabusinessnews.com/2010/11/30/ghana-loses-gh%C2%A22-2m-in-revenue-from-abmiller-tax-dodging-actionaid/> (accessed 22 August 2016).

Ghana's effort in fighting money laundering started before the 1990s when offences such as forgery, drug trafficking, fraud, bribery, corruption, abuse of banking system, smuggling were criminalised. In 1990 Parliament enacted the Narcotic Drugs (Control, Enforcement and Sanctions) Law of 1990 (PNDCL 336) which was the first law to criminalise the use, transfer and possession of funds in connection with illegal narcotics trade. Section 12 of the Act prohibits the laundering of the proceeds deriving from narcotic drug offences wherever committed. It provides as follows:

(1) No person shall use, transfer the possession of, send or deliver to any person or place, transport, transmit, alter, dispose of or otherwise deal with, in any manner, any property or proceeds of any property with intent to conceal or convert that property or those proceeds knowing that all or a part of that property or of those proceeds was obtained or derived directly or indirectly as a result of—

(a) the commission of a narcotic drug offence; or

(b) an act anywhere which, if it had occurred in Ghana, would have constituted a narcotic drug offence.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable on conviction to imprisonment for a term of not less than ten years.<sup>22</sup>

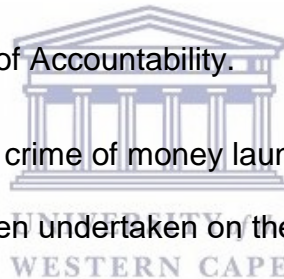
In response to international concerns about the increasing incidence of financial and economic crimes, and gaps in the existing laws of Ghana, the government initiated a comprehensive anti-money laundering legislative programme in 1997. In 2008, the Anti-Money Laundering Act and the Anti-Terrorism Act of 2008 were passed, respectively. In November 2009, the Mutual Evaluation Report adopted by GIABA on Ghana revealed that Ghana was non-compliant with all the sixteen key FATF Recommendations. The country therefore developed strategic action plans to address the deficiencies in the existing AML laws. With the help of GIABA and the FATF, the country amended its AML Act in 2014. In its commitment to fighting

---

<sup>22</sup> Narcotic Drugs (Control, Enforcement and Sanctions) Law of 1990 section 12.

money laundering and terrorist financing, the government established a legislative and institutional anti-money laundering legal framework. There exists presently an anti-money laundering strategy implementation committee whose mandate is to develop the AML/CFT strategy for the country. This committee is made up of the Attorney- General's Department, the Ministry of Finance and Economic Planning, the Bank of Ghana, the National Security Secretariat, the Ghana Police Service, the Narcotics Control Board, Customs, Excise and Preventive Service, the Securities and Exchange Commission and the Ministry of Foreign Affairs.<sup>23</sup>

There are other government institutions as well which implement the anti-money laundering measures. Some of them are the Financial Intelligence Centre, the Commission on Human Rights and Administrative Justice (CHRAJ), the Office of the Auditor-General, and the Office of Accountability.



Very little literature exists on the crime of money laundering in Ghana, and until now no comprehensive study has been undertaken on the efficacy of the country's anti-money laundering legal regime. Of the scant literature on this subject is Kenneth Abudu's thesis on the role commercial banks in Ghana play in dealing with money laundering.<sup>24</sup> The other study is by Thomas Addae Nketsiah who examines also the role of banks in the fight against money laundering and the financing of terrorism.<sup>25</sup>

Both these studies focus mainly on the financial sector. In their article, Ishmael Norman, Blandina Awiah and Fred Binka, compare Ghana's AML/CFT laws and

---

<sup>23</sup> Mutual Evaluation Report Executive Summary Anti-Money Laundering and Combating the Financing of Terrorism Ghana available at [http://www.giaba.org/media/f/341\\_Ghana%20Executive%20Summary%20-%20Eng-1](http://www.giaba.org/media/f/341_Ghana%20Executive%20Summary%20-%20Eng-1) (accessed 22 August 2016).

<sup>24</sup> Abudu K *Examining the Role Commercial Banks Play in Dealing with Money Laundering: A case Study of Access Bank (Ghana) Limited* (Unpublished BSc. Admin thesis, Kwame Nkrumah University of Science and Technology, 2012).

<sup>25</sup> Nketsiah T A *Combating Money Laundering and Financing of Terrorism: the Role of Banks in Ghana* (Unpublished M.A thesis, University of Ghana, 2013).

policies to the international AML/CFT legal framework and conclude that Ghana has too many laws regulating AML/CFT which are difficult to put into effect.<sup>26</sup> There is otherwise no known literature on the effectiveness of Ghana's AML/CFT laws. It is hoped that this study will help to motivate further research aimed at strengthening Ghana's effort to bring money launderers to book.

#### 1.4 Significance of Effective Anti-Money Laundering Laws

Controlling and prosecuting economic crimes is very important to Ghana as a developing country, for it protects the state and its citizens from being used as a channel for the perpetration of such crimes. Ghana also requires a strong AML/CFT regime to be able to integrate into the global financial system. Robust AML/CFT regulations will make it extremely difficult for criminals to profit from their illegal activities. Improving global compliance with AML/CFT standards will benefit the whole international financial body and increase public confidence in the financial institutions while promoting market integration and investments across borders.<sup>27</sup> An effective AML/CFT regime promotes good governance, transparency and the rule of law. Preventive measures such as customer due diligence, the reporting of suspicious transactions, and identification of beneficial asset owners can curb tax evasion and tax fraud. Ghana depends largely on foreign aid and it is advisable to have in place effective and implementable anti-money laundering laws so as to have a good reputation and continue receiving donor funds for development.

---

<sup>26</sup> Norman I D, Awiah B M et al 'Mapping the Laws on anti-money laundering and Combating Financing Terrorism to determine appraisal skills of accountable institutions' (2015) *Issues Business Management and Economics* 87 available at <http://journalissues.org/wp-content/uploads/2015/06/Norman-et-al.pdf> (accessed 22 August 2016).

<sup>27</sup> International Monetary Fund Money Laundering and Financing of Terrorism: a-multi-donor Trust Fund (2000) 7 available at <http://www.imf.org/external/np/otm/2009/anti-money.pdf> (accessed 22 August 2016).

## 1.5 Methodology

This study will be a qualitative study which will be based mainly on primary and secondary sources. The primary sources will include domestic and international legal instruments as well as case law relating to the subject at hand. The primary sources will consist mainly of reports of parliamentary debates, laws, court cases, official reports as well as the leading international instruments for combating money laundering and the financing of terrorism. The secondary sources will comprise books dealing with money laundering, relevant law journal articles, media reports and electronic sources.

## 1.6 Structure of the Study

The rest of the research paper is structured as follows: Chapter Two will give the general history of money laundering and the laws used to counter it and define terms used in the study. It will also consist mainly of the Ghanaian AML/CFT laws, regulatory and enforcement institutions that are aimed at fighting money laundering. Chapter Three will discuss the effect of money laundering in Ghana. It will evaluate the effectiveness of Ghana's AML/CFT laws and whether or not they meet international standards. Chapter Four concludes the research paper with some recommendations.

## CHAPTER TWO

### THE LEGAL HISTORY OF MONEY LAUNDERING, INTERNATIONAL EFFORTS TO COMBAT IT AND UNDERSTANDING THE LAUNDERING PROCESS

#### 2. Introduction

Money laundering was criminalised only recently although the practice dates as far back as the 1930s where Al Capone used launderettes to disguise illegal profits derived from selling contraband alcohol.<sup>28</sup> The term 'money laundering', however, was first used to describe what has become known as the Watergate scandal, which occurred in the early 1970s, when President Richard Nixon was forced out of power for conspiring to cover up the truth about a burglary that occurred at the headquarters of the Democratic National Committee (Watergate complex).<sup>29</sup> The trial of cheque clearances in the Watergate scandal linked the burglars to President Nixon's campaign, the U.S intelligence and justice sectors and to the president himself.<sup>30</sup> However, the first legislation to define and prohibit money laundering as a crime was the Money Laundering Control Act of 1986. This federal legislation was aimed at strengthening the US government's ability to address money laundering.<sup>31</sup> Since then the law has been amended several times.

International regulation of money laundering is a result of the liberalisation of the financial market in the 1990s.<sup>32</sup> This liberalisation attracted both legal and illegal capital. The transnational nature of money laundering requires joint measures for its prevention, detection and eradication. Initiatives aimed at combating this menace

---

<sup>28</sup> Unger B 'Money Laundering regulation: from Al Capone to Al Qaeda' in Unger B, Van der Linde D (eds) *Research Handbook on Money Laundering* (2013) 19.

<sup>29</sup> Madinger J *Money Laundering A Guide for Criminal Investigators* 3ed (2012) 14.

<sup>30</sup> Sharman J.C *The Money Laundering Regulating Criminal Finance in the Global Economy* (2011) 16.

<sup>31</sup> Madinger J (2012) 23.

<sup>32</sup> Unger B (2013) 19.

has been launched at international, regional and national levels. What follows is a brief discussion of some of the initiatives taken at the international level aimed at combating money laundering. These initiatives were led by the United Nations with its adoption of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention), the United Nations Convention against Transnational Organised Crime and the Protocols thereto 2000 (Palermo Convention) and the United Nations Convention against Corruption 2005 (UNCAC). The banking and financial sectoral supervisory bodies such as the Basel Committee, the Egmont Group and the Wolfsberg Group also developed policies to protect the global financial system against money laundering. This chapter explores those provisions related to what should constitute money laundering offence.

## 2.1 The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (The Vienna Convention)

The above-mentioned Convention was adopted in 1988. It entered into force in 1990.<sup>33</sup> Ghana ratified it in November 1990.<sup>34</sup> The purpose of the Vienna Convention was to encourage states parties to include in their domestic legal systems, legislative and administrative measures to address more effectively various aspects of illicit traffic in narcotic drugs and psychotropic substances.<sup>35</sup> The Convention deals with issues such as definition and characterisation of the offence, international co-operation including mutual legal assistance and extradition arrangements,

---

<sup>33</sup> Savona E U, De Feo M A 'International Money Laundering Trends and Prevention/Control Policies' in Savona E U (ed) *Responding to Money Laundering International Perspectives* (1997) 9.

<sup>34</sup> Republic of Ghana Treaty Manual available at <http://legal.un.org/avl/documents/scans/GhanaTreatyManual2009.pdf?teil=II&j> (accessed 6 October 2016).

<sup>35</sup> Article 2(1) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 available at [https://www.unodc.org/pdf/convention\\_1988\\_en.pdf](https://www.unodc.org/pdf/convention_1988_en.pdf) (accessed 30 August 2016).

enforcement mechanisms including depriving criminals of the proceeds from which they derived from their criminal activities. States parties are required to enact laws necessary to establish criminal offences in relation to illicit trafficking.<sup>36</sup> The scope of criminalisation must cover a broad list connected to drug trafficking such as production, cultivation, possession, organisation, management and financing of trafficking operations.<sup>37</sup> The Vienna Convention did not expressly use the term 'money laundering' but in its article 3, it stated that the conversion or transfer of property derived from the established offences for the purpose of concealing the illicit origin of the property amounts to a crime.<sup>38</sup> Article 3 of the Vienna Convention states as follows:

- b) i) The conversion or transfer of property, knowing that such property is derived from any offence or offences established in accordance with subparagraph a) of this paragraph, or from an act of participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions;
- ii) 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 an offence or offences established in accordance with subparagraph a) of this paragraph or from an act of participation in such an offence or offences.<sup>39</sup>

This convention marked the beginning of anti-money laundering policies, the goal of which was to attack criminal activities and defend the transparency of financial and economic systems.<sup>40</sup> For money laundering framework to be applied uniformly

---

<sup>36</sup> Article 3 (1) of the Vienna Convention.

<sup>37</sup> Mugarura N 'The Institutional Framework against Money Laundering and its Underlying Predicate Crimes' *Journal of Financial Regulation and Compliance* 19 iss 2 (2011) 175 available at <http://www.emeraldinsight.com/doi/full/10.1108/13581981111123870> (accessed 27 October 2016).

<sup>38</sup> United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 available at [https://www.unodc.org/pdf/convention\\_1988\\_en.pdf](https://www.unodc.org/pdf/convention_1988_en.pdf) (accessed 30 August 2016).

<sup>39</sup> Article 3 of the Vienna Convention 1988.

<sup>40</sup> Savona E U (ed), De Feo M A (1997) 33.



among states. Article 3 (1) (c) (i) provides that the acquisition, possession or use of property knowing at the time of the receipt, that such property was derived from an offence or offences established in accordance with subparagraph (a) of this paragraph or from an act of participation in such an offence or offences.<sup>41</sup> With regard to extradition, because states parties are obligated to establish article 3(1) offences as offences under their domestic laws, any requirements of dual criminality in a party's extradition should be met.<sup>42</sup> This implies that states that have enacted this law must accept to fully comply with their treaty obligations because of the international law principle of *pacta sunt servanda*. Under this convention, the enforcement mechanism is designed to destroy the financial aspect of drug-trafficking especially the confiscation of proceeds derived from crime. The Convention obligates states parties to confiscate the proceeds derived from the drug-related offences.<sup>43</sup> Depriving criminals of the proceeds made from crime is an effective way to combat drug-related crime and also positive means of administering justice. The Convention creates a framework that weakens the efforts of criminals who move money internationally within the financial system. Proceeds derived from and instrumentalities used in illegal trafficking cannot escape forfeiture simply because their form has been changed or they have been co-mingled with other properties.<sup>44</sup> Article 5 provides a necessary mechanism for international co-operation thus states parties are required to adopt measures which will enable them to identify, trace and freeze or seize property or proceeds located in the requested states, where property was allegedly derived from or used in drug trafficking or and drug

---

<sup>41</sup> Article 3 (1) (c) (i) of the Vienna Convention.

<sup>42</sup> Article 6 (2) of the Vienna Convention.

<sup>43</sup> Article 5 (1) of the Vienna Convention.

<sup>44</sup> Article 5 (6) of the Vienna Convention.

money laundering in violation of laws of requesting state.<sup>45</sup> Article 5 shall not be construed as prejudicing the rights of *bona fide* third parties.<sup>46</sup> Furthermore, they are required to render the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to any of the offences under the Convention.<sup>47</sup> Although assistance may be refused on the basis of faulty form or content,<sup>48</sup> the requested Party cannot refuse assistance on the ground of bank secrecy, since bank secrecy laws favour money launderers.<sup>49</sup> The Convention recognises the essential nature of domestic courts in the fight against money laundering, therefore article 5 (3) empowers the courts of states parties or relevant authorities to order banks and financial institutions make available their records for examination.<sup>50</sup> The Vienna Convention was mainly aimed at confiscating proceeds from drug trade.



### 2.1.2 The United Nations Convention against Transnational Organised Crime and the Protocols Thereto (The Palermo Convention)

The Palermo convention of 2000 has its purpose the promotion of co-operation among states to prevent and combat transnational organised crime more effectively.<sup>51</sup> Ghana ratified this Convention only in August 2012.<sup>52</sup> The Convention contains a number provisions designed to strengthen the fight against transnational organised crime. Countries that ratify it must implement its provisions by internalising

---

<sup>45</sup> Article 5 (4) (b) of the Vienna Convention.

<sup>46</sup> Article 5 (8) of the Vienna Convention.

<sup>47</sup> Article 7 (1) of the Vienna Convention.

<sup>48</sup> Article 7 (15) of the Vienna Convention.

<sup>49</sup> Article 7 (5) of the Vienna Convention.

<sup>50</sup> Article 5 (3) of the Vienna Convention.

<sup>51</sup> Article 1 of Palermo Convention 2000.

<sup>52</sup> Status of ratification of the United Nations Convention against Transnational Organised Crime and the Protocols thereto as at 1 October 2012 available at [https://www.unodc.org/documents/treaties/organized\\_crime/COP6/CTOC\\_COP\\_2012\\_CRP/CTOC\\_CP\\_2012\\_CRP1.pdf](https://www.unodc.org/documents/treaties/organized_crime/COP6/CTOC_COP_2012_CRP/CTOC_CP_2012_CRP1.pdf) (accessed 6 October 2016).

it into domestic law. This Convention obligates states to criminalise money laundering, including all serious predicate offences of money laundering whether committed inside or outside the country. The required intent for this crime must be inferred from objective factual circumstances.<sup>53</sup> States are required also to establish regulatory framework to detect and deter all forms of money laundering, including customer identification, reports of suspicious transactions and record keeping.<sup>54</sup> States are required to authorise both the domestic and international co-operation and exchange of information among administrative, regulatory, law enforcement and other authorities.<sup>55</sup> Parties must also consider the establishment of financial intelligence units (FIUs) to collect, analyse and disseminate information. The Convention applies to the prevention, investigation and prosecution of all offences under the Convention.<sup>56</sup> States parties are obligated to adopt legislative and other measures to criminalise the laundering of the proceeds of crime and not only drug-related offences as contained in the Vienna Convention but also to other serious offences.<sup>57</sup> Article 6 (2) (a) and (b) states as follows:

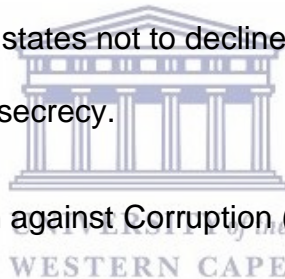
2. For purposes of implementing or applying paragraph 1 of this article:
  - (a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;
  - (b) Each State Party shall include as predicate offences all serious crime as defined in article 2 of this Convention and the offences established in accordance with articles 5, 8 and 23 of this Convention. In the case of States Parties whose legislation sets out a list of specific predicate offences, they shall, at a minimum, include in such list a comprehensive range of offences associated with organized criminal groups;<sup>58</sup>

---

<sup>53</sup> Article 3 (2) of the Palermo Convention.  
<sup>54</sup> Article 7 1 (a) of the Palermo Convention.  
<sup>55</sup> Article 7 1 (b) of the Palermo Convention.  
<sup>56</sup> Article 3 of the Palermo Convention.  
<sup>57</sup> Article 6 of the Palermo Convention.  
<sup>58</sup> Article 6 (2) (a) and (b) of the Palermo Convention.

The Convention obligates countries to institute comprehensive domestic regulatory and supervisory regimes for banks, other financial institutions and bodies that are prone to money laundering in order to deter and detect all forms of money laundering. This regulatory and supervisory regime for banks are required to insist on the requirements for customer identification, record-keeping and the reporting of suspicious transactions.<sup>59</sup> The Convention also criminalises corruption, which is one of the main predicate offences of money laundering.<sup>60</sup> Countries are required to adopt measures to enable them to trace, freeze, confiscate and seize the property and the proceeds of crime.<sup>61</sup> Countries are required, too, to co-operate with each other for the purposes of confiscation and they are obligated, too to afford one another mutual legal assistance in relation to the offences under the Convention.<sup>62</sup>

This Convention also calls upon states not to decline to render mutual legal assistance on the basis of bank secrecy.



### 2.1.3 United Nations Convention against Corruption (UNCAC)

The third United Nations Convention aimed at combating money laundering is the United Nations Convention against Corruption which was adopted in 2003 and entered into force in 2005.

This Convention was ratified by Ghana in December 2007.<sup>63</sup> According to Chaikin and Sharman, 'corruption and money laundering are symbiotic: not only do they tend to co-occur, but ...the presence of one tends to create and reciprocally reinforce the

---

<sup>59</sup> Article 7 of the Palermo Convention.

<sup>60</sup> Article 8 of the Palermo Convention.

<sup>61</sup> Article 12 of the Palermo Convention.

<sup>62</sup> Article 18 of the Palermo Convention.

<sup>63</sup> Good Practices of implementation of UNCAC by States Parties to the United Nations Convention against Corruption available at <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/2-6June2014/V1403544e.pdf> (accessed 6 October 2016).

incidence of the other. Corruption produces enormous profits to be laundered...<sup>64</sup>

Under UNCAC, states are required to institute comprehensive domestic regulatory and supervisory measures for banks and non-bank financial institutions, including natural or legal persons to deter and detect all forms of money laundering.<sup>65</sup>

Countries are encouraged to also take measures to monitor the cross-border movement of money. In order to combat money laundering, countries are encouraged to develop and promote global, regional and bilateral co-operation among the judicial, law enforcement and financial regulatory authorities.<sup>66</sup> Under article 23, states must criminalise money laundering. Persons who convert and transfer property of a crime for the purpose of concealing or disguising its illicit origin and persons who help in the commission of the predicate offence commit the offence of money laundering.<sup>67</sup> Countries must afford mutual legal assistance to one another in investigations, prosecutions and judicial proceedings with regard to the crimes under UNCAC.<sup>68</sup> There must be mutual legal assistance for states to be able to recover stolen property.<sup>69</sup> This is important because stolen assets are returned to the victim state. Under article 52, parties are required to ensure that their financial institutions apply enhanced due diligence on customers and their beneficiaries to detect suspicious transactions for the purpose of reporting to competent authorities.<sup>70</sup> Countries are obliged to set up Financial Intelligence Units (FIUs) which will be responsible for receiving, analysing and disseminating reports of suspicious financial transactions.<sup>71</sup> There have been concerns raised by critics that most

---

<sup>64</sup> Chaikin D, Sharman J C *Corruption and Money Laundering A Symbiotic Relationship* (2009) 1.

<sup>65</sup> Article 14 of UNCAC.

<sup>66</sup> Article 14 (5) of UNCAC.

<sup>67</sup> Article 23 (1) (a) of UNCAC.

<sup>68</sup> Article 46 of UNCAC.

<sup>69</sup> Chapter V of UNCAC.

<sup>70</sup> Article 52 of UNCAC.

<sup>71</sup> Article 58 of UNCAC.

clauses under UNCAC are hortatory rather than obligatory. This raises problems because some parties will adopt the articles that favour them most.

## 2.2 Financial Action Task Force (FATF)

The next, and undoubtedly the most important and significant, breakthrough in the fight against dirty money came in 1989 with the birth of the FATF.<sup>72</sup> In 1989, the Financial Action Task Force (FATF) was established by the G-7 at an economic summit in Paris to develop and assist in the implementation of anti-money laundering laws and practices on an international and national level.<sup>73</sup> The FATF is located at the Organisation for Economic Co-operation and Development and it is independent of this organisation. The FATF is not a treaty based organisation but a task force. The FATF sets comprehensive international standards for processes, procedures, regulation and monitoring of money laundering activities.<sup>74</sup> In 1990, the FATF 40 Recommendations were drawn up as initiative to combat the misuse of financial institutions by persons laundering drug money. The Recommendations were revised in 1996, 2001, 2003 and 2012 to reflect evolving money laundering techniques and to widen the scope beyond drug-money laundering.<sup>75</sup> There have been updates in February 2013, October 2015 and June 2016 respectively.<sup>76</sup> These Recommendations are mandatory. The Recommendations that apply to law enforcement may be grouped under four categories namely, the criminalisation of money laundering, the confiscation and seizure of proceeds derived from money

---

<sup>72</sup> Todd D 'Cleaning up Anti-Money Laundering Strategies: Current FATF Tactics Needlessly Violate International Law' *Houston Journal of International Law* 24(2) (2001) 292.

<sup>73</sup> Turner J E Money Laundering Prevention Deterring, Detecting, and Resolving Financial Fraud (2011) 20.

<sup>74</sup> FATF 'Who we are' available at <http://www.fatf-gafi.org/about/> (accessed 6 October 2016).

<sup>75</sup> FATF

<sup>76</sup> The FATF Recommendations available at <http://www.fatf-fi.org/publications/fatfrecommendations/documents/fatf-recommendations.html#UPDATES> (accessed 6 October 2016).

laundering, suspicious transaction reporting and international co-operation in the investigation, prosecution and extradition of suspects of money laundering crimes. The FATF has succeeded in placing as priority, money laundering on the policy programmes of international financial institutions such as the World Bank, the International Monetary Fund and the European Bank for Reconstruction and Development.<sup>77</sup> The FATF does regular self-assessment exercises and mutual evaluation of countries and besides that, it conducts regular typology exercises in collaboration with its members and other organisations to uncover emerging money laundering techniques and develop strategies to counter them.<sup>78</sup> In 2012, the FATF revised its Recommendations to include the risk-based approach (RBA). Countries are to identify, assess and understand the risk of money laundering that they face and adopt appropriate measures to mitigate the risk.<sup>79</sup> The RBA allows countries to adopt measures to target their resources effectively and apply preventive measures that are commensurate to the nature of the risk, so as to focus their efforts in the most effective way.<sup>80</sup> Financial institutions are required to identify their customers to ensure that the financial institution is not used as a channel for criminal funds. Efforts must be made to determine the true identity of customers requesting the services of the financial institution. Banks are no longer required to hold anonymous accounts or accounts in fictitious names.<sup>81</sup> Where the financial institution suspects that the account holder is a nominee holder, the institution must satisfy itself as to the identity of the person on whose behalf the account is being held. Enhanced due diligence and monitoring is to be made on PEPs since they are prominent figures who could

---

<sup>77</sup> Shams H *Legal globalization Money Laundering Law and Other Cases* (2004) 4.

<sup>78</sup> Mugarura N (2011) 179.

<sup>79</sup> FATF Recommendations (2012).

<sup>80</sup> FATF (2012).

<sup>81</sup> Recommendation 10.

abuse their positions in society. Financial institutions are required to keep records on transactions and customers for a period of 5 years after the business relationship with the customer has ended.<sup>82</sup> This is important because it keeps a paper trail for authorities in the event that they need it for investigation and prosecution against any customer for a criminal activity. Designated non-financial businesses and professions (DNFBPs) such as casinos, real estate agents, dealers in precious metals and stones, lawyers, notaries and accountants are also required to keep records and perform CDD.<sup>83</sup> On the issue of reporting of suspicious transactions, financial institutions and DNFBPs are required to report any suspicious activity to the ML officer who then takes it up to the FIUs. Where a financial institution suspects that funds are connected to criminal activities, it is required to report their suspicions promptly to the authorities. To achieve this, the law must immunise them from civil and criminal liability when these reports are made in good faith.<sup>84</sup>

The FATF was very influential in the development of the 1991 European Union's (EU) Directive against money laundering.<sup>85</sup> The Recommendations have been effective in criminalising the act of money laundering and they have established stricter penalties for the money laundering offence. Countries must ensure they have adopted and implemented laws and practices which are less damaging for the fight against money laundering lest they are blacklisted and face harsh economic sanctions.<sup>86</sup> The FATF is widely recognised as the preeminent force in the fight against money laundering. More than 190 countries, large and small, rich and poor

---

<sup>82</sup> Recommendation 11.

<sup>83</sup> Recommendation 22.

<sup>84</sup> Recommendation 21.

<sup>85</sup> Todd D (2001) 293.

<sup>86</sup> Todd D (2001) 297.



have adopted a standard set of anti-money laundering laws.<sup>87</sup> The FATF collaborates with international stakeholders to identify national vulnerabilities with the aim of protecting the international financial system from misuse. To achieve its goals, the FATF relies on a global network of FATF-Style Regional Bodies (FSRBs) to promote effective implementation of the FATF Recommendations.<sup>88</sup> The West African FATF-style body, of which Ghana is a member, is called the West Africa Money Laundering Group (GIABA) based in Dakar, Senegal.<sup>89</sup>

The FATF Recommendations have been described as “the single most comprehensive, significant and forceful international declaration on money laundering to date”.<sup>90</sup>

### 2.3 Basel Committee on Banking Supervision

The Basel Committee on Banking and Supervision was established in 1974. It comprises of a group of central bankers and bank supervisors with the mandate to formulate broad supervisory standards and guidelines.<sup>91</sup> It is a banking regulator whose recommendations have been widely implemented by member and non-member states. The committee recommends statements of best practices for states to implement through their national legislative systems<sup>92</sup> and it aims at enhancing financial stability by improving supervisory knowhow and the quality of banking

---

<sup>87</sup> Sharman J.C (2011) 1.

<sup>88</sup> FATF available at <http://www.fatf-gafi.org/countries/> (accessed 7 October 2016).

<sup>89</sup> FATF-Style Regional Bodies available at <http://www.apgml.org/fatf-and-fsrb/page.aspx?p=94065425-6aa-479f-8701-5ca5d07ccfe8> (accessed 7 October 2016).

<sup>90</sup> Bassiouni C M, Gualtieri D S ‘International and National Responses to the Globalization of Money Laundering’ in Savona E U (1997) 132.

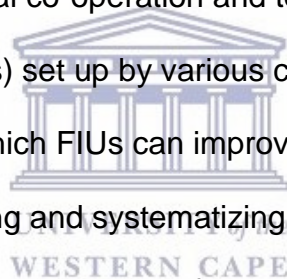
<sup>91</sup> Peihani M ‘Basel Committee on Banking Supervision A Primer on Governance, History and Legitimacy- Part I *Brill Research Perspective in International Banking and Securities Law* vol 1 iss 1 (2016) 1 available at <http://booksandjournals.brillonline.com/content/journals/10.1163/24056936-12340001> (accessed 1 November 2016).

<sup>92</sup> Parkman T *Mastering Anti-Money Laundering and Counter-Terrorist Financing: A Compliance Guide for Practitioners* (2012) 35.

supervision worldwide. In 1997, the Committee issued the Core Principles for Effective Banking Supervision (Core Principles) which are 'used by countries as benchmark for assessing the quality of their supervision systems and for identifying future work to achieve a baseline of sound supervisory practices'.<sup>93</sup> The principles cover areas such as account opening and customer identification, customer due diligence, transparency in payments messages and international co-operation.

#### 2.4 The Egmont Group of Financial Intelligence Units

In June 1995, government agencies and international organisations met at the Egmont (Arenberg Palace) in Brussels, Belgium to discuss the way to confront the global problem of money laundering.<sup>94</sup> This meeting birthed the Egmont Group with the aim of facilitating international co-operation and to support the increasing number of financial intelligent units (FIUs) set up by various countries. The Egmont Group provides the medium through which FIUs can improve their national AML programmes<sup>95</sup> such as expanding and systematizing international co-operation in the reciprocal exchange of financial intelligence information. It also helps increase the effectiveness of FIUs by offering training and personal exchanges in order to improve the expertise and capabilities of FIU Staff.<sup>96</sup> An FIU is eligible to apply to become a member of the Egmont Group if it complies with the criteria of receiving, requesting and analysing and disseminating financial information to competent authorities as appropriate.



---

<sup>93</sup> Consultative Document Core Principles for Effective Banking Supervision (2012) 1 available at <https://www.bis.org/publ/bcbs213.pdf> (accessed 1 November 2016).

<sup>94</sup> Muller W, Kälin C et al *Anti-Money Laundering: International Law and Practice* (2007) 86.

<sup>95</sup> Parkman T (2012) 36.

<sup>96</sup> Benefits of Egmont Group Membership available at <http://www.egmontgroup.org/membership> (accessed 1 November 2016).

## 2.5 The Wolfsberg Group

The Wolfsberg group is an association of 11 banks that derived its name from the Château Wolfsberg where the banks had their first meeting in 2000.<sup>97</sup> Its aim was to address money laundering risks in private banking but it has since expanded to address financial crime risks such as corruption and financing of terrorism within the financial industry. The group drafted the Wolfsberg Anti-Money Laundering Principles for Private Banking which was published in October 2000 and revised in 2002 and 2012. The group has since published papers on areas including correspondent banking, terrorist financing, monitoring, screening and searching, statements on international wire transfer transparency, trade finance principles, anti-corruption guidance and guidance on the risk-based approach.<sup>98</sup>

## 2.6 Definition of Money Laundering

According to Reuter, 'Money laundering is the conversion of criminal incomes into assets that cannot be traced back to the underlying crime'.<sup>99</sup> It is the process of disguising the proceeds of crime to make it appear legal.<sup>100</sup> Money laundering poses a real danger to the economy of a country, especially when the proceeds of crime infiltrate the legitimate economy.<sup>101</sup> Money laundering is closely linked to organised crime, organised criminal syndicate operate like normal businesses and their activities are difficult to detect. The complex process of money laundering involves

---

<sup>97</sup> Aiolfli G, Bauer H P 'The Wolfsberg Group' *Collective Action: Innovative Strategies to Prevent Corruption* (2012) available at <http://www.wolfsberg-principles.com/pdf/home/The-Wolfsberg-Group.pdf> (accessed 1 November 2016).

<sup>98</sup> Parkman T (2012) 36.

<sup>99</sup> Reuter P, Truman E M *Chasing Dirty Money: the Fight against Money Laundering* (2004) 1.

<sup>100</sup> Unger B *The Scale and Impacts of Money Laundering* (2007) 15. ( Edward Elgar Publishing Limited UK)

<sup>101</sup> Dini L 'The Problem and its Diverse Dimensions' in Savona E U (ed) (1997) 3.

placement, layering and integration of illegal proceeds. These phases are explained below.

### 2.6.1 Placement

Placement is the first phase of money laundering where the proceeds of crime are placed into the financial system. One of the aim of the criminal is to remove the cash from the location where it was acquired since large amounts of cash may draw attention to the illegal source. Criminals normally exchange the cash into smaller denominations for larger denominations to deposit. Also, to evade the threshold requirement and to avoid suspicious transaction reporting, criminals use smurfs to deposit the money in different banks.<sup>102</sup> Criminals may further obscure the path of illegal money by shipping it to foreign financial organisations or use the money to buy works of art, aircrafts, boats, jewelries and precious metals.<sup>103</sup>

One of the oldest technique of placement is the smuggling of currency. Bulk currency are shipped across borders hidden in cargos. Criminals also go to the extent of purchasing shipping businesses in order to store cash inside the goods they ship.<sup>104</sup> The cash is smuggled out of the country to another country with weak AML standards and then sent back through bank transfers. This technique has a certain inherent drawback which is, the cash is bulky and difficult to transport without detection.<sup>105</sup>

---

<sup>102</sup> Savona E U, De Feo M A (1997) 23.

<sup>103</sup> Turner J E (2011) 9.

<sup>104</sup> Reuter P, Truman E M 'Chasing Dirty Money the Fight against Money Laundering' (2004)

<sup>105</sup> Unger B 'Implementing Money Laundering' in Masciandro D et al 'Black Finance: The Economics of Crime' (2007)132.

The purchase of traveller's cheques with dirty money is also a placement technique. This method makes it easier for the criminal to move cash across borders because they are issued by reputable companies and there is no reporting requirement.<sup>106</sup>

Also, in gambling and casinos, a launderer can convert dirty money by buying chips at a casino then change it back into cash and obtain a cheque from the casino to show a legitimate transaction then deposit at a bank.

There is the new trend of money launderers moving away from the banking sector to the non-financial sector. Here, there is the use of currency exchange services and wire transfers companies to dispose of criminal proceeds.

### 2.6.2 Layering

The second stage, layering occurs where the illicit proceeds are further separated from their source by creating layers of financial transactions designed to interrupt any trail.<sup>107</sup> The objective here, is to hide the origins, so the more layers that are added to the process, the harder it is to prove the illicit origin of the funds.<sup>108</sup> At this stage, the money may be circulated nationally or internationally to hide its illegal origin. Layers include various financial accounts, high-value items, currency and equipment sales, the purchase of real estate and businesses mainly in the tourism sector.<sup>109</sup> Some law firms even help in setting up shell companies to help layer the transaction. Some methods used in layering include the purchase of tangible assets with cash and converting or reselling them. The identity of the parties to the

---

<sup>106</sup> Unger B (2007) 134.

<sup>107</sup> Savona E U, De Feo M A (1997) 26.

<sup>108</sup> Turner J E (2011) 9.

<sup>109</sup> Turner J E (2011) 9.

transaction may be obscured and the assets may become difficult to locate and confiscate.

### 2.6.3 Integration

Integration is the third and final stage where the money is eventually introduced into the legitimate economy without arousing suspicion. The money is used for economic purposes like the purchase of luxuries of life, real estates or businesses that will generate profits.<sup>110</sup> Integrated proceeds make laundered money appear as normal investments, loans or reinvestment of earnings.

The FATF urges countries to implement effective measures to bring the national systems for combatting ML into compliance with the FATF Recommendations.

### 2.7 Conclusion

The international legal regime has responded to the menace of money laundering with serious standards which must be complied with at both regional and domestic levels. The aim of these Conventions and Recommendations is to detect, suppress and punish money laundering. Criminal organisations are attracted to money laundering hubs, therefore countries with weak regulations are prone to attract these criminals. It is therefore crucial for domestic legislation to criminalise the proceeds of crime within their jurisdiction in order to be in conformity with international efforts to curb money laundering. In order to succeed in the fight against money laundering, countries are to enact and implement effective legislation which meets these international standards.



---

<sup>110</sup> Parkman T *Mastering Anti-Money Laundering and Counter Terrorist Financing* (2012) 5. (Pearson Education Limited UK)

## CHAPTER THREE

### ASSESSING GHANA'S LEGAL AND INSTITUTIONAL ANTI-MONEY LAUNDERING FRAMEWORK

#### 3. Introduction

As part of the mutual evaluation regime, the FATF conducts detailed assessments of the extent to which AML regimes of different countries are effective or not. The basic requirement is that each country must have legislation which criminalises the process of money laundering, permits the seizure and confiscation of criminal assets, and imposes criminal penalties for breaches of the law.<sup>111</sup> A country must have regulations which cover risk assessment, customer identification and due diligence, suspicious transaction reporting, record-keeping, staff training and many more as set out in the FATF Recommendations. There must also be regulators that have powers to ensure compliance with laws and regulations. This chapter focuses on reviewing the legal and institutional framework for combating money laundering in Ghana. Its goal is to evaluate the adequacy of the various legislative and institutional frameworks for tackling the money laundering. The review has two sections. The first section discusses the anti-money laundering legal framework and the second section reviews the institutional framework in place to fight money laundering.

#### 3.1 The Legal Framework on Money Laundering In Ghana

Apart from the Narcotic Drugs (Control, Enforcement and Sanctions) Act of 1990, a number of laws have been passed since the enactment of the AML Act of 2008. A total of 12 Acts have been passed or amended to conform to the AML Act.<sup>112</sup> These are the:

---

<sup>111</sup> Parkman T *Mastering Anti-Money Laundering and Counter-Terrorist Financing: A Compliance Guide for Practitioners* (2012) 39.

<sup>112</sup> GIABA 'National Risk Assessment on Money Laundering and Terrorist Financing of Ghana' (2016)

- Anti-Terrorism Act 762 of 2008
- Economic and Organised Crime Office Act 804 of 2010
- Mutual Legal Assistance Act 807 of 2010
- Anti-Money Laundering Regulations L.I 1987 of 2011
- Anti-Terrorism Regulations L.I 2181 of 2012
- Anti-Terrorism (Amendment) Act 842 of 2012
- Anti-Terrorism (Amendment) Act 875 of 2014
- Economic and Organised Crime Office (Operations) Regulation L.I 2183 of 2012
- Anti-Money Laundering (Amendment) Act 874 of 2014
- Criminal and Other Offences Procedure (Amendment) Act 30 of 1960

The purpose of the Narcotic Drugs Act was to bring under one enactment the offences relating to illicit dealings in narcotic drugs and to prevent drug dealers from profiting from their crimes.<sup>113</sup> The Act criminalises the importation and exportation of narcotic drugs.<sup>114</sup> It prohibits the possession of narcotics and trading in narcotic drugs.<sup>115</sup> The Act prohibits also the laundering of the proceeds from a narcotic drug offence wherever committed.<sup>116</sup> A person who is convicted under any offence under the Act shall have his property or equipment confiscated.<sup>117</sup> The Act provides also for mutual legal assistance to foreign countries.<sup>118</sup> There have been prosecutions under

---

available at [http://www.giaba.org/media/f/1001\\_NRA%20REPORT%202016%20-%20PUBLIC%20VERSION.pdf](http://www.giaba.org/media/f/1001_NRA%20REPORT%202016%20-%20PUBLIC%20VERSION.pdf) (accessed 9 October 2016).

<sup>113</sup> Narcotic Drugs (Control, Enforcement and Sanctions) Act of 1990.

<sup>114</sup> Section 1 of the Narcotic Drugs (Control, Enforcement and Sanctions) Act.

<sup>115</sup> Sections 2 and 3 Narcotic Drugs (Control, Enforcement and Sanctions) Act.

<sup>116</sup> Section 12 Narcotic Drugs (Control, Enforcement and Sanctions) Act.

<sup>117</sup> Section 13 Narcotic Drugs (Control, Enforcement and Sanctions) Act.

<sup>118</sup> Section 42 Narcotic Drugs (Control, Enforcement and Sanctions) Act.



this Act for narcotic possession and exportation of narcotics, but the prosecution of money laundering cases under the Act has proven unsuccessful.<sup>119</sup>

As noted earlier, Ghana made efforts to combat money laundering in 1990, with the enactment of the Narcotic Drugs (Control, Enforcement and Sanctions) Act. But in response to international concerns, the Anti-Money Laundering Act was enacted in 2008 and amended in 2014. It is the primary law for the prevention of money laundering in Ghana. The discussion below will focus on the key components of the Act and other relevant laws.

### 3.1.2 The Criminalisation of Money Laundering

Sections 1 and 2 of the AML act criminalises money laundering in accordance with article 3 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention)<sup>120</sup> and article 5 of the United Nations Convention against Transnational Organised Crime (Palermo Convention).<sup>121</sup> All the listed predicate offences by the FATF have been criminalised by Ghana. The sections state as follows:

1. (1) A person commits an offence of money laundering if the person knows or ought to have known that property is or forms part of the proceeds of unlawful activity and the person
  - (a) converts, conceals, disguises or transfers the property;
  - (b) conceals or disguises the unlawful origin, disposition, movement or ownership of rights with respect to the property; or
  - (c) acquires, uses or takes possession of the property.<sup>122</sup>

---

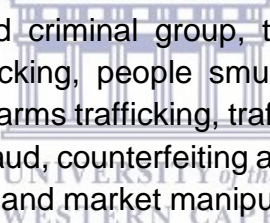
<sup>119</sup> GIABA (2010).

<sup>120</sup> United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) available at [https://www.unodc.org/pdf/convention\\_1988\\_en.pdf](https://www.unodc.org/pdf/convention_1988_en.pdf) (accessed 30 August 2016).

<sup>121</sup> United Nations Convention against Transnational Organised Crime and the Protocols thereto (2000) available at [https://www.unodc.org/documents/middleeastandnorthafrica/organised-rime/UNITED\\_NATIONS\\_CONVENTION\\_AGAINST\\_TRANSNATIONAL\\_ORGANIZED\\_CRIME\\_AND\\_THE\\_PROTOCOLS\\_THERETO.pdf](https://www.unodc.org/documents/middleeastandnorthafrica/organised-rime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERETO.pdf) (accessed 30 August 2016).

<sup>122</sup> Section 1(a) (b) and (C) of AML (amendment) Act of 2014.

Section 1(2) defines unlawful activity as conduct which constitutes a serious offence, financing of terrorism, financing of the proliferation of weapons of mass destruction or other transnational organised crime or contravention of a law regarding any of these matters which occur in Ghana or elsewhere.<sup>123</sup> Offences committed outside Ghana can be tried in Ghana. Ghana has limited the predicate offences to conducts which constitute 'serious offences'. A serious offence is defined in Section 59 as an offence for which the maximum penalty is death or imprisonment for not less than twelve months.<sup>124</sup> A person who aids and abets the commission of the offence of ML also commits an offence of ML.<sup>125</sup> Section 74 of the Economic and Organised Crime Office Act also defines serious offence to include:

- 
- (a) participation in an organised criminal group, terrorism and terrorist financing, money laundering, human trafficking, people smuggling, sexual exploitation, illicit trafficking in narcotic drugs, illicit arms trafficking, trafficking in stolen and other goods, corruption and bribery, serious fraud, counterfeiting and piracy of products, smuggling, extortion, forgery, insider trading and market manipulation,
  - (b) murder, grievous bodily harm, armed robbery or theft where there are predicate offences for a serious offence, and
  - (c) any other similar offence or related prohibited activity punishable with imprisonment for a period of not less than twelve months.<sup>126</sup>

There is nothing in the laws of Ghana which precludes the prosecution of persons who launder the proceeds from their crime.<sup>127</sup> Thus, laundering the proceeds of one's own crime is an offence and can be prosecuted in Ghana. The inchoate offences of attempt and conspiracy are provided for in sections 18 and 23 of the

---

<sup>123</sup> Section 1(2) of the AML Act.

<sup>124</sup> Section 51 of the AML Act.

<sup>125</sup> Section 2 of the AML Act.

<sup>126</sup> Section 74 of the EOCO Act.

<sup>127</sup> Detailed Mutual Evaluation Report on Ghana (2010).

Criminal and Other Offences Act 29 of 1960, respectively. Section 5 of Act 29 states that 'whenever under the provision of any law for the time being in force other than this Code any offence is created, this part shall apply, except in so far as a contrary intention appears, to the offence as it applies to offences under this Code'.<sup>128</sup> This means that a person who attempts or conspires to launder money commits an offence. Under the Narcotic Drugs (Control, Enforcement and Sanctions) Act, attempts and conspiracy are provided for.<sup>129</sup>

Few ML cases have been prosecuted successfully, although there have been some convictions and confiscations of the proceeds of crime.<sup>130</sup> A case in point is *The Republic v Maurice Asola Fadola*.<sup>131</sup> In this case the accused person posed as an American soldier who, whenever he met women at dating sites, promised them gold bars and marriage, persuading them to send him money through Western Union. He succeeded in collecting an amount of £735,000.00 from his victims. He was tried in the High Court in Accra and convicted in 2014 for fraud and money laundering. There is also the case of *The Republic v John Cobbinah & Eugene Amoako Mensah* where Accused Number 2 aided Accused Number 1 in stealing company money amounting to GHC 4,552,582.13. This money was placed in a bank. They were tried and convicted of theft and money laundering. The assets of the accused were confiscated. According to GIABA's National Risk Assessment 2016 Report, since the enactment of the AML Act of 2008, Ghana recorded its first conviction for money

---

<sup>128</sup> Section 5 of the Criminal Offences Act.

<sup>129</sup> Section 56 of Narcotic Drugs (Control, Enforcement and Sanctions) Act.

<sup>130</sup> GIABA Report 2016.

<sup>131</sup> 2014 High Court Accra (Unreported) available at [http://fic.gov.gh/wp-content/uploads/2015/11/2014\\_Annual\\_Report.pdf](http://fic.gov.gh/wp-content/uploads/2015/11/2014_Annual_Report.pdf) (accessed 19 October 2016).

laundering only in 2014. This may be due to lack of skill and experience on the part of financial crime investigators and prosecutors.<sup>132</sup>

### 3.1.3 Criminal Penalties

According to Article 19 (11) of the 1992 Constitution, no person shall be convicted of a criminal offence unless the offence is defined and the penalty for it is prescribed in a written law.<sup>133</sup> Thus, section 3 of the AML Act conforms to the Constitution and provides that a person who contravenes section 1 or 2 commits an offence and is liable on summary conviction to a fine of not less than 5000 penalty units (one penalty unit is GHC 12.00) or to a term of imprisonment of not less than 12 months and not more than 10 years or to both.<sup>134</sup> ML is categorised as second degree felony, which is regarded as a serious offence. In the *Maurice Asola Fadola case*, the accused person was sentenced to a term of five years' imprisonment while in the *John Cobbinah & Eugene Amoako Mensah case*, the first accused was sentenced to the maximum term of 10 years' imprisonment and a fine of GHC100,000.00 (US\$26,315.79). The chief justice has written sentencing guidelines for judges to ensure uniformity in sentencing by judges.<sup>135</sup> However, regulation sectors like the banks, security and insurance firms do not have sanctions in the laws governing them. It is therefore very difficult for these regulators to enforce financial sanctions.<sup>136</sup> They resort to the AML Act which creates offences in relation to the keeping of records and the storage of customer information.<sup>137</sup>

---

<sup>132</sup> GIABA Report 2016.

<sup>133</sup> Article 19(11) of the Constitution of 1992.

<sup>134</sup> Section 3 of the AML Act.

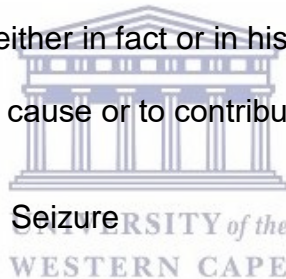
<sup>135</sup> Jafaru M Y 'Guidelines on Sentencing Launched' (2015) available at <http://www.graphic.com.gh/news/general-news/guidelines-on-sentencing-launched.html> (accessed 24 October 2016).

<sup>136</sup> GIABA Report (2016) 40.

<sup>137</sup> Section 18 of AML Act.

### 3.1.4 The *Mens Rea* of Money Laundering

Criminal liability for money laundering in Ghana applies to both natural and legal persons because the Interpretation Act of 1960 defines a person as a body corporate as well as a natural person or individual. Section 39(2) of the AML Act provides that where an offence is committed by a company or a body of persons, the penalty shall be a fine of not more than 1000 penalty units (approximately US\$3,000.00). From the intention of the drafters of the laws, it appears that the mental element can be inferred from the objective factual circumstances. Sections 1 and 2 of the AML Act deal with a 'person who knows or ought to have known' while section 11(1) of the Criminal Offences Act states that 'if a person does an act for the purpose of thereby causing or contributing to cause an event, he intends to cause that event, within the meaning of this Code, although either in fact or in his belief, or both in fact and also in his belief, the act is unlikely to cause or to contribute to cause the event'.



### 3.1.5 Confiscation, Freezing and Seizure

Recommendation 4 of the FATF provides that countries should adopt legislative measures to enable their competent authorities to freeze or seize and confiscate laundered property, proceeds from, or instrumentalities used in or intended for the use in money laundering or predicate offence without prejudicing the rights of *bona fide* third parties.<sup>138</sup> To make sure crime does not pay, the legal framework for confiscation, freezing and seizing of proceeds of crime in Ghana is found in several enactments, including the Anti-Money Laundering Act, the Criminal and Other Offences (procedure) Act, the Anti-Terrorism Act, the Narcotic Drugs (Control,

---

<sup>138</sup> FATF Recommendation 4.

Enforcement and Sanctions) Act and the Economic and Organised Crime Office Act. The EOCO Act contains detailed provisions on how to deal with proceeds of crime.

The AML Act empowers the Financial Intelligence Centre (FIC) to freeze assets and bank accounts to facilitate investigation where necessary.<sup>139</sup> Provisions related to freezing and confiscation under the AML Act are limited, but they are extensive in the EOCO Act. The FIC is responsible for the receipt, analysis and dissemination of suspicious transaction reports (STRs) submitted by financial, non-financial institutions and designated non-financial businesses and professions.<sup>140</sup> In the period between 2013 and 2014, the FIC applied for 42 freezing orders arising from suspicious transaction reports and all were granted.<sup>141</sup>

The Economic and Organised Crime Act of 2010 provides for criminal investigations and prosecutions of serious offences, including where the conduct results in financial or economic loss to the State.<sup>142</sup> It provides also for seizures, confiscation and the freezing of the proceeds of crime.<sup>143</sup> Section 45 of the Act contains a presumption clause which shifts the burden of proof to the person convicted of the offence. It provides that, in determining whether or not a confiscation or pecuniary penalty order should be made, the court shall presume that the property or income which is the subject of an application for confiscation was acquired as a result of a serious offence. The burden of proof that the property or income which is the subject of the application or the declaration of property and income is lawfully acquired property is

---

<sup>139</sup> Section 47 of the AML Act.  
<sup>140</sup> Section 6 of the AML Act.  
<sup>141</sup> GIABA Report (2016).  
<sup>142</sup> Section 3 of EOCO Act.  
<sup>143</sup> Section 22 of EOCO Act.

on the person convicted for the offence in relation to which the application is made.<sup>144</sup>

The Executive Director has the power to apply, within a month of the conviction of the accused person, for a confiscation order against the proceeds of crime or a pecuniary order against a person in respect of the benefit derived from the serious offence.<sup>145</sup> The court also has the power to make an order to confiscate the property or income to the country where it finds that any property or income was deliberately or negligently excluded by the declarant.<sup>146</sup> Where the conviction upon which the confiscation order is quashed, the order still stands.

The Narcotic Drugs (Control, Enforcement and Sanctions) Act also provides for confiscation orders in relation to accused persons who have been convicted of drug offences. The Act also provides for non-conviction based asset recovery. This occurs where a person is not convicted, but the prosecution is able to prove to the court's satisfaction that an offence of drug trafficking has been committed or where a person against whom a forfeiture notice has been issued fails to appear in court. Section 16 also provides that the Attorney-General may apply *ex parte* to a court for an order of forfeiture of illegal properties or all the properties of which that person is a holder where Attorney-General has reason to believe that a person is liable. There is a detailed provision in favour of *bona fide* third party interest.<sup>147</sup>

Confiscation orders have been made in 2015 in the high court case of *Republic v Riera Cascante and Victor Hugo* where an amount of over GHC 2,485,200 (US\$ 654,000) was found in the possession of the accused person, resulting in the

---

<sup>144</sup> Section 45 (1) (2) of EOCO Act.

<sup>145</sup> Section 24 of EOCO Act.

<sup>146</sup> Section 44 (3) of EOCO Act.

<sup>147</sup> Section 18 (4) (5) of the Narcotic Drugs (Control, Enforcement and Sanctions) Act.

forfeiture.<sup>148</sup> In the case of *Republic v John Cobbinah & Eugene Amoako Mensah*, the landed property of the accused person was confiscated, sold and the proceeds given to the victim in the case.<sup>149</sup>

### 3.1.6 Customer due Diligence and Record-Keeping

Financial institutions are vulnerable to money laundering and are required to remain vigilant in executing their duties. Recommendation 10 of the FATF contains an extensive interpretative notes on CDD requirements. The Recommendation prohibits financial institutions from keeping anonymous accounts or accounts in fictitious names. They are required to undertake customer due diligence (CDD) measures when establishing business relations with a customer, when carrying out transactions above the designated threshold of USD/EUR 15,000, where there is a suspicion of money laundering and where the financial institution is in doubt about the authenticity of previously obtained identification documents of the customer. Records of customers such as passports, identity cards, driving licences or other documents obtained through CDD must be kept for up to five years after the business relationship has terminated. The CDD measures should be determined according to the risk-based approach. Where a financial institution is unable to conduct CDD for any reason, the financial institution must not provide the requested services and it must consider making a suspicious transaction report.<sup>150</sup> The laws that regulate CDD and record-keeping in Ghana are the AML Act, the Anti-Money Laundering Regulations of 2011 (L.I 1987) and the Anti-Money Laundering/Combating the Financing of Terrorism Guideline. Under section 6 of the amendment to the AML Act, CDD is not limited only to financial institutions but covers also

---

<sup>148</sup> GIABA Report (2016) 37.

<sup>149</sup> GIABA Report (2016) 37.

<sup>150</sup> Parkman T (2012) 29.



designated non-financial businesses and professions. These institutions shall not establish or maintain anonymous accounts or accounts in fictitious names. An accountable institution shall apply CDD measures as prescribed by the Regulations.<sup>151</sup> An accountable institution shall also keep books and records of their customers and they shall ensure that the records and the underlying information are made available on a timely basis to the FIC and other competent authorities such as the Bank of Ghana, the Ghana Immigration Authority, the Economic and Organised Crime Office, the Narcotics Control Board, the Ghana Police Service and a few other authorities.<sup>152</sup> The books and records are to be kept for a period of not less than five years after the business relationship has ended. The Anti-Money Laundering Regulations and Guidelines address CDD comprehensively. They include rules related to the establishment and verification of the identity of natural and legal persons, record-keeping, and due diligence for both new and existing customers. The guidelines define CDD as the identification and verification of both the client and beneficiary, including but not limited to continuous monitoring of the business relationship with the financial institution.<sup>153</sup> Financial institutions are required to undertake CDD measures when carrying out occasional transactions relating to the designated threshold of GHC 20,000.00 (USD 4962.84) and above where there is a suspicion of money laundering, regardless of any exemptions or any thresholds and where there are doubts as to the veracity or adequacy of previously obtained customer identification data.<sup>154</sup> To enhance effective CDD/KYC, institutions are to seek the identity and verify the identity of the customer or the beneficial owner. In so

---

<sup>151</sup> Section 23 (1) of AML Act.

<sup>152</sup> Section 24 of AML Act.

<sup>153</sup> Guideline 1.3 of the Bank of Ghana Anti-money Laundering/Combating the Financing of Terrorism Guidelines (2011).

<sup>154</sup> Guideline 1.4.

doing, the name, address, source of funds, account purpose etc. must be obtained, but Ghana has a very poor residential address register, except in a few rich residential areas in the major cities. Regulation 14 of the AML Regulation of 2011 therefore states *inter alia* that an accountable institution shall obtain from the client the location including important landmarks close to the client's residence.<sup>155</sup> This makes it difficult for banks and other institutions to verify the residential and business locations of their customers.<sup>156</sup> The guideline details the CDD procedures and also requires financial institutions to perform enhanced customer due diligence (ECDD) for higher risk categories of customers, business relationships and transactions involving non-resident customers, private banking customers, legal persons and legal arrangement such as trusts that are personal-assets-holding vehicles, politically exposed persons, cross-border banking and business relationships and companies that have nominee-shareholders or shares in bearer form.<sup>157</sup> As financial institutions are required to take measures to determine whether a customer or beneficial owner is a PEP, the guidelines state that financial institutions should put in place appropriate risk management systems to determine whether a potential customer or an existing customer or the beneficial-owner is a PEP. On the issue of internal controls, financial institutions are required to implement programmes against money laundering as per Recommendation 18 of the FATF, therefore, the Bank of Ghana guidelines on AML provide that financial institutions are required to establish and maintain internal procedures, controls and policies to prevent money laundering. The internal procedures should cover CDD measures, record retention, the detection of unusual and suspicious transactions and the recording obligations.

---

<sup>155</sup> Regulation 14 of AML Regulations.

<sup>156</sup> GIABA Report (2016) 7.

<sup>157</sup> Guideline 1.6.

### 3.1.7 International Co-operation

As indicated in the previous chapter, Ghana has ratified and is a party to the Vienna and Palermo Conventions, the UNCAC and the Terrorist Financing Convention in accordance with Recommendation 36 of the FATF. Recommendation 37 of the FATF provides that countries should rapidly, constructively and effectively provide for the widest possible range of mutual legal assistance in relation to money laundering, associated predicate offences and terrorist financing investigations, prosecutions and related proceedings. Countries are also required to have an adequate legal basis for providing mutual legal assistance, either by virtue of being party to treaties, mutual agreements, or other mechanisms to enhance co-operation.<sup>158</sup>

The legal framework governing mutual legal assistance can be found first of all in Article 73 of the 1992 Constitution which states that the government of Ghana shall conduct its international affairs in consonance with the accepted principles of public international law and diplomacy in a manner consistent with the national interest of Ghana.<sup>159</sup> It can also be found in the Transfer of Convicted Persons Act 743 of 2007 which provides for the transfer of convicted persons from the Ghana to another country and *vice versa* for the purposes of serving a prison term. The Narcotic Drugs (Control, Enforcement and Sanctions) Act of 1990 (PNDCL 236) also requires the authorities to provide assistance to foreign countries in relation to any drug-related matter.<sup>160</sup> The Extradition Act 22 of 1960 provides for the extradition of persons accused or convicted of criminal offences committed within the jurisdiction of other countries. The Anti-Money Laundering Act of 2008, as amended, makes money laundering an extraditable offence which is governed by the Extradition Act. Finally,

---

<sup>158</sup> Recommendation 37.

<sup>159</sup> Article 73 of the Constitution.

<sup>160</sup> Part VI of the Narcotic Drugs (Control, Enforcement and Sanctions) Act.

thorough international co-operation provisions are provided for by the Mutual Legal Assistance Act of 2010 (Act 807).

Under the Mutual Legal Assistance Act, the central authority entrusted with the responsibility to make and receive requests for assistance, execute or arrange for the execution of requests etc. is the ministry of justice of the Republic.<sup>161</sup> The Act makes money laundering an extraditable offence in accordance with the Extradition Act.<sup>162</sup> A person who commits an extraditable offence under the Act and who is present in Ghana, including Ghanaian citizens, can be extradited. According to the 2016 national risk assessment report of the GIABA, Ghana has received hundreds of international legal assistance requests from countries all around the world these are attended to promptly.<sup>163</sup> The MLA Act applies to member states of the Commonwealth, ECOWAS, the AU, UNCAC and the African Union Convention on Preventing and Combating Corruption, although mutual legal assistance is based on arrangement between Ghana and the requesting state.<sup>164</sup> The EOCO, through the international cooperation unit, usually spearheads most ML investigations by sending MLA requests. Requests sent to Ghana are sent also either to the EOCO, the Economic Crime Unit of the Criminal Investigations Department (CID) or the Narcotics Control Board (NACOB) for investigations. In 2013, the EOCO assisted the Crown Prosecution Service of the UK to seize and confiscate properties in Ghana and it remitted funds frozen in the accounts of the accused to British authorities.<sup>165</sup> Interpol has been working with the Ghana Police Service by sharing information with

---

<sup>161</sup> Section 6 of the Mutual Legal Assistant Act.

<sup>162</sup> Section 45 of AML Act.

<sup>163</sup> GIABA Report (2016) 39.

<sup>164</sup> Schedule to Mutual Legal Assistance Act.

<sup>165</sup> GIABA Report (2016) 40.

other institutions in combating international crimes.<sup>166</sup> The FIC executed memoranda of understanding with four countries in 2015, namely, Australia, Belgium, Kosovo and Panama.<sup>167</sup>

### 3.1.8 Cross-Border Transportation of Currency

Ghana has one international airport and shares borders with three countries, namely, Ivory Coast to the west, Burkina Faso to the north and Togo to the east. There are about seven points of entry to Ghana and only three are recognised as main points of entry, namely, Elubo, Paga and Aflao.<sup>168</sup> People who cross these borders are required to declare any currency exceeding the threshold requirement. The legal framework that governs the cross border transportation of currency or bearer negotiable instruments is the AML Act and the Foreign Exchange Act 723 of 2006. The Foreign Exchange Act prohibits the importing and exporting of currency unless it is in accordance with Bank of Ghana (BOG) Regulations.<sup>169</sup> Recommendation 32 of the FATF requires that persons transporting physical cash and bearer negotiable instruments exceeding the threshold of USD/EUR 15,000 across a border to submit truthful declaration to a designated competent authority. A person who intends to transport to or from the country a currency in excess of USD 10,000 must declare the particulars of the currency to the BOG or its authorised agent.<sup>170</sup> Section IV of the operational guidelines to the BOG Foreign Exchange Act requires all travelers arriving in Ghana and who intend to convey all or part of their foreign currency at a later date to fill the foreign exchange declaration form.<sup>171</sup> These declared currencies

---

<sup>166</sup> GIABA Report (2016) 40.

<sup>167</sup> FIC Annual Report (2015) 58.

<sup>168</sup> Border Crossings to/from Ghana available at <http://easytrackghana.com/travel-information-ghana-border-crossings.php> (accessed 30 October 2016).

<sup>169</sup> Section 18 of the Foreign Exchange Act.

<sup>170</sup> Section 33 (1) of AML Act.

<sup>171</sup> BOG Operational Guidelines Notice No. BG/GOV/SEC/2007/3 and BG/GOV/SEC/2007/4.

are to be checked and endorsed by officials of the Customs Excise and Preventive Service. Failure to declare currency or upon false declaration of currency, the currency is subject to seizure. The 2009 mutual evaluation report on Ghana by GIABA revealed enormous amounts of money seized at Kotoka International Airport and Aflao border between 2007 and 2009. On 30 October 2008, an amount of USD 120,000.00 in excess of allowable limit was seized for failure to declare on arrival. In the December 2008, an amount of USD 70,000.00 was found concealed on the person of a passenger and was seized for failure to declare it on arrival. A total USD 349, 600.00, which was concealed on body of passenger at Aflao border, was seized.<sup>172</sup> The report states that there are no structured systems in place for reporting cross-border transactions, so the various institutions such as the Ghana Immigration Service, the Ghana Police Service, the Narcotics Control Board, and the Bureau of National Investigation, report to their headquarters on a monthly basis.<sup>173</sup>



### 3.2 The Institutional Framework on Money Laundering In Ghana

Recommendation 30 of the FATF requires countries to ensure that designated law enforcement authorities have the responsibility for money laundering investigations. Countries are also to ensure that when these authorities are conducting investigations, they use a wide range of investigative techniques such as undercover operations, intercepting communications, accessing computer systems and controlled deliveries which are suitable for investigating money laundering and associated predicate offences. The AML Act has designated some institutions to implement money laundering laws. However, the law enforcement authorities and prosecutorial authorities are in need of adequate financial, human and technical

---

<sup>172</sup> GIABA Report (2009) 84.

<sup>173</sup> GIABA Report (2009) 83.

resources.<sup>174</sup> Ghana is short of such resources, which makes investigations almost impossible. For instance, according to the 2015 annual report of the FIC, some insurance companies do not have the appropriate AML software to conduct KYC/CDD processes and other important AML transactions.<sup>175</sup> These relevant institutions implementing anti-money laundering measures in Ghana include the FIC, the Narcotics Control Board (NACOB), the Economic and Organised Crime Office (EOCO), the Ghana Police Service (GPS), the Ministry of Justice, the Attorney-General, the Customs Excise and Preventive Service, the Bank of Ghana (BOG), the National Insurance Commission, financial institutions and DNFBPs.

### 3.2.1 The Financial Intelligence Centre (FIC)

The fulcrum of every AML regime is a central authority with the mandate to receive, analyse and disseminate financial intelligence to the appropriate authorities under the law. Section 4 of the AML Act establishes the FIC. It is responsible for the receipt, analysis and dissemination of suspicious transaction reports. The centre also has to inform, advise and co-operate with investigating authorities, supervisory bodies, the revenue agencies, the intelligence agencies and foreign counterparts.<sup>176</sup> It is administrative in nature, and does not have investigative powers, but provides only intelligence to investigating authorities. The FIC is a member of the EGMONT Group which is made up financial intelligent units worldwide, the aim of which is to exchange information to fight money laundering and terrorist financing. In accordance with Recommendation 20 of the FATF and section 30 (1) of the AML Act on suspicious transaction reports, the FIC has received 1619 STRs from banks, savings and loans companies, law enforcement agencies, insurance companies and

---

<sup>174</sup> Interpretative notes to Recommendation 30.

<sup>175</sup> FIC Annual Report (2015) 33.

<sup>176</sup> Section 6 of the AML Act.

it disseminated 733 between 2009 and 2015.<sup>177</sup> In 2009 it received 1 STR while in 2015, it received 365 STRs, which shows that there has been an increase in the number of STRs since the enactment of the AML Act. The FIC's annual reports since 2011 show that most of the STRs came from banks, all in relation to cyber-crime. Since the FIC started functioning, there has not been a single report filed by a designated non-financial businesses or profession such as lawyers, real estate agents, trust and company service providers and casinos. This could either be ignorance or unwillingness on their part to flag suspicious transactions. When the FIC receives STRs, it analyses them to ascertain if a *prima facie* case could be established. If the suspicion merits further attention, the case is then forwarded to the appropriate law enforcement agency to prosecute. Under sections 28 and 29 of the AML Act, the FIC has the mandate to obtain information directly or indirectly from reporting entities, supervisory bodies and public agencies. It is required to work with law enforcement agencies, the Attorney-General's department and other governmental and private bodies. In consonance with its mandate, officers of the public agencies are required to co-operate with the FIC in the performance of its functions. An officer of the public who fails without just cause to co-operate with the FIC to perform its functions commits an offence and is liable on summary conviction to a fine of not more than 50 penalty units or to a term of imprisonment of not more than three months or both.<sup>178</sup> Since the FIC has been in operation, there has been low incidence of prosecution and conviction due to poor investigations or non-investigation of cases.<sup>179</sup> The FIC has its own challenges which prevent it from fully performing its functions under the AML Act to combat money laundering. Contrary to

---

<sup>177</sup> FIC Annual Report (2015) 7.

<sup>178</sup> Section 49 (1) and (2) of the AMLA.

<sup>179</sup> GIABA Report (2016) 27.



interpretative note 10 to Recommendation 29 of the FATF which requires FIUs to have adequate financial, human and technical resources to effectively execute their duty,<sup>180</sup> the Ghana FIC suffers from operational challenges such as constrained financial resources as its budget is allocated after much delay by the Ministry of Finance. This makes it difficult for the centre to undertake planned projects. Then it has very limited office space and consequently cannot employ enough staff. Furthermore the FIC also lacks enhanced software to analyse the huge numbers of reports filed with it.<sup>181</sup>

### 3.2.2 Narcotics Control Board (NACOB)

The Narcotic Drugs (Control, Enforcement and Sanctions) Act of 1990 established NACOB. Its mandate is to prosecute money laundering offences related to illicit traffic in narcotic drugs and psychotropic substances. NACOB works with Ghana post, DHL, Federal Express and the Ghana immigration service to intercept parcels containing narcotics. NACOB has officials at Kotoka International Airport who arrest people carrying drugs and seize the drugs. Between January and June 2009, 30 passengers were arrested and 62 kilograms of cocaine were seized. The courts convicted 13 individuals in 2009 based on the arrests made by NACOB.<sup>182</sup> In these cases, the accused were not charged with money laundering, probably due to the fact that investigators and prosecutors do not know how to deal with the crime of money laundering.

---

<sup>180</sup> Interpretative note 10 to Recommendation 29.

<sup>181</sup> FIC Annual Report (2015) 76.

<sup>182</sup> International Narcotics Control Report vol 1 (2010) 299.

### 3.2.3 Economic and Organised Crime Office (EOCO)

The Economic and Organised Crime Act of 2010 established EOCO. It is a specialised agency created to monitor and investigate economic and organised crimes. It may also prosecute offences to recover the proceeds of crime upon the authority of the Attorney-General. The objects of the office are to prevent and detect organised crime and to facilitate generally the confiscation of the proceeds of crime.<sup>183</sup> In accordance with its investigative powers, in 2015, EOCO investigated 186 cases, and it is currently prosecuting 46 of them, and has recovered \$2,419,443.72 for the state.<sup>184</sup>

### 3.2.4 Ghana Police Service (GPS)

Article 200 of the 1992 Constitution provided for a police service of Ghana<sup>185</sup> and the Police Service Act 350 of 1970 established the Ghana police service. The function of the police is to investigate crime and to arrest suspects.<sup>186</sup> Officers of the police service have the powers of search and seizure. The Ghana police service has created units such as fraud and human trafficking units which investigate specific crimes such as money laundering offences. The police have a prosecution department which prosecutes money laundering cases on behalf of the Attorney-General in the lower courts. The FIC occasionally organises training sessions in financial crime investigation for senior police officers. The police service exchanges information with other countries and helps in the extradition and deportation of persons based on intelligence received from the Attorney-General's department,

---

<sup>183</sup> Section 2 of the EOCO Act.

<sup>184</sup> EOCO recovers over \$2.4m for Ghana in 2015 available at <http://www.myjoyonline.com/business/2016/march-20th/eoco-recovers-over-gh24m-for-ghana-in-2015.php> (accessed 28 October 2016).

<sup>185</sup> Article 200 (1) of the Constitution.

<sup>186</sup> Section 1(1) of the Police Service Act.

Interpol and other sources. According to the 2009 mutual evaluation report, there is a huge capacity gap and lack of understanding on AML investigation within the police service and only 20 police personnel have been trained in AML issues.<sup>187</sup> A number of police engage in unprofessional practices such as corruption, which has dented the image of the police in Ghana. Surveys undertaken by Transparency International, the Centre for Democratic Development, the Institute of Economic Affairs and Ghana Integrity Initiative have rated the police as the second most corrupt institution in Ghana.<sup>188</sup> This affects the integrity and prosecution of money laundering cases in Ghana.

### 3.2.5 Ministry of Justice and Attorney-General's Office

The Ministry of Justice and Attorney-General's office derives its powers from article 88 of the 1992 Constitution. The Attorney-General is the head of the Ministry of Justice and the principal legal adviser to the government. The Attorney-General is responsible for the initiation of all criminal matters in Ghana. Because of the complex nature of money laundering, prosecutors in Ghana refrain from charging people with money laundering, hence the limited number of money laundering cases tried in Ghana. In order to prosecute financial crimes, especially money laundering, prosecutors need to be trained. Only a few attorneys at the Attorney-General's office have received specialised training in investigation and prosecution of financial crime, including money laundering cases.<sup>189</sup> This training was organised by the Overseas Technical Assistance (Department of Treasury) of USA. The Attorney-General relies heavily on police prosecutors, who only have basic training in prosecuting money

---

<sup>187</sup> GIABA Report (2009) 78.

<sup>188</sup> GIABA Report (2016) 30.

<sup>189</sup> GIABA Report (2016) 32.

laundering cases, to prosecute financial crime cases because of the lack of enough state attorneys (public prosecutors).

### 3.2.6 Bank of Ghana

The banking sector is one of the main sectors vulnerable to ML due to its domestic and international role in financial transactions. The bank of Ghana (BOG) is the main body that supervises and oversees the activities of all banks and non-banking financial businesses. The regulatory and legal framework with which these institutions operate in Ghana are the Bank of Ghana Act 612 of 2002, the Banking Act 673 of 2004, Non-Bank Financial Institutions Act 774 of 2008, the Companies Act 179 of 1963 and the Bank of Ghana Notices/Directives/Circulars and Regulations. The key function of BOG is to regulate, supervise and direct the banking and credit systems to ensure the smooth operation of safe and sound banking in Ghana.<sup>190</sup> There are adequate AML measures in the sector to mitigate the risk of ML in Ghana. As part of the global effort to minimize the scourge of ML, the BOG and the FIC have designed guidelines to assist licensed banks and non-bank financial institutions implement their AML compliance programmes. The guideline contains rules for banks to identify high-risk customers such as PEPs. Banks are also required to carry out CDD to identify the ultimate beneficial owners of transactions and other relationships. The BOG conducts supervisory site visits to institutions, especially the foreign exchange bureaux which are also required to submit audited financial statements to the bank. The BOG has the power to impose administrative sanctions against any bank that does not comply with the AML regulations.<sup>191</sup> The challenge BOG is facing is regulating the black market and the

---

<sup>190</sup> Bank of Ghana Regulatory Framework available at <https://www.bog.gov.gh/supervision-a-regulation/regulatory-framework> (accessed 31 October 2016).

<sup>191</sup> Section 39 (4) of AML Act.

underground remittance system (hawala). These sectors are informal and unregulated. Exchange of both local and foreign currencies is done underground with no documentation and this system is highly used by people from both the formal and informal sectors because transactions within this system are relatively faster compared to the legal institutions.<sup>192</sup> Because of the nature of black market operations, they remain unidentified thus making BOG visits and inspection impossible. This sector is highly vulnerable to ML.

### 3.2.7 Designated Non-Financial Businesses and Professions (DNFBPS)

DNFBPs refer to casinos, real estate agents, dealers in precious metals and dealers in precious stones, lawyers, notaries, accountants, and trust and company service providers.<sup>193</sup> They have been described in the first schedule of the AML Act as accountable institutions. According to the estimates of the statistical service of Ghana, DNFBPs contribute about 30% to the gross domestic product of Ghana and they employ about 25% of the population and contribute considerably to the tax revenue of Ghana.<sup>194</sup> FATF Recommendation requires DNFBPs to conduct CDD and keep records of their clients when they engage in any cash transaction equal to or above the applicable designated threshold. Although each DNFBP in Ghana has laws that regulate them, they are vulnerable to ML because they lack specific AML regulations, effective supervision and monitoring. Accountants, for example, are regulated by the Chartered Accountants Act of 1963 (Act 170) while lawyers are regulated by the Legal Profession Act of 1960 (Act 32). None of these Acts contains provisions that require these professions to comply with AML measures. Most of the

---

<sup>192</sup> GIABA Report (2016) 55.

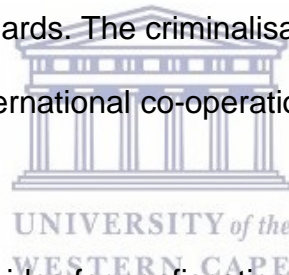
<sup>193</sup> Recommendation 22.

<sup>194</sup> GIABA Report (2016) 56.

transactions are concealed by members of these professions and no CDD is done. This explains why from the inception of the FIC, no DNFBP has filed an STR with regards to their activities. The 2016 national risk assessment report rates DNFBPs 84 per cent vulnerable to ML, which is extremely high.<sup>195</sup>

### 3.3 Analysing the Effectiveness of Ghana's Legislative and Institutional Anti-Money Laundering Framework

Ghana's AML framework appears to be comprehensive and deals with the emerging trends in money laundering. The effectiveness of Ghana's legislative and institutional AML framework can be measured in various ways. One of the ways to measure its effectiveness can be seen in the amendment of the anti-money laundering laws in 2012 to meet international standards. The criminalisation of ML, and the provision for mutual legal assistance, and international co-operation, among others, are some of the strengths of the AML Act.



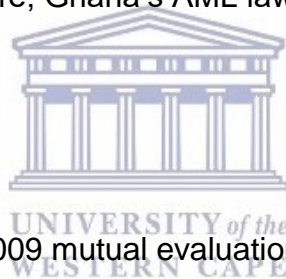
In addition, the AML regime provides for confiscation, freezing and seizure of proceeds of crime to make sure that criminals do not benefit from their crimes. There is also provision for STR, receipt, analysis and dissemination by the FIC. However, these comprehensive laws on paper have its own challenges when it comes to their implementation due to the lack of adequate knowledge on the part of the appropriate authorities, especially in the areas of crime investigation and criminal prosecution. Financial crime investigation is relatively new to the criminal justice system of Ghana. Thus most investigators lack the requisite skill, knowledge, resources and experience to make the investigations effective. An example is the area of tracing, identification, detection, seizure and confiscation of proceeds and instrumentalities.

---

<sup>195</sup> GIABA Report (2016) 57.

There is no specialised financial crime investigators who are well trained in asset forfeiture in Ghana.<sup>196</sup> Above all, the country has no established office for asset management. The laws governing the banking sector, insurance firms and securities firms do not have sanctions in their provisions, regulations and guidelines, consequently regulators and supervisors of these sectors find it extremely difficult to enforce financial sanctions.<sup>197</sup>

It is submitted that, despite these challenges, Ghana is making efforts to conform to international standards. Legislation, implementation and enforcement are expensive exercises. However, given the seriousness with which the Legislature has sought to combat money laundering, and given, too, that Ghana has a growing economy, there is hope that in the very near future, Ghana's AML laws will meet international requirements and standards.



### 3.4 Conclusion

As stated in Chapter One, the 2009 mutual evaluation on Ghana revealed shortcomings in the country's compliance with AML measures. Some of the shortcomings were that the FIC was not in existence until 2010, financial institutions did not conduct CDD on their customers as required by Recommendation 10, and there were no guidelines for accountable institutions to devise internal controls and rules. But after advanced improvement of its AML laws, Ghana has formed a solid framework for fighting money laundering and this framework has increased the number of predicate offences. Although Ghana has a fairly robust primary AML framework, the institutions face several challenges with the implementation of AML laws. Regulation 39 of the AML Regulations of 2011 requires the FIC and other

---

<sup>196</sup> GIABA Report (2016) 36.

<sup>197</sup> GIABA Report (2016) 40.

supervisory bodies to maintain comprehensive statistics on matters relating to STRs, mutual legal assistance requests etc. but according to GIABA's 2016 national risk assessment report, a number of the institutions do not have information or statistical units. Most institutions also do not have adequate management information systems, making it difficult to generate data on the progress of the fight against ML. There has also been the proliferation of micro-financial institutions due to the tremendous growth of the country's cash-based economy. This has made the financial system very vulnerable to ML risks. There is the existence of a strong legislative and regulatory framework on AML but a low enforcement activity. As the fight against ML is still very new to Ghana, it is therefore hoped that the existent of these robust laws will help to fight ML adequately in future. One can say that having laws in place to work with is better than having no laws at all.<sup>198</sup>



---

<sup>198</sup> Xin W 'Study on China's Criminal Law Response to Anti-Money Laundering in Light of International Evaluation' 2 *Peking University Journal of Legal Studies* (2010) 80.



## CHAPTER FOUR

### GENERAL CONCLUSION AND RECOMMENDATIONS

#### 4. Concluding Comments

Money launderers exploit the complexities embedded in the global financial systems as well as the differences between the various national AML laws and systems.<sup>199</sup>

Launderers are interested in jurisdictions with weak and ineffective AML laws because they are able to move their funds easily without detection. Countries need, therefore, to enact robust and effective AML laws to prevent the spread of money laundering to other countries and nearby regions. A strong and effective AML regime enhances the integrity and the stability of the financial sector which, in turn, facilitates the country's integration into the global financial system.

The aim of this paper was to examine the adequacy and effectiveness of Ghana's AML laws, which are scattered over several enactments. Ghana has a strong AML legal framework but weak implementation regime. Money laundering is relatively new to the Ghanaian legal system, even though it has developed internationally over the past decades. Law enforcement agencies are yet to develop an effective approach and skills base to secure convictions for the crime. As demonstrated in the previous chapter, there are only few prosecutions of money laundering cases in Ghana, and the conviction rate is low. A number of laws have been introduced since the passing of the Anti-Money Laundering Act of 2008. These laws were either enacted or amended to conform to the main AML regime. The raft of AML laws enacted testifies of the government's determination and implacable political will to ensure that the

---

<sup>199</sup> IMF 'the IMF and the Fight against Money Laundering and the Financing of Terrorism' (2016) available at <https://www.imf.org/external/np/exr/facts/aml.htm> (accessed 14 December 2016).

global fight against ML/TF is sustained. Several improvements to Ghana's AML regime have been effected since GIABA's 2009 Mutual Evaluation Report, which scored Ghana as non-compliant.<sup>200</sup>

This work has attempted to establish some of the drawbacks in implementing the AML laws, such as lack of training, deficiencies in technical infrastructure, financial resources and professional skill, all of which combine to make the investigation of ML cases a difficult endeavour. Added to this is the lack of appropriate software to conduct CDD/KYC and to monitor suspicious transactions. Moreover, it has also been established that there is no structured systems for reporting cross-border transactions. Some of these deficiencies, for example, the financial shortages experience by the FIC, could be remedied if only the Ministry of Finance stops delaying in releasing the FIC's budget. Investigations into financial crimes such as money laundering are relatively novel to the Ghanaian criminal justice system, hence the lack of professional skill in dealing with the scourge of money laundering. This points to a pressing need to upgrade the skills of regulators, criminal investigators, prosecutors and the judiciary. The scanty residential address records make it even more difficult for financial institutions and police alike to carry out due diligence properly and to locate a person's home or business premises.

In order to prevent a country's financial system from being used as the channel for money laundering activities, that country has to develop a robust anti-money

---

<sup>200</sup> Mutual Evaluation Report Executive Summary Anti-Money Laundering and Combating the Financing of Terrorism Ghana available at [http://www.giaba.org/media/f/341\\_Ghana%20Executive%20Summary%20-%20Eng-1](http://www.giaba.org/media/f/341_Ghana%20Executive%20Summary%20-%20Eng-1) (accessed 14 December 2016).

laundering regime. This paper therefore proposes some recommendations to help in the global fight against money laundering in light of the problems it has identified.

#### 4.1 General Recommendations

As mentioned above, the effectiveness of Ghana's AML legal and institutional framework requires that it is robust, adequate, and implementable as well as it being able to meet international standards. The recommendations include:

##### 4.1.1 The Need for Training and Capacity Building

There is the need for an adequate training programme for law enforcement agencies, prosecutors and financial crime investigators. Such skills upgrading is required section 20 (i) of the AML Act of 2014 (Act 874) and is indispensable if money laundering has to be tackled head-on. The government needs to redouble its efforts to ensure that enough resources are made available for training on an ongoing basis for institutions such as the EOCO, the Police Service, the FIC, NACOB, the Ministry of Justice and Attorney-General's Department. Such capacity building helps to generate more awareness about money laundering, the different techniques used to launder money and how to thwart deceitful conduct.

##### 4.1.2 Improving the Address System

There is the need for the government to take concrete and effective steps to improve the address system in Ghana. Streets must be named with houses numbered to ensure that every citizen has an identifiable place of residence or business. This will help banks and non-banks to improve upon their CDD verification procedures and reduce criminals from carrying out their laundering activities using these institutions. What is more, a well maintained record of residential addresses will enable police to find and arrest criminals.

#### 4.1.3 The Need to Regulate the Underground or Informal Remittance System

The underground remittance system is one areas most vulnerable to ML. At present, there are no regulations governing this sector, which is uncontrolled and opaque.

The government needs to enact strict laws that govern informal remittances. It might not be able to control all underground remittance systems in the country, but stricter regulation would help to reduce the rate at which criminals are exploiting using the system as money laundering medium. There is a need to conduct comprehensive empirical research on the extent to which the informal remittance is used in practice and the impact this has on the national economy and financial sector. The public needs to be made aware of the potential danger informal remittances pose for the national economy when used by criminals.

#### 4.1.4 The Need for the Supervision of Foreign Exchange (Forex) Bureaux

The Bank of Ghana needs to implement a plan of action which is directed at making sure that the numerous money exchange bureaux in Ghana are inspected and supervised regularly. Such money exchange outfits are known to be misused by money launderers as a front to conceal their criminal activities. The bureaux must be obligated by law to perform some form of CDD on their customers. They need to be made to elicit information from their customers which, like in the case of banks, should be kept for a minimum period. This will sanitise the sector and will help deter launderers from abusing the forex bureau system.

#### 4.1.5 The Need to Regulate DNFbps

As discussed in Chapter Three, the DNFbps sector is unregulated and thus highly vulnerable to ML activities. There is a need for enforceable regulations and guidelines, especially for dealers in precious minerals and stones, car dealers,

lawyers and real estate agents. They need to perform KYC/CDD procedures before transacting business. There should be strict supervision of this sector by the supervisory bodies which must ensure compliance with AML regulations. Parliament should pass a legislation to regulate the real estate sector since, at present no such regulation exists.

#### 4.1.6 Inclusion of the Informal Sector in the Lawful Financial System

There is the need to include unbanked persons, who constitute the majority of the population, into the normal economy. A starting point would be to issue everyone in Ghana with birth certificates, identity cards and whatever personal documents people need to open bank accounts. At present no one knows how much money circulates in the informal sector. However, given the size of this sector, which is evidenced by the numerous kiosks found across the country, it is fair to assume that the amount of money exchanging hands in the informal sector, some of it illegally, is considerable. Bringing the unbanked population into the normal economy would go a long way towards boosting the national economy and strengthening the financial sector. This would also reduce the amount of cash transactions in the economy, many of which are used to cover the trail of money launderers.

## LIST OF REFERENCES

### 1. PRIMARY SOURCES

#### 1.1 LEGISLATION

##### 1.1.1 International Instruments

- Financial Action Task Force Mutual Evaluation Report of Ghana.
- Financial Action Task Force 40+9 Recommendations.
- Financial Action Task Force Recommendations 2012.
- International Convention for the Suppression of the Financing of Terrorism 1999.
- United Nations Convention against Corruption 2003.
- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988.
- United Nations Convention against Transnational Organised Crime and the Protocols thereto.



### 1.1.2 National Laws

- Anti-Money Laundering Act 749 of 2008.
- Anti-Money Laundering (Amendment) Act 874 of 2014.
- Anti-Money Laundering Regulations 2011 (L.I 1987).
- Anti-Terrorism Act 762 of 2008.
- Anti-Terrorism (Amendment) Act 842 of 2012.
- Anti-Terrorism Regulations L.I 2181 of 2012.
- Banking Act 673 of 2004 Constitution of Ghana of 1992.
- Chartered Accountants Act 170 of 1963.
- Criminal Offences Act 29 of 1960.
- Criminal and Other Offences Procedure (Amendment) Act 30 of 1960.
- Economic and Organised Crime Office Act 804 of 2010.



- Economic and Organised Crime Office (Operations) Regulation L.I 2183 of 2012.
- Extradition Act 22 of 1960.
- Foreign Exchange Act of 723 of 2006.
- Ghana Police Service Act 350 of 1970.
- Ghana Revenue Authority Act 791 of 2009.
- Legal Profession Act 32 of 1960.
- Mutual Legal Assistance Act 807 of 2010.
- Narcotic Drugs (Control, Enforcement and Sanctions) Law of 1990.
- Non-Bank Financial Institutions Act 612 of 2002.
- Transfer of Convicted Persons Act 743 of 2007.





## 2. SECONDARY SOURCES

### 2.1 Books

- Chaikin D, Sharman J C *Corruption and Money Laundering A Symbiotic Relationship* (2009) Palgrave Macmillan New York United States.
- Madinger J *Money Laundering A Guide for Criminal Investigators* 3ed (2012) Taylor & Francis Group, LLC United States of America.
- Parkman T *Mastering Anti-Money Laundering and Counter Terrorist Financing* (2012) Pearson Education Limited Great Britain.
- Reuter P, Truman E M *Chasing Dirty Money: the Fight against Money Laundering* (2004) Institute for International Economics Washington DC United States.
- Shams H *Legal globalization Money Laundering Law and Other Cases* (2004) The British Institute of International and Comparative Law Russel Square London.
- Sharman J.C *The Money Laundering Regulating Criminal Finance in the Global Economy* (2011) Cornell University Press United States of America.
- Turner J E *Money Laundering Prevention Deterring, Detecting, and Resolving Financial Fraud* (2011) John Wisely & Sons Inc. Hoboken New Jersey.



- Unger B *The Scale and Impacts of Money Laundering* (2007) Edward Elgar Publishing Limited United Kingdom.

## 2.2 Chapters In Books

- Asmal K 'Forward' in Muller, Kälin, Goldsworth (eds) *Anti-Money Laundering International Law and Practice* (2007) John Wiley & Sons Ltd England.
- Bassiouni C M, Gualtieri D S 'International and National Responses to the Globalization of Money Laundering' in Savona E U (ed) *Responding to Money Laundering International Perspectives* (1997) Harwood Academic Publishers Netherlands.
- Dini L 'The Problem and its Diverse Dimensions' in Savona E U (ed) *Responding to Money Laundering International Perspectives* (1997) Harwood Academic Publishers Netherlands.
- Savona E U, De Feo M A 'International Money Laundering Trends and Prevention/Control Policies' in Savona E U (ed) *Responding to Money Laundering International Perspectives* (1997) Harwood Academic Publishers Netherlands.



- Unger B 'Money Laundering regulation: from Al Capone to Al Qaeda' in Unger B, Van der Linde D (eds) *Research Handbook on Money Laundering* (2013) Edward Elgar Publishing Limited Cheltenham United Kingdom.

### 2.3 Journal Articles

- Todd D 'Cleaning up Anti-Money Laundering Strategies: Current FATF Tactics Needlessly Violate International Law' *Houston Journal of International Law* 24(2) (2001) 279-314.
- Xin W 'Study on China's Criminal Law Response to Anti-Money Laundering in Light of International Evaluation' 2 *Peking University Journal of Legal Studies* (2010) 57-81.



### 2.4 Case Law


- *Republic v John Cobbinah & Eugene Amoako Mensah* (Unreported) High Court Accra 2014.
- *Republic v Maurice Asola Fadola* (Unreported) High Court Accra 2014.

### 3. Academic Studies

- Abudu K *Examining the Role Commercial Banks Play in Dealing with Money Laundering: A case Study of Access Bank (Ghana) Limited* (Unpublished BSc. Admin thesis, Kwame Nkrumah University of Science and Technology, 2012).
- Nketsiah T A *Combating Money Laundering and Financing of Terrorism: the Role of Banks in Ghana* (Unpublished M.A thesis, University of Ghana, 2013).

### 4. Internet Sources

- Anan B 'Oil Discovery in Ghana: a blessing or a curse' available at <https://www.theseus.fi/bitstream/handle/10024/39303/thesis%20doc%202.pdf?sequence=1> accessed 22 August 2016).
- Bank of Ghana Regulatory Framework available at <https://www.bog.gov.gh/supervision-a-egulation/regulatory-framework> (accessed 31 October 2016).
- BBC News 'Ghana dismisses judges guilty of bribery charges' available at <http://www.bbc.com/news/world-africa-35037318> (accessed 22 August 2016).
- Border Crossings to/from Ghana available at [http://easytrackghana.com/travel-information-hana\\_border-crossings.php](http://easytrackghana.com/travel-information-hana_border-crossings.php) (accessed 30 October 2016).

- EOCO recovers over \$2.4m for Ghana in 2015 available at <http://www.myjoyonline.com/business/2016/march-20th/eoco-recovers-over-gh24m-for-ghana-in-2015.php> (accessed 28 October 2016).
- Cornelius Osei Fosu 'Tax Evasion Stifles Ghana's Development' The Ghanaian Times 12 December 2014 available at <http://www.ghanaiantimes.com.gh/tax-evasion-stifles-ghanas-development/> (accessed on 13 April 2016).
- Dogbevi E 'Ghana loses Ghc 2.2m in revenue from SABMiller tax dodging- ActionAid available at  <https://www.ghanabusinessnews.com/2010/11/30/ghana-loses-gh%C2%A2-2m-in-revenue-from-sabmiller-tax-dodging-actionaid/> (accessed 22 August 2016).
- Dovi E 'Ghana's Economy: hope rekindled' available at <http://www.un.org/africarenewal/magazine/august-2010/ghana%E2%80%99s-economy-hope-rekindled> (accessed 22 August 2016).
- FATF-Style Regional Bodies available at <http://www.apgml.org/fatf-and-fsrb/page.aspx?p=94065425-6aa-479f-8701-5ca5d07ccfe8> (accessed 7 October 2016).

- FATF 'Who we are' available at <http://www.fatf-gafi.org/about/> (accessed 6 October 2016).
- Financial Intelligence Centre available at <http://www.fic.gov.gh/about-us/> (accessed on 6 April 2016).
- Ghana Statistical Service 2010 Population & Housing Census Summary Report of Final Results (2012) 1 available at [http://www.statsghana.gov.gh/docfiles/2010phc/Census2010\\_Summary\\_report\\_of\\_final\\_results.pdf](http://www.statsghana.gov.gh/docfiles/2010phc/Census2010_Summary_report_of_final_results.pdf) (accessed on 13 April 2016).
- GhanaWeb 'History of Akosombo Dam' available at [http://www.ghanaweb.com/GhanaHomePage/history/akosombo\\_dam.php](http://www.ghanaweb.com/GhanaHomePage/history/akosombo_dam.php) (accessed 22 August 2016).
- GhanaWeb 'Pre-Colonial Period' available at <http://www.ghanaweb.com/GhanaHomePage/history/pre-colonial.php> (accessed 22 August 2016).
- GIABA Inter-Governmental Action Group against Money Laundering in West Africa 'About GIABA' available at [http://www.giaba.org/about-giaba/index\\_656.html](http://www.giaba.org/about-giaba/index_656.html) (accessed on 4 April 2016).
- GIABA 'National Risk Assessment on Money Laundering and Terrorist Financing of Ghana' (2016) available at



[http://www.giaba.org/media/f/1001\\_NRA%20REPORT%202016%20-%20PUBLIC%20VERSION.pdf](http://www.giaba.org/media/f/1001_NRA%20REPORT%202016%20-%20PUBLIC%20VERSION.pdf) (accessed 9 October 2016).

- Good Practices of implementation of UNCAC by States Parties to the United Nations Convention against Corruption available at <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/2-6June2014/V1403544e.pdf> (accessed 6 October 2016).
- Gyamfi J A 'Drugs and Drug Control in Ghana' in Kalunta-Crumpton A (ed) Pan-African Issues in Drugs and Drug Control: An International Perspective (2016) available at <http://www.books.google.co.za>. (accessed on 5 April 2016).
- International Monetary Fund 'Money Laundering and Financing of Terrorism: a-multi-donor Trust Fund' (2000) available at <http://www.imf.org/external/np/otm/2009/anti-money.pdf> (accessed 22 August 2016).
- Jafaru M Y 'Guidelines on Sentencing Launched' (2015) available at <http://www.graphic.com.gh/news/general-news/guidelines-on-sentencing-launched.html> (accessed 24 October 2016).
- Mutual Evaluation Report Executive Summary 'Anti-Money Laundering and Combating the Financing of Terrorism' Ghana available at



[http://www.giaba.org/media/f/341\\_Ghana%20Executive%20Summary%20-%20Eng1](http://www.giaba.org/media/f/341_Ghana%20Executive%20Summary%20-%20Eng1) (accessed 22 August 2016).

- Norman I D, Awiah B M et al 'Mapping the Laws on anti-money laundering and Combating Financing Terrorism to determine appraisal skills of accountable institutions' (2015) Issues Business Management and Economics 87-99 available at <http://journalissues.org/wp-content/uploads/2015/06/Norman-et-al.pdf> (accessed 22 August 2016).
- Republic of Ghana Treaty Manual available at <http://legal.un.org/avl/documents/scans/GhanaTreatyManual2009.pdf?teil=II&j> (accessed 6 October 2016).
- Status of ratification of the as at 1 October 2012 available at [https://www.unodc.org/documents/treaties/organized\\_crime/COP6/CTOC\\_COP\\_2012\\_CRP/CTOC\\_CP2012\\_CRP1.pdf](https://www.unodc.org/documents/treaties/organized_crime/COP6/CTOC_COP_2012_CRP/CTOC_CP2012_CRP1.pdf) (accessed 6 October 2016).
- Transparency International Corruption Perception Index 2015 Ghana available at <https://www.transparency.org/country/#GHA> (accessed on 13 April 2016).
- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) available at [https://www.unodc.org/pdf/convention\\_1988\\_en.pdf](https://www.unodc.org/pdf/convention_1988_en.pdf) (accessed 30 August 2016).



- United Nations Convention against Transnational Organised Crime and the Protocols thereto (2000) available at [https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED\\_NATIONS\\_CONVENTION\\_AGAINST\\_TRANSNATIONAL\\_ORGANIZED\\_CRIME\\_AND\\_THE\\_PROTOCOLS\\_THERETO.pdf](https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERETO.pdf) (accessed 30 August 2016).
- 2014 High Court Accra (Unreported) available at [http://fic.gov.gh/wp-content/uploads/2015/11/2014\\_Annual\\_Report.pdf](http://fic.gov.gh/wp-content/uploads/2015/11/2014_Annual_Report.pdf) (accessed 19 October 2016).
- 2016 Index of Economic Freedom available at <http://www.heritage.org/index/country/ghana> (accessed on 13 April 2016).



## 5. Other Sources

- Bank of Ghana and Financial Intelligent Centre ‘*Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) Guideline*’ (2011).