COMBATING MONEY LAUNDERING AND FINANCING OF TERRORISM: THE ROLE OF BANKS IN GHANA

BY

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LEGON         JULY 2013
DECLARATION

I hereby declare that this dissertation is my own research carried out under the supervision of Dr. Linda Darkwa and that no part of it has been submitted anywhere else for any other purpose.

.......................................................... ..........................................................
Thomas Addae Nketsiah Dr. Linda Darkwa
(Student) (Supervisor)

Date: Date:
DEDICATION

This study is dedicated to my lovely daughters Liora Saaba Addae Nketsiah and Efua Gyakyewah Addae Nketsiah.
ACKNOWLEDGEMENTS

I would like to give glory to God for His immense guidance throughout my odyssey at LECIAD, for without Him, I do not think it would have been possible.

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<tr>
<td>AML/CFT</td>
<td>Anti-Money Laundering and Combating Financing Terrorism</td>
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<tr>
<td>AMLRO</td>
<td>Anti-Money Laundering Reporting Officer</td>
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<td>BCCI</td>
<td>Bank of Credit and Commerce International</td>
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<td>BOG</td>
<td>Bank of Ghana</td>
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<td>BSD</td>
<td>Banking Supervision Department</td>
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<td>CDD</td>
<td>Customer Due Diligence</td>
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<td>CSO</td>
<td>Customer Service Officer</td>
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<tr>
<td>CTR</td>
<td>Cash Transactions Reporting</td>
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<td>ETR</td>
<td>Electronic Transfer Report</td>
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<td>EOCO</td>
<td>Economic and Organised Crime Office</td>
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<tr>
<td>FATF</td>
<td>Financial Action Task Force</td>
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<td>FIC</td>
<td>Financial Intelligence Centre</td>
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<td>FIU</td>
<td>Financial Intelligence Unit</td>
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<td>GIABA</td>
<td>Inter-Governmental Action Group</td>
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<td>GPS</td>
<td>Ghana Police Service</td>
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<td>KYC</td>
<td>Know Your Customer</td>
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<td>PEPs</td>
<td>Politically Exposed Persons</td>
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<td>STRs</td>
<td>Suspicious Transactions Reports</td>
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<td>UNODC</td>
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ABSTRACT

Money laundering and financing of terrorism are crimes with international ramifications because they affect international security. As borderless crimes, no one state can stay aloof but to join the global efforts in combating them. These crimes are committed using the international banking system as the conduit to launder the ill-gotten proceeds through the money laundering processes of placement, layering and integration. The AML/CFT regime is a global policy aimed to combat these crimes in order to protect the safety and soundness of the banking system. Banks are pivotal to ensure the success of the AML/CFT regime. However, banks are less likely to fully cooperate with the law enforcement agencies and the regulators to ensure the soundness and safety of the bank system because of high deposit drive and profit making. Bank officials are in some cases complicit in aiding money laundering. Information was gathered from both primary (interviews) and secondary sources of data and analysed the role banks in Ghana could play to achieve the aims of the AML/CFT regime. Ineffective control measures such as incomprehensive KYC and CDD on customers, inadequate training of staff and non-reporting of all suspicious transactions, coupled with inordinate desire for increased deposits, staff collusion with criminals, non-compliance with FATF and BOG/FIC recommendations and guidelines respectively were some of the inherent weaknesses that make banks being conduit for these crimes. Although, Ghana has shown the commitment by enacting laws and ratifying international treaties, the main actors in ensuring the success of the AML/CFT, that is BOG and FIC do not have administrative sanctions. The study concluded with the assertion that lack of cooperation among the relevant partners such as the banks, law enforcement agencies and the regulators will inure rather to the benefit of criminals than to the banks. The study recommended comprehensive internal control measures, adherence to FATF and BOG/FIC Recommendations and Guidelines respectively, cooperation among relevant partners, harmonisation of laws and use of modern technology to detect and combat money laundering and terrorist financing.
CHAPTER ONE

RESEARCH DESIGN

1.0 Introduction

Combating money laundering and financing of terrorism (CML/TF) have gained an increased international recognition, especially after the events of 9th September 2011. Money laundering as an underground economic activity mostly takes place in the financial institutions especially the banks which are the conduits for the laundering of ‘dirty’ money.¹

Banks play a crucial role in money laundering activities because of the high volumes of financial transactions, anonymity protection and electronic transfer systems available in the international banking system.² Money laundering and financing of terrorism affects the integrity of banks because customers may lose confidence in the banking system and reputational risk.³ According to Anthony Amicelle, “banks have become the traffic wardens that are required to regulate the flow of financial traffic⁴” and any weak regulations and controls will facilitate money laundering. There is thus the need to ensure that banks maintain integrity and transparency especially in an era of financial turmoil across the globe.

Money laundering can be defined “as an attempt to conceal or disguise the ownership or source of the proceeds of criminal activity and integrate them [proceeds from crime] into the legitimate financial systems in such a way that they cannot be distinguished from assets acquired by legitimate means.”⁵ The
underground activities of money laundering flourish in countries that have lax financial controls and in turn negatively affect the economic, social and political well-being of states across the globe. Underground economic activities such as kidnapping, illegal prostitution, drug and human trafficking as well as corruption have given great impetus to the crime of money laundering. Since such activities are illegal in most legal systems, efforts are made to legitimate the proceeds obtained through the banks.

Money laundering involves three stages namely placement, layering and integration. These are processes through which ‘dirty’ money goes through the banking system to get laundered. The placement stage is when a large sum of money is placed into the banking system and the layering is a process where complex financial transactions are carried out to ostensibly hide the source of the money. Lastly, the integration stage occurs when the ‘dirty' money has been washed and put into the economy and it is very difficult to detect the source of funds at the integration stage.

Financing of Terrorism occurs when someone either directly or indirectly provide funds to facilitate terrorism. Financing of Terrorism (FT) is defined here to include both legitimate and illegitimate money characterized by concealment of the origin or intended criminal use of the funds to cause death or injury to the populace of any country. Financing of Terrorism is an international scourge affecting national and international economies alike. Terrorists “raise their funds
through various profitable activities that mainly stem from criminal acts, such as kidnapping, extortion, large-scale smuggling, narcotics trafficking, robbery, and theft”.\textsuperscript{10} Through the banking system, terrorists “mobilise and channel their funds”.\textsuperscript{11}

The practice of offshore banking is internationally recognised as destinations for money laundering and financing of terrorism, even though the fact that offshore banking may be used for legitimate businesses.\textsuperscript{12} Offshore banking is shrouded in extreme secrecy and confidentiality for their customers. Offshore Financing Centres (OFCs) encourage fraudulent transactions and provides safe haven especially for high net persons and politically exposed persons (PEPs).\textsuperscript{13} Offshore banking promotes no or relatively low tax regimes, relaxed to little regulations for the affluent to keep their money at a safe place, and banks are also motivated by the strong desire to protect their assets, which are mostly accompanied with great anonymity.\textsuperscript{14} OFCs such as the Cayman Island, Singapore, and Nauru are constantly under the watch of international organisations such as Financial Action Task Force (FATF), which is internationally mandated to ensure that banks are well regulated and comply with international banking standards.\textsuperscript{15}

Money laundering is also flourishing through the advancement of technology in banking. Contemporary banking encourages electronic transfers of funds from one location to another, especially through the Offshore Financial Centres (OFCs), where anonymity of customer transactions is assured. To this end, huge sums of money could be electronically transferred without carrying huge bags
stuffed with notes.\textsuperscript{16} Money laundering provides criminals, such as terrorists with revenues to perpetrate heinous crimes against society.

Combating money laundering and the financing of terrorism requires cooperative efforts from the government (law enforcement agencies), banks and the general public to help in the detection and prevention of money laundering activities.\textsuperscript{17} This helps to prevent a phenomenon where criminals could own banks and or abuse the financial system. Enhancing transparency in the banking system requires the institutionalisation of good and effective monitoring of their customers and reporting all suspicious transactions to the appropriate authorities. This can be achieved through Customer Due Diligence, Suspicious Transactions Report and effective implementation of banking regulations from governments through their central banks.\textsuperscript{18} Equally, banks especially their corporate and private banking departments should learn more about their customers, especially the origins and destinations of funds.

The transnational nature of money laundering and financing of terrorism makes all states prone to these crimes. It requires international cooperation to fight money laundering and financing of terrorism. If these crimes are not comprehensively combated, they could seriously undermine Ghana’s development and progress. In spite of the existence of the Anti-money Laundering Act, 2008 (Act 749) and Anti-Terrorism Act, 2008 (Act 762) in Ghana, the country was in February 2012, blacklisted as a Non-Counter Cooperative Country (NCCT) by FATF.\textsuperscript{19} In addition to these legal provisions, the Bank of Ghana
(BOG) and the Financial Intelligence Centre (FIC) issued the Anti-money Laundering and Combating the Financing of Terrorism (AML\CFT) Guidelines for banks and non-financial institutions to further strengthen the fight against money laundering and financing of terrorism.\textsuperscript{20}

Enhanced cross-border cooperation is required to combat money laundering and financing of terrorism in order to protect the integrity of the international financial system. Thus in 1998, the G7 in Paris established the Financial Action Task Force (FATF) to regulate the international banking system from abuse by money laundering and financing of terrorism. Consequently, FATF has issued 40 recommendations to combat money laundering and financing of terrorism.

1.1 Problem Statement

Money laundering and financing of terrorism gained increased international attention especially after the events of 11\textsuperscript{th} September 2001 in the United States of America. The heightened attention led to a number of measures to better regulate global finance in order to minimise the use of legal financial systems for money laundering and financing of terrorism. Due to banks’ clients’ protection rules, the banking system has become one of the main conduits for money laundering and financing of terrorism. Although the negative implications of money laundering and financing of terrorism are well known, the motivation to increase deposit bases and profits make banks complicit in the two crimes above-mentioned. The consequence of this is either to intentionally or unintentionally not to institute the
right internal control mechanisms aimed at arresting money laundering and financing of terrorism.

Whilst rewarding the criminals involved, money laundering and financing of terrorism undermine the integrity of banks and harm the reputation of countries in which the crimes occur. In February 2012, Ghana was blacklisted by the FATF as Non-Counter Cooperative Country (NCCT). Since then, several efforts have been made to tackle the problems of money laundering and financing of terrorism. These efforts notwithstanding, banks in Ghana are less likely to put in place internal control measures thus making the efforts to combat money laundering and financing of terrorism less effective as far as the banking sector is concerned. The anonymity and customer protection rules make banks less inclined to join the global effort in combating money laundering and financing of terrorism.

The following research questions shall be answered:

- Are Ghanaian banks applying the international standards on Anti-money laundering and combating terrorist financing (AML/CFT)?
- What are the kinds of risks faced by Ghanaian banks that will encourage the implementation and enforcement of AML/CFT?
- Are the banks sanctioned for not complying?

1.2 Scope of the study

Money launderers and financiers of terrorism use the financial institutions to launder the proceeds of their illegal funds. However, the scope of the study is banks in Ghana and not all financial institutions like the insurance companies and
microfinance organisations because banks are mostly the conduit for money laundering and financing of terrorism. The role of banks in money laundering and financing of terrorism remain unquestionable.

1.3 Objectives of the study

The objectives of the study are:

- To ascertain whether the level of financial control measures existing in the banks are deterrent enough to discourage money launderers and financiers of terrorism.
- To identify the weaknesses in the banks that encourages money laundering and financing of terrorism.
- To determine whether regulations from FATF, the Bank of Ghana and Financial Intelligence Centre are being complied with.

1.4 Rationale of the Study

Money laundering and financing of terrorism (ML/TF) are international economic crimes affecting national and international economies, especially given the current international financial crisis and advancement in the use of technology to electronically transfer money from one jurisdiction to another.

The study seeks among other things to determine how Ghanaian banks are cooperating with the law enforcement agencies to combat money laundering and financing of terrorism. Without the cooperation of banks, the combat against money laundering and financing of terrorism may be futile.
1.5 Theoretical Framework

The theory of cooperation is an outgrowth of pluralism, which posits that cooperation and coexistence among states enhances international peace, cooperation and compromise for the benefit of all states involved.\(^\text{22}\) States are dependent on one another to the extent that no one particular state is irrelevant with regard to international relations.

Robert Keohane defines cooperation as when “actors adjust their behavior to the actual or anticipated preferences of others, through a process of policy coordination”.\(^\text{23}\) To ensure a harmonious society, actors and non-actors must ensure coordination of policies to achieve a common goal. There is thus a shared goal which enhances voluntary interaction among actors. One of the proponents of the theory of cooperation is Robert O. Keohane. In his book, ‘After Hegemony, Cooperation and Discord in the World Political Economy’, Keohane posited that cooperation is necessary to ensure a harmonious economic order. According to Keohane, cooperation is not the absence of conflict but when common interest exist.\(^\text{24}\)

As a concept, the pluralists make the following assumptions. Firstly, non-state actors are part of the international system and they play important roles in ensuring international stability. For instance, international organisations like the International Monetary Fund and the World Bank are on “certain issues independent actors in their right”\(^\text{25}\) and at their fora, states cooperate to achieve a common goal which in most cases benefit all states. Secondly, the state is not a unitary actor, because the international community is made of competing
individuals, interest groups and bureaucracies whose decisions and actions affect states. For instance, the activities of money launderers and terrorists have socio-economic consequences which reveal the vulnerabilities inherent in most societies. Thirdly, the state is not always a rational actor as states often miscalculate but statesmen and organisations take such decisions based on public opinion for the betterment of all. Finally, pluralists assume that the agenda of international politics is extensive and opine that although national security is paramount, issues of trade, monetary and social issues should also be given prominence. To this end, it may suffice to say that no state has developed without any economic advancement but as the economy of a particular state grows or develops, criminal activities also thrive to the detriment of that society.

Contemporary banking services have become all the more complex because of technological advancement in transactions. Hitherto, it was difficult moving millions of dollars around. However, with the press of a button money is electronically transferred across borders with relative ease. Criminal activities such as drug trafficking, kidnapping, prostitution and terrorism have equally advanced in their methodologies to launder the proceeds of their crime using the international financial system. The combat against money laundering and financing of terrorism will thus require a comprehensive cooperation between the state, banks and individuals in protecting the integrity of the financial system.

Several non-state actors have, through their activities, contributed to the fight against money laundering and financing of terrorism. For example, the International Monetary Fund and the World Bank are non-state actors whose
actions and decisions have continually ensured that, member states take such measures to ensure transparency and protection of the integrity of the international financial regimes. Similarly, the Financial Action Task Force (FATF) has made recommendations, which are aimed at ensuring compliance with good and effective international standards on anti-money laundering and combating the financing of terrorism.

Cooperation among states enhances the combat against money laundering and the financing of terrorism. Since states depend on one another, and the crimes and effects of money laundering and financing of terrorism are transnational, there must be cooperation and coexistence, to effectively combat money laundering and financing of terrorism. Cooperation in this endeavour must be at the national and international levels to achieve the desired results. The 18th Recommendation of the Financial Action Task Force (FATF) requires sharing of information among domestic and international branches to fight against money laundering and financing of terrorism. Furthermore, Recommendations 2 of FATF states that “countries should ensure that policy makers, the financial intelligence unit (FIU) [FIC], law enforcement authorities, and supervisors and other relevant competent authorities, at the policy-making and operational levels, have effective mechanisms in place which enable them to cooperate, and, where appropriate, coordinate domestically with each other concerning the development and implementation of policies and activities to combat money laundering and terrorist financing...”27
However, cooperation among states and non-state actors has not always been cordial, in most cases for parochial reasons. Banks are not adequately cooperating with the law enforcement agencies in the fight against money laundering and financing of terrorism in order to mobilise more deposits and increase their profits.

1.6 Literature Review

International approach towards combating money laundering and financing of terrorism ratcheted after the horrific attacks in the United States of America on 11th September, 2001. The phenomenon of money laundering as ‘a quintessential global issue’\(^28\) is a secretive act where activities are hard to detect, because locating the source of illegitimate income is a near impossibility. The global nature of money laundering makes geographical borders less significant. Money launderers are always moving from one geographical location to another in order to avoid detection by law enforcement agencies. Combating money laundering would require international cooperation between countries, organisations and law enforcement agencies especially through the use of ‘common laws and sharing of information’.\(^29\) As a consequence, most countries have enacted laws meant to regulate and combat ‘a robust, corrosive, all-consuming and dynamic activity that has far-reaching consequences and effects.\(^30\) Ghana has thus enacted the Anti-Money Laundering Act, 2008 (Act 749) and established the Financial Intelligence Centre (FIC) to inter alia protect the integrity of the financial system.\(^31\) Such laws had become international requirements for countries wanting to curb and reduce the abuse of their banks for money laundering purposes.\(^32\)
Historically, Ghana has not had money laundering in its criminal jurisprudence until the case of Bonsu (alias Benjillo) v The Republic [1998-99] SCGLR 112; was decided upon. In this case, money laundering was specifically criminalised, thus becoming a judicial precedent. This fact however, does not mean that, there was no money laundering, where banks were used as the conduit in Ghana. It can even be assumed that Bonsu alias Benjillo was laundering his proceeds using the banks in Ghana. According to Mr. Essel Thompson, even though, there were no specific laws criminalising money laundering and financing of terrorism, there were laws criminalising predicate offences.

Money laundering involves three-staged processes namely placement, layering and integration. The placement stage is a process that involves the physical movement of cash derived from illegitimate activities such as drug trafficking and terrorism to a place (usually a bank) or into a form that is less suspicious to the security agencies to detect. The proceeds are placed into traditional or non-traditional financial institutions or into the retail economy. Secondly, layering involves “the separation of proceeds from their illegal source by using multiple complex financial transactions such as wire transfers, letters of credit, bonds, securities, prime bank notes, and guarantees to obscure the audit trail and hide the proceeds”. The final stage in the laundering process is integration stage, which encompasses the conversion of illegal income into an ostensibly legitimate business through the regular financial institutions especially the banks. According to Brett F. Woods, the layering and integration stages are the most ‘sophisticated money-laundering techniques because cash is held in bulk into the
financial system’. The layering and integration stages are being facilitated by the advancement in financial transactions, where wire transfers for instance facilitate the transfer of cash from one jurisdiction to another with ease. Detection at these stages is a near impossibility because there is a co-mingling of dirty money with genuine funds. Co-mingling makes detection of laundered funds very difficult because, otherwise dirty money had gone through the processes of laundering. The process may be very easy in Ghana due to some factors. Examples of such may include lack of requisite anti-money laundering detection software, lack of will on the part bank officials and the desire for increased deposits and profits. The possible consequence of this is that, Ghanaian banks become attractive to money launderers. Although, money laundering involves the three stages, it is also appreciated that some money laundering processes may involve more than these stages.\textsuperscript{40} The fact that placement, layering and integration are known, it is possible that the other stages of money laundering are not known; thus further accentuating the vulnerability of Ghanaian banks.

Crucially, money laundering is aimed at hiding the source of the illegal income to make it appear legitimate using the traditional banking system. Money laundering, though carried out by individuals; it involves major banks where funds are moved from one bank account into another through complex bank transactions.\textsuperscript{41} Even though, money laundering is a global phenomenon, the actual amount laundered annually is unknown because of the weaknesses inherent in the techniques of detection. Various scholars on money laundering are divided as to the quantum of money laundered annually. According to Peter Lilley, “the vagueness of such
estimates is a result both of disagreements over how to conceptualise money laundering and of weakness in the techniques used to quantify it”. Figures range from one to two trillions dollars per year as being the proceeds from money laundering. The act of concealment of proceeds and the apparent difficulty in knowing how much is involved in the illicit activities of money laundering and financing of terrorism, poses greater danger to the international community in general and Ghana in particular. Ghana’s case is precarious because of the inherent weaknesses already existing in the Ghanaian banks and the study will seek among other things to address this.

Most illegal acts are geared towards money, thus money laundering becomes “the dynamic act that enables criminal activity of all descriptions to grow and expand”. Proceeds from criminal activities such as drug trafficking, terrorism and illegal sex trade use the process of money laundering to launder the dirty money using the normal business environment. In this light however, the banks are used to launder dirty money. Combating these predicate crimes will require comprehensive measures aimed at ensuring that Ghanaian banks are not unduly abused by such criminals. This will thus call for legal regimes to punish banks found complicit or aiding and abetting money laundering.

A laundering mechanism include cash smuggling, casinos and other gambling avenues are among other laundering mechanisms used by criminal networks. Other methods include wire and electronic funds transfer, credit card advance payment and currency exchange bureaus among others.
The complexity of money laundering is being heightened with advancement in technological evolution. The olden days of ‘apocryphal suitcases stuffed with notes’ seems to be over. With the press of a button, bulk money is transferred from one jurisdiction to another within a matter of seconds. Globalisation and the rise in internet use coupled with revolutionised financial markets have made ‘virtual money laundering a reality’. Cyber currency is the “movement of money by electronic transfer technology” and the ‘use of microchip-based electronic money for financial transactions’. Meanwhile, money launderers and financiers of terrorism exploit the advancement in technology to their advantage. “Cyber currency includes the attributes of conventional currency: a store of value, a medium of exchange, a numeraire, anonymity, and ease of use”. Since money laundering is aimed at dissociating criminal proceeds from their illegal acts, any act that will enhance anonymity is highly exploited. Electronic transfer and cyber payment affords money launderers the needed anonymity especially through offshore banking. The contemporary banking system has witnessed a ratcheted use of “electronic money technology in financial transactions by consumers”. Many banks in Ghana are known for the use of electronic banking for various services such as internet banking, funds transfer, electronic deposits, electronic bank statements and ATM among other services. However, as advocates of electronic banking, it appears either wittingly or unwittingly that banks in Ghana do not have the adequate technological back-ups to completely deal with the pace of money launderers.
Combating money laundering also involves curtailing terrorist financing. Financing of terrorists activities is a global concern especially after September 11. However, prior to September 11 attacks, the United Nations (UN) had in 1999 passed the UN International Convention for the Suppression of the Financing of Terrorism. This Convention stipulates in article 2.1 that

“any person who by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out an act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing an act” is guilty of terrorist financing”.

The key goal of the UN Convention was to inter alia make access to funds difficult for terrorists and to prosecute parties directly and indirectly involved in financing terrorists. Although “terrorism is cheap” money plays a crucial role in the activities of terrorists. For instance, considering the enormous economic and social consequences of the activities of Al Qaeda, it cost them merely between $400,000 and $500,000. Money is considered as the lifeblood of terrorism and finance and becomes the “engine of the terrorist train”.

It is a complex endeavour to directly link terrorist financing with money laundering. However, according to Peter Reuter and Edwin M. Truman

“one should distinguish between the marginal cost of a particular terrorist operation and the much larger total cost of creating and maintaining a sponsoring organization. In this sense, combating terrorism financing has a good deal in common with combating money laundering in the context
of conventional organized criminal organizations such as the Mafia, drug cartels, and street gangs. In addition, some countries and organizations that sponsor terrorism are also involved in conventional criminal activities such as drugs and cigarette smuggling”.

It is thus very possible that financiers of terrorist activities are involved in money laundering to enable them finance their (terrorists) group.

Terrorist financing comprises “financing of operational terrorists cells which provide them [terrorists] with daily living expenses, and funds to train for and commit the terrorist act and secondly, fundraising, where a terrorist group raises money to fund its activities”. Peter Lilley maintains that the fundraising aspect of terrorist financing involves larger sums of money and can show the same features as money laundering. The sources of fundraising include front companies, fraud, state sponsorship, corruption, counterfeit narcotics trade and smuggling. These sources are predicate offences thus reinforcing the connection between money laundering and terrorist financing.

More so, “money laundering in terror financing context is most commonly implemented through the transnational transfer of money and property”. Terrorists do not always transfer money through the normal banking system but an underground banking system which operates in a similar way as the traditional banking system. According to the Governor of Bank of Ghana, Dr. Wampah, “money-laundering and terrorist financing had become a serious threat to the country’s economy especially in the banking sector. He observed that the perceived relatively weak internal control at the rural and community banks has
become a fertile ground for the perpetrators of money-laundering and terrorist financing”. The implication is that robust and effective internal control measures are key to effective combat of money laundering and financing of terrorism. This is the challenge most Ghanaian banks are confronted with, which is either artificially created for purposes of deposit mobilization and profit drive or not having the capacity to fight the menace of money laundering and financing of terrorism.

The financial institutions especially the banks have become the avenues through which illegally acquired money is laundered. Global financial liberation and increased advancement in technology have contributed hugely to “phenomenal increase in global financial flows”, hence facilitating the ease with which huge sums of money are electronically transferred by criminals through money laundering from one area to another within a matter of seconds.

In another respect, money laundering and financing of terrorism are facilitated by countries with offshore banking. Offshore banking countries are very much prone to being destinations for money laundering as offshore banking provides lax tax havens and extreme anonymity. An offshore financial centre is defined by the IMF as

“A center where the bulk of financial sector activity is offshore on both sides of the balance sheet, (that is the counterparties of the majority of financial institutions liabilities and assets are non-residents), where the transactions are initiated elsewhere, and where the majority of the institutions involved are controlled by non-residents”.

18
Offshore financial centres ensure absolute anonymity and secrecy and it attracts high net worth individuals seeking protection normally to protect their ill-gotten wealth. OFCs thus become the natural destinations for dirty money, which easily encourages money laundering and facilitate the commission of other economic crimes.\textsuperscript{69} Examples of OFCs countries include Bahamas, Cayman, Cyprus, Liberia and Singapore and the “importance and size of offshore centres is neither peripheral nor inconsequential”\textsuperscript{70} to money laundering. In the case of Ghana, the offshore license granted to Barclays Bank was withdrawn when Ghana was becoming the safe haven for drug traffickers. Notwithstanding the withdrawal of the license, money laundering is pervasive in the banking sector of Ghana as confirmed by the Governor of Bank of Ghana.

Furthermore, the element of secrecy and complete anonymity associated with the banking system makes it the more suitable institution through which money is laundered. According to Kavaljit Singh, bank secrecy is an essential attribute of OFCs because it promises great anonymity and bank officials are barred from revealing the identity of customers. Banking secrecy had its modern relevance when in 1934; the Swiss Banking system “made it a criminal offence for any banker or bank employee to divulge details pertaining to business between the bank and its client”.\textsuperscript{72} Ordinary customers of banks do not require that absolute secrecy about their deposits because their deposits may not be that huge to require that extreme anonymity. However, private banking customers do. Private banking is a service rendered by banks, where esteemed customers are given privilege services. Such customers transact their businesses at special designated offices
with special staff to attend to their needs. In most of the cases, such Private Banking Departments close very late in order to attend to their customers. The private banking is now a common feature of almost all banks and it attracts “politically exposed persons whose source of wealth may not be legitimate”.73

Money laundering has social and economic consequences on societies where it is very pervasive. Its transnational nature and rapid global interdependence do not immune any nation from the clandestine activities of money launderers. It is therefore imperative to ensure that “the international financial architecture that provides for stability, growth and equity”74 is protected from the insidious activities of money launderers. As it is a well-grounded truism that a stable financial system is the lifeblood for economic development, thus a steady financial system is a public good.75 The aim of anti-money laundering (AML) regimes is to protect the integrity of the banking system, which is the main institution, used by money launderers76 to thwart the legitimacy of the financial system to ensure a smooth movement of criminal proceeds and the financing of terrorism.77

Combating money laundering and financing of terrorism will require international cooperation. It is also dependent on the kind of internal mechanisms put in place by the banks to forestall money launderers from abusing the financial institutions especially by adopting a comprehensive due diligence on politically exposed persons and scrutinizing suspicious transactions. Detecting the elusive stages of layering and integration of money laundering will require comprehensive cooperation among all institutions whose duty inter alia is to protect the stability,
integrity and reputation of banks to ensure customer confidence. “Combating money laundering is not just a matter of fighting crime but of preserving the integrity of financial institutions [banks] and ultimately the financial system as a whole.” Banks in Ghana, must therefore co-operate among themselves and with the law enforcement agencies in the combat against money laundering and financing of terrorism, if the integrity of the banking sector is to be maintained and enhanced.

1.7 Sources of Data and Research Methodology

A qualitative method of study was adopted in this study. The study relied on both primary and secondary sources of data. The primary sources included in-depth and one-on-one interviews with selected compliance officers from sampled universally licenced banks in Ghana namely CAL Bank, Access Bank, Energy Bank Ghana Limited, UT Bank Ghana Limited, First Atlantic Bank Limited and United Bank for Africa (UBA). The banks deal in products and services as well as customers likely to encourage high risks inherent with money laundering. The secondary sources comprised books, journals, reports, newspapers and internet sources. In addition, structured interviews were used for data collection. The gathered data was to establish the trajectory of money laundering in Ghana and financing of terrorism and the role of banks in combating the international menace.

The study adopted a purposive sampling method. A purposive sampling involves intentionally selecting units of the sample selected for study since they share the same characteristics with the general universe. The research design thus
comprises interviewing compliance officers of purposively selected banks, Banking Supervision of BOG, some officers from Financial Intelligence Centre (FIC) and the head of Commercial Crime Unit of the Criminal Investigations Department. These persons have been involved in reporting suspicious transactions, ensuring compliance by banks and provided intelligence to combat money laundering and financing of terrorism in Ghana.

Qualitative method involves exploration and in-depth analysis of the methods and processes of events is more suitable in analysing money laundering and financing of terrorism. The data collected was analysed using thematic analysis which is a method for identifying, analysing, and reporting patterns within data.81

1.8 Definition of Concepts

Most social science concepts and/ or terms are nebulous and controversial and for the avoidance of any ambiguity, it is extremely necessary to specify the meanings of the main concepts. For the purpose of this study, the following concepts as used: bank, money laundering, financing of terrorism and international crime are defined below.

Bank: The Banking Act, 2004 (Act 673) defines a bank as “an institution whose current operations consist of granting loans and receiving deposits from the public”.

International Crime: The Encyclopedia Britannica defines international crime as crimes that may be carried out in more than one country, in which case they are considered as transborder crimes.
**Money Laundering:** The United Nations Office on Drugs and Crime (UNODC) defines money laundering “as an attempt to conceal or disguise the ownership or source of the proceeds of criminal activity and integrate them [proceeds from crime] into the legitimate financial systems in such a way that they cannot be distinguished from assets acquired by legitimate means.”

**Terrorist Financing:** The International Convention for the Suppression of the Financing of Terrorism (1999) defines financing of terrorism in article 2(1) that “a person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly unlawfully and willingly provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part in order to carry out”:

2 (1) (a) An act which constitute an offence within the scope of and as defined in one of the treaties listed in the annex; or

2 (1) (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context is to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing an act.

**International Standards:** Refers to the updated FATF’s 40 Recommendations
1.9 Limitations of the study

The very complexity associated with money laundering and financing of terrorism was experienced during the research. The greatest limitation was getting relevant literature on money laundering and financing of terrorism in Ghana’s banking sector. It is a new phenomenon and hopes that, more research will be carried out on this. The second greatest limitation was getting compliance officers from the banks to be interviewed for the study. After a scheduled interview with a number of them, majority of them refused to grant the interview because, they did not want to reveal much about their AML/CFT activities. Out of the ten scheduled interviews only six compliance officers actually granted the interviews. This arguably was due to the fact that there was concern over revealing their AML/CFT activities. The refusal of the four other compliance officers to grant interview did not affect the study too much as it was noted that almost all interviewees had similar concerns and made very similar suggestions. Consequently, it was noted that additional interviews were unlikely to shed any new light on the issue under discussion. Also the element of time was yet another limitation.

1.10 Organisation of Chapters

The study has four chapters. Chapter one comprises the introduction, problem statement, objectives of the study, scope, rationale of the study, literature review and methodology. The second chapter offers a critical appraisal of money laundering and financing of terrorism in the Ghanaian economy. Chapter three is on the role of banks in the combat against money laundering and financing of
terrorism and chapter four is the summary of findings, conclusions and recommendations.
End Notes

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CHAPTER TWO

A CRITICAL APPRAISAL OF MONEY LAUNDERING AND FINANCING OF TERRORISM.

2.0 Introduction

This chapter involves a critical appraisal of money laundering and financing of terrorism. It analyses a brief history of money laundering, financing of terrorism, banking secrecy and terrorism, the nexus between money laundering and financing of terrorism and international, regional and national laws aimed at combating money laundering and financing of terrorism. Also, the chapter considers the impact of money laundering and financing of terrorism on the Ghanaian economy.

2.1 The Phenomenon of Money Laundering and Financing of Terrorism: A Prognosis

These international crimes have become international security issue and the whole world has become gravely concerned as “individuals, body corporate and countries have suffered untold harm in the hands of these criminals”.1

Consequently, there have been several international efforts in combating these crimes. Some states have subsequently enacted and ratified some of the international laws in order to be cooperative partners in the global combat against these crimes. However, despite the seemingly global enthusiasm in combating these crimes, there is some level of reluctance on the part of some countries in the
combat against money laundering and financing of terrorism. Thus many countries have different regimes and laws regulating money laundering and financing of terrorism. Money launderers have thus taken advantage of the differences among countries especially concerning “AML regimes, enforcement efforts and international cooperation”.

2.2 Money Laundering: A Prognosis

The U.N. Development Organisation (UNODC) defines money laundering “as an attempt to conceal or disguise the ownership or source of the proceeds of criminal activity and integrate them [proceeds from crime] into the legitimate financial systems in such a way that they cannot be distinguished from assets acquired by legitimate means”.

According to Okoye et al, money laundering is today one of the largest crimes in the world around, which all other crimes revolve. The consequences of money laundering are many and varied; from economic, political and social consequences.

The complexity and perplexity characterizing money laundering is such that it interwove many institutions and professions. Bankers by their services protect the details of their customers and are in most cases prevented by law from divulging information about their clients. The anonymity or protection provided by law is abused wittingly or unwittingly. For instance, section 84 of the Banking Act, 2004 of Ghana states:

“a director, an officer or any other employee of a bank shall not disclose an information relating to the affairs of a customer with the bank except
where the disclosure of the information is required by law or a court of
competent jurisdiction or the Bank of Ghana or is authorised by the
customer or is in the interests of that bank”.

Although it is prerequisite not to divulge information on customers recklessly, the
call by British Prime Minister, David Cameron before the G8 summit in Northern
Ireland in 2013 by “knocking down the walls of banking secrecy”\(^3\) should be
holistically embraced as there is an abuse of the banking secrecy in order to
perpetuates money laundering and finance terrorism.

The predicate crimes that necessitate money laundering may be classified into
five namely, drug trafficking, other blue collar crimes, white collar crimes,
bribery and corruption and terrorism.\(^4\) The proceeds of these predicate crimes are
laundered through the banking systems and “they are ploughed back into more of
the same criminal activity, invested into legitimate economy, used to and finance
other criminal activities”.\(^5\)

Methods of money laundering include some of the following: cash smuggling,
casinos and other gambling venues, insurance policies, securities, wire and
electronic transfer, structuring or smurfing, legitimate business ownership, credit
card advance payment, currency exchange bureaus, ‘shell corporations among
others.\(^6\)

The socio-economic consequences of money laundering can be huge and is a
threat to a nation’s national security because it fuels the activities of drug dealers
and the proceeds may be used to finance terrorism and other criminals to carry out
their criminal activities and to expand their criminal kingdoms. Consequently, criminals manipulate the international financial system especially the banks and can bring into disrepute the integrity of a nation’s financial system.\(^7\) Combating money laundering will thus require comprehensive international cooperation among states, banks and individuals in order to achieve the aim of AML/CFT regime of protecting the integrity of the international banking system.

Money laundering has the following features: it traditionally involves three stages; placement, layering and integration, the financial institutions (banks) are their targets and deposit-taking, money transfer, and lending provide the conduit where laundered dirty funds pass. It is also facilitated by the electronic transfer on funds and has domestic and international dynamics.\(^8\)

Globalisation and advancement in technology has played an enormous role in contemporary money laundering. Globalism, regionalism, internationalism and advancement in technology serve as key vulnerabilities and provide no immunity to any state from the insidious activities of money launderers and financiers of terrorism. In its forward, the International Convention against Transnational Organised Crime, The Palermo Convention states that:

“Criminal groups have wasted no time in embracing today’s globalized economy and the sophisticated technology that goes with it. But our efforts to combat them have remained up to now very fragmented and our weapons almost obsolete. The Convention gives us a new tool to address the scourge of crime as a global problem. With enhanced international cooperation, we can have a real impact on the ability of international criminals. The Palermo Convention to operate successfully and can help citizens everywhere in their often bitter struggle for safety and dignity in their homes and economies”\(^9\)
Technological advancement in banking has played a huge role in facilitating these crimes. Todays’ technology in the banking system employs “personal service, total discretion, confidentiality, managing account via phone, fax or electronically”\textsuperscript{10} in most cases without necessarily being present at the bank’s premises. As a consequence, transferring money from one area to another is transacted within a matter of few minutes. In Ghana for instance, electronic banking is well appreciated by many especially through mobile money, a process of transferring money using the mobile telephony. Also, the Politically Exposed Persons (PEPs) patronises electronic banking because of electronic banking offers extreme anonymity. Besides, “corporate and investment banking, along with private banking, are less concerned with large customer-screening tasks”.\textsuperscript{11}

The international banking system plays a phenomenal role in money laundering. The banking system is the key conduit through which, huge sums of illegally acquired funds are laundered to make it appear clean. The system’s role in these criminal acts is carried out either innocuously or with the complicity of some banking officials. The complexity of these crimes is such that without adequate information sharing between all stakeholders, detection at all stages is a near impossibility. The banking system is a conduit because of extreme anonymity and advancement in technology associated with modern banking methods. Anonymous banking is guaranteed especially at offshore banking which is highly patronised by “high net worth individuals who are seeking confidentiality, privacy and protection of their assets”.\textsuperscript{12} Banks have the penchant of not interfering in the financial transactions of their clients.\textsuperscript{13} Money launderers abuse this
confidentiality protection to attack the very integrity of banks, which may sooner than later, erode the public confidence in banking considering the alarming rate of money laundering.

The role of banks in money laundering is of great concern to the international community and the main goal of all anti-money laundering regimes is to protect the integrity of the international financial system. Article 6(a) of the Palermo Convention, enjoins all states to:

“Institute comprehensive domestic regulatory and supervisory regime for banks...and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious transactions”.

The response of the international community in reaction to money laundering is to set the standards and rules for fighting this menace through “the instrumentalities of international conventions and initiatives or programmes”.14 There are such conventions like the UN Convention against Illicit Traffic in Narcotics Drugs and Psychotropic Substances (1988) (Vienna Convention) and The Palermo Convention, all aimed at combating money laundering and protecting the integrity of the international financial system. The efforts of the international community have gone beyond reactionary. There is also the Financial Action Task Force (FATF) 40 Recommendations on money laundering, which inter alia, monitors progress of member states in the implementation of anti-money laundering regimes and reviews and reports money laundering trends, techniques and counter measures
2.3 Financing of Terrorism

Financing of terrorism had existed prior to 9/11 but the aftermath the attacks changed the dynamics on issues bordering on the sources of funds for terrorists. In consequence, many means have been devised to curtail the sources of funds for terrorism. Money has been the mainstay of terrorism and as a result, terrorists and their financiers have devised varied means to fund their illegal activities.

Although terrorism is a nebulous phenomenon, in November 2004; the United Nations’ Secretary General’s report defined it as “any act intended to cause death or serious bodily harm to civilians or non-combatants with the purpose of intimidating a population or compelling a government or an international organisation to do or abstain from doing an act”\(^\text{15}\). Hussain Jabbar describes terrorism as “politically and emotionally charged” therefore some unscrupulous politicians wanting to destabilise a particular regime would rather finance terrorists to achieve a political goal. As a consequence, terrorist financiers are to be treated as terrorists.\(^\text{16}\) Thus unscrupulous investors use the financial markets and systems for purposes of money laundering and terror financing.\(^\text{17}\)

Article 2(1) of the International Convention for the Suppression of the Financing of Terrorism (1999) provides that a person is guilty of terrorist financing when that “person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and willingly provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part in order to carry out” to cause bodily harm to civilians who are not part of any hostility.
This phenomenon (terrorism financing) may also encompass the “raising and processing of funds to supply terrorists with resources to carry out their attacks”\(^\text{18}\). Terrorist financing “is one of the most disturbing problems of the twenty-first century”\(^\text{19}\) because terrorist organisations have demonstrated their capacity and preparedness to cause indescribable harm to society as they are able to surreptitiously raise funds to effectuate their criminal acts. Although terrorism is cheap, “finances are the engine of the terrorists’ train”\(^\text{20}\). According to the 9/11 Commission Report; the terrorist group spent between $400,000 and $500,000.00. These estimates are incomparable to the quantum of damage Al Qaeda caused to life and property.

Methods of financing of terrorism differ. Financing of terrorism could come from both legitimate and illegitimate sources. For instance, some of the funding received by Al Qaeda and Bin Laden came from the latter’s huge family inheritance and other international business connections of Al Qaeda’s.\(^\text{21}\) Terrorist groups receive funding from supporters especially from the oil-rich regimes like “Libya in the 1970s and Iran under Ayatollah Khomeini beginning in the 1980s”.\(^\text{22}\) Also donations and fund raising activities forms key component of funding for terrorist organisations and Al Qaeda for instance relies very heavily on these methodologies.\(^\text{23}\) The illegitimate sources may include proceeds from drugs, kidnapping and other illegal sources.

The Money Laundering and Terrorist Financing Typologies issued by FATF-GAFI in 2005, terrorist financing could be categorized by: (a) predicate or other
related offence, (b) country or region, (c) financial sector, (d) development stage of the financial market and (e) weak points or vulnerabilities in AML/CFT regime.24

Terrorist groups have devised highly sophisticated methods of financing terrorism in such a manner that, it is becoming increasingly cumbersome in detecting the scale of funds that are geared towards sponsoring criminal acts. Al Qaeda was able to defeat all the detection mechanisms put in place to monitor financing of terrorism in the USA.25 Terrorism is an evolving scenario so its financing is also adapting modern technological advancement in order to ease the processes through which terrorists groups like al Qaeda and al Shabaab could transfer funds with enhanced anonymity; facilitated by modern advancement in international banking. The International Monetary Fund (IMF) explains that terrorists “often exploit the vulnerabilities in financial systems that allow for an inappropriate level of anonymity and non-transparency in the execution of financial transactions”. According to Schneider, “the 9/11 terrorists took advantage of the lack of a financial system control, which gave them the ability to transmit and receive money with relative anonymity and to find the financial resources to carry out their plans of al Qaeda inspired groups and other terrorist organizations.26” The global financial system both formal and informal has characterized modern terrorist financing. The normal banking and hawla system is the means of transferring funds to terrorist groups for their training and other commitments.27
Globalism, internationalism and regionalism have greatly added to the ease with which financing of terrorism have become difficult to detect. The international community has therefore put in place such measures to dry out the sources of funds to terrorists group by ensuring a comprehensive, cooperative enforcement of measures across states. For instance, Security Council Resolution No.1373 compels member states to criminalise terrorist financing.\textsuperscript{28} In addition to national laws and regulations aimed at containing terrorist financing; combating terrorist financing will require that “the intelligence processes to fight terrorist financing should combine experts from different fields to detect the various indicators and trends”\textsuperscript{29}

\subsection*{2.4 The Nexus between Money Laundering and Financing of Terrorism}

These two crimes have gained international notoriety because of the social, economic and political ramifications they pose to nation states. The main goal of money laundering is to hide the source of the illegitimate income and financing of terrorism involves the provision of funds either directly or indirectly to individuals or organisations in orchestration of terrorist activities.\textsuperscript{30}

To keep alive their goal, terrorists require money to finance their activities, which are mostly transferred to them by their financiers through surreptitious means ostensibly to hide or protect the source of their income.\textsuperscript{31}

It must be appreciated at the onset that, establishing a link between money laundering and financing of terrorism is an arduous task and many scholars on money laundering and financing of terrorism have established that, this attempt of
connecting the two is an ongoing debate. According to Peter Lilley “terrorist financing is not money laundering”. The conscious linkage became more so relevant after the 9/11 attacks on New York and Pennsylvania to determine the sources of finance of terrorists groups and a call on all civilized states to combat money laundering and terrorist financing; hence FATF in October 2001 drew a “parallel between other forms of money laundering and the financing of terrorism”.

Terrorism is a politically and emotionally charged phenomenon and making commercial profit is mostly not the mainstay of terrorists. However, there are commercial terrorists who seek to benefit from their activities but money launderers aim to benefit financially from their criminal activities. All in all, terrorists are motivated to achieve political goals and other concomitants are peripherals.

The sources of funds for terrorists are many and varied but it may be grouped into two main sources namely state sponsorship and private donations. State sponsorship is the process where states makes funds available to terrorist groups either domestically or internationally to attack other states and private sources of funds for terrorists come from individuals who provide funds for terrorists groups to carry out terrorism. The sources of funds for terrorism could either be legitimate or illegitimate. Even though some states engage in money laundering, the process is very common among private persons especially through the fundraising aspect of terrorist financing. Most of sources of funds for terrorist activities are predicate crimes for money.
Indeed, both crimes aim at concealing the sources of their funds and anti-money laundering regimes aim at deterring terrorism, thus making it difficult for would-be terrorist and their financiers to access funds. However, as money launderers hope to dissociate the laundered money from its criminal origins, terrorist financiers aim at making funds available to their groups.\textsuperscript{40} Terrorism is a cheap endeavour because it does not mostly require huge sums of money to carry out a terrorist activity but money laundering encompasses huge transactions.

Krieger and Meierriecks maintain that so far as some terrorist acts are crimes, there is proximate connection between terrorism and organised crime (money laundering).\textsuperscript{41} Besides, terrorism financiers may “engage in illegal activities to obtain funds that then require cleaning”.\textsuperscript{42} Reuter and Truman posit that maintaining sponsorship of terrorists organisations may need constant flow of funds and they maintain further thus “in this sense, combating terrorism financing has a good deal in common with combating money laundering in the context of conventional organised criminal organizations such as the Mafia, drug cartels and street gangs”.\textsuperscript{43}

According to Peter Lilley terrorist groups such as PLO, IRA, ETA and KLF have been found complicit in narcotics trade and they have used the proceeds out of their illegal trade to finance their terrorist activities. He went further to mention that Osama bin Laden and his Al-Qaeda group has “jointly exploited the drugs trade”.\textsuperscript{44}

Makarenko’s “crime-terror nexus further explains the nexus between money laundering and financing of terrorism. The crime-terror nexus is to be placed on a
“continuum within which every single group can slide up and down the scale depending on the environment within which it operates”. According to her crime-terror nexus, there is connection between organised crime and terrorism and at the middle of the spectrum; it is highly difficult to disentangle organised crime (money laundering) from terrorism and at the fulcrum of the continuum lies the point of ‘convergence’, where a single entity simultaneously exhibits criminal and terrorist characteristics”.

The nexus between money laundering and financing of terrorism occurs when laundered funds are used in financing terrorism especially through private sponsors of terrorism; which mostly engage in cleaning dirty money. The sources of funds of these financiers are those involved in the predicate crimes such as narcotic-trade, smuggling, and corruption. From the forgoing, although establishing the link is an on-going debate, the illegitimate sources of funds for the purposes of terrorism can be linked with money laundering because “the techniques used to launder money are essentially the same as those used to conceal the sources of, and uses for terrorist financing. Funds used to support terrorism may originate from legitimate sources, criminal activities or both”.

2.5 Offshore Financial Centres (OFCs) and Money Laundering

The international financial architecture had undergone revolutionary changes resulting from financial deregulation and liberalisation. Financial deregulations and liberalisation have weakened governmental controls on the barriers to traditional banking and this has proliferated the establishment of OFCs.
Defining an Offshore Financial Centres has been a difficulty because it is a nebulus and complex phenomenon, as it has been attributed to varied names such as International Financial Centre (IFC), International Banking Centre (IBC), International Banking Facilities (IBFs), and Offshore Banking Centre. Singh (2000) defines OFCs as those “jurisdictions where banks and other financial institutions are exempt from a wide range of regulations that are normally imposed on onshore institutions”. Examples of jurisdictions with OFCs include London, Cayman Island, Bermuda, Mauritius among others. These jurisdictions are characterised with low or no tax for non-residents, bank secrecy and secrecy established by law, attractive commercial financial legislation, absence of exchange controls and total freedom of capital movement, little regulation and administrative controls, poor banking regulation, flexible legal system, political and economic stability among others.

The role OFCs play in the global financial flow of capital is phenomenal and their importance and abuse increase steadily and this have been facilitated by an exponential rise in technology. According to a report by the Research Department of Bank of Ghana (2008) about 45% of the world’s private wealth is managed offshore. OFCs are the tax havens that attract both legal and illegal investors because with OFCs the issue of sovereignty does not exist and this attracts criminal investors especially to deposits their illegally-gotten money at OFCs.

Banking secrecy is an essential attribute of OFCs and this makes it conducive for tax cheaters and money launderers and it attracts both legitimate and criminal
investors. According to Singh (2000) strict bank secrecy laws makes OFCs traditional destinations for the bulk of huge sums of dirty money gotten through illicit activities. This makes OFCs vulnerable to money launderers and financiers of terrorism to channel their illegitimate money. Picard and Pieretti (2009) stated that “money laundering and bank secrecy is inextricably linked” and since OFCs operate with extreme secrecy, the tendency of making money laundering activities pronounced is very high.

In 2007, the government of Ghana introduced the Banking Amendment Act, 2007 (Act 738) to make room for the establishment of International Financial Centre in order to make Ghana the financial hub of West Africa. In consequence, the Barclays Bank Ghana Limited was granted the licence to operate as an OFC. However, the licence was withdrawn by the government because of “perceptions of money laundering, low interest by Ghanaians in the service and lack of regulations”. In addition, Amissah-Arthur, the then governor of BoG maintained that the withdrawal was necessary “at a time that Ghana was gaining a reputation for launder, we [government] did not want to confirm this perception”. OFCs thus provide avenues for both legitimate and criminal investors but owing to the element of profound secrecy, money launderers are inherently associated with OFCs.

2.6 Bank Secrecy and Money Laundering and Financing of Terrorism

Banks are known to be the gateways of the financial system especially to most developing countries like Ghana. Banks facilitate domestic and international
payments, serves as the intermediary for depositors and borrowers, and as a provider of other financial products and services. However, banking secrecy shrouds the nature of relationship between banks and their customers and has raised controversies as it is being abused for money laundering and financing of terrorism. Banking secrecy although protects customers from unjustifiable intrusion of their financial transactions; it has been abused by criminals such as money launderers and financiers of terrorism and thus serves as an affront to the combat against money laundering and financing of terrorism.

Historically, banking secrecy has a long trajectory but its contemporary relevance is said to have started in the 1920s in Switzerland to protect the assets of Jews from Nazi Germany from espionage activities. In 1934 however, the Swiss adopted the Federal Banking Law to protect bank secrecy.

The UBS’ dictionary of Banking and Finance defines bank secrecy as “the obligation of the bank and its employees to keep secret information referring to customers”.

2.6.1 The Legal Basis for Bank Secrecy

In almost all jurisdictions there are some laws and provisions related to protecting the financial transactions and other information related to banks’ customers. Bank officials are consequently prohibited from unjustifiably divulging information about their customers. Equally, bank officials are protected by the same laws from unlawful legal actions; unless the action arises out of negligence or wrongful
For instance, in section 84 of the Banking Act, 2004 of Ghana, it provides that:

“A director, an officer or any other employee of a bank shall not disclose an information relating to the affairs of a customer with that bank except where the disclosure of the information is required by law or by a court of competent jurisdiction or the Bank of Ghana or is authorised by the customer or is in the interests of that bank”.

The Act consolidates all laws related to banking and to regulate institutions which carry out the business of banking.

The bank secrecy is guaranteed by law and all banking officials are expected to adhere to such laws backing secrecy of customers. Violations attract punishments and banks and its officials may warrant criminal, civil and administrative punishments.

### 2.6.2 Limitations of Bank Secrecy

Even though bank secrecy is aimed at protecting customer details form being unlawfully disclosed to third parties, the phenomenon of secrecy is not absolute. In traditional banking practice, all accounts are attached to individuals and corporate entities. In effect, under normal scheme of things, all transactions should be traceable. Under various legal systems, courts can issue orders for information about a customer to be supplied and in most cases for investigative purposes. For instance, in the USA, there is “The Currency and Foreign Transactions Reporting Act (1970) otherwise known as Bank Secrecy Act which
among other things require financial institutions to assist government agencies to
detect and prevent money laundering. Again in Ghana, section 84 of Banking Act,
2004 provide in part that … “except where the disclosure of the information is
required by law or by a court of competent jurisdiction or the Bank of Ghana or is
authorised by the customer or is in the interests of that bank”.

The limitation is to ensure that the bank secrecy act are not abused by criminal
and willful employees to commit crime especially money laundering and other
financial crimes.

2.6.3 Bank Secrecy and Money Laundering and Financing of Terrorism

The banking sector has become the target of money launderers and financiers of
terrorism due to high volume of cash that can either be transferred physically or
electronically and the anonymity or secrecy the banking system offers.\textsuperscript{62} Bank
secrecy is applies to all customers of a bank but there is extreme anonymity or
secrecy that associate private banking. According to Ruce (2011) private banking
provides “financial and related services to wealthy clients” especially politically
exposed persons who are mostly the affluent in societies. The wealthier a client
the more likely, he or she may prefer private banking and to enjoy private
banking, it requires at least five million dollars and this poses a serious risk to
banks particularly when banks do not divulge information about their clients\textsuperscript{63}
unless properly ordered.

There is intense competition among banks for high net clients. They are
preferentially treated and in some cases, their relationship managers suspend or
not at all implement anti-money laundering procedures on such persons. Profit making is the essence of banking and huge depositors are protected absolutely or the banks will be selective in reporting which transaction is suspicious. This therefore makes private banking the most vulnerable areas to money laundering.

Electronic banking has been a contributing element to an epochal increase in money laundering. Cash is electronically transferred without regard to border especially among banks and their international corresponding banks. With electronic banking, the degree of anonymity and secrecy is assured and electronic transfer has been exploited by money launderers and financiers of terrorism.

Peter Lilley (2012) stated that about 80% of suspicious transactions come from banks. Banks have been infiltrated, subverted and corrupted by money launderers especially when some criminal gangs own banks. In some cases bank employees wittingly or unwittingly collude with money launderers to launder money at the expense of rules and regulations and sound banking system. Banks such as erstwhile Bank of Credit and Commerce International (BCCI), the Vatican Bank and Liberty Reserves are known to have laundered huge sums of money resulting in either the collapse or prosecution of bank officials.

Bank secrecy makes the fight against money laundering and financing of terrorism difficult. In Nauru for instance, banking anonymity is so pronounced that tracing banks is difficult and all banks have the same post office box.
2.7 International Regimes on Money Laundering and Financing of Terrorism

Stephen Krasner defines international regime as “implicit or explicit principles, norms, rules and decision-making procedures around which actors’ expectations converge in a given area of international relations”. There have been conscious attempts by the international society to ensure harmonisation of national policies and programmes to enhance global cooperation in the fight against money laundering and financing of terrorism. Related to this is the fact that money laundering and financing of terrorism has become wider as there are no longer immune territories.\textsuperscript{37} There is disquiet in all governments as efforts to combat these menace appears to be futile or ineffective. This may be attributed to reluctance in cooperation by some countries, thereby earning those countries the epithet, Non-Cooperative Countries and Territories (NCCT).

The global anti-money laundering regime (AML/CFT) technically aims at preventing, detection and prosecuting of criminals; aiming to destabilise the international financial system. Peter Reuter and Edwin Truman maintain that:

“The global regime to control money laundering involves three dimensions: national and international building blocks, a firm legal and enforcement foundation, and close interaction between public and private sectors in order to lower compliance costs and raise the probability of achieving its [AML regime] objective”\textsuperscript{67}
The international community led by the UN and the G8 have taken several initiatives in ensuring that the global international financial architecture is protected from the illegal activities of money launderers and financiers of terrorist activities. Despite the many initiatives such as the FATF’s 40 Recommendations, money laundering and other criminal activities have increased phenomenally in quantity; coupled with the complexities in their (criminals) modus operandi. Phil Williams and Dmitri Vlassis maintains that international efforts to “contain and combat such contagion have, for the most part, been futile”.68 In like manner, Reuter and Truman emphasis that; “this idealization of the global anti-money laundering (AML) regime is unattainable”.69 The AML regime appears unachievable due to “differences in institutions, perspectives and priorities”.70 However, in the midst of these strong pessimisms, the initiatives and actions taken by the global community to combat money laundering and financing of terrorism have put the activities of money launderers and financiers of terrorism in check.71

The global AML/CFT regime revolves around prevention and enforcement strategies. The preventive measures involve deterring criminals from abusing private persons and organisations in the laundering of illegal proceeds from crime and further enhancing the commissioning of further crimes.73 The enforcement pillar is aimed at “punishing criminals when, despite preventive efforts, they have facilitated the successful laundering of those proceeds”.74 The preventive measures includes customer due diligence, reporting, regulation and supervision and sanctions.75 On the other hand, the enforcement measures comprises,
underlying predicate crimes, investigation, prosecution, punishment and confiscation.\textsuperscript{76}

Achieving the goals (prevention and enforcement) of global AML will require international cooperation among states by sharing information, legal correspondence or mutual legal assistance among other cooperative efforts.

\subsection*{2.8. International Legal Mechanisms for Money Laundering and Financing of Terrorism}

Organised crimes such as money laundering and financing of terrorism have always engaged the attention of the international community especially at the level of the United Nations. These crimes have been recognised by the international community as having multiplier effects and thus require comprehensive and robust regulations to combat and contain them. The 1988 United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances became the first international legal endeavour to represent money laundering and criminalise the offence of money laundering.\textsuperscript{77}

Also, immediately after the attacks on the USA, in September 2001, the UN Security Council adopted Resolution 1373, by which, it became obligatory to a certain degree for member states to prevent and suppress the financing of terrorism, criminalise terrorism, make funds extremely difficult for terrorist to access and not to provide safe haven for terrorists.\textsuperscript{78} Related to this, in April 2002, the UN passed the International Convention for the Suppression of the Financing of Terrorism. This Convention further called on member states to inter alia, take
the necessary comprehensive measures to protect the integrity and soundness of their financial institutions (banks) from being abused by persons intending to involve in terrorist activities and called for the establishment of Financial Intelligence Units (FIUs).\textsuperscript{79} Ghana established its FIC to comply with these Conventions in 2008.

Furthermore, in September 2003 and December 2005, the UN Convention against Transnational Organized Crime and the UN Convention against Corruption were respectively created. These two Conventions broadened the scope of the offence of money laundering to the extent that it was not only applicable to the proceeds of illicit drug trafficking but also that of other serious crimes. In addition, these Conventions encouraged member states to have elaborate domestic supervision and regulatory frameworks for banks and non-bank financial institutions as they are prone to the activities of money laundering.\textsuperscript{80}

FATF is an “inter-governmental body which sets standards, and develops and promotes policies to combat money laundering and terrorist financing”.\textsuperscript{81} As an international body, it is clothed with authority to ensure that local regimes or national systems for fighting money laundering and terrorist financing meet FATF’s standards. FATF’s recommendations are endorsed by 130 countries.\textsuperscript{82}

The FATF’s 40 recommendations among other things aimed to “improve national legal systems, enhancing the role of the financial sector and intensifying cooperation in the fight against money laundering”.\textsuperscript{83} All in all, the 40 FATF recommendations provide comprehensive international set of frameworks for an
effective legal and institutional regime to combat money laundering and the financing of terrorism.

To fully achieve a stable international system with regard to combat against money laundering and financing of terrorism, the international community must cooperate as contained in FATF’s recommendations 35-40.

2.9 Continental and Regional Legal Frameworks on AML/CFT

Africa has not been spared the scourge of these crimes and coupled with weak institutions and legislative frameworks, African countries have become prone to money laundering and financing of terrorism. Bribery, corruption and drug trafficking are some of the predicate offences that fuel money laundering.

To combat money laundering, the African Union Convention on Preventing and Combating Corruption was adopted to inter alia “formulate and pursue, as a matter of priority, a common penal policy aimed at protecting the society against corruption”\textsuperscript{84}. The Convention also covers money laundering and illicit enrichment as provided in articles 6 (a) that:

“The conversion, transfer or disposal of property, knowing that such property is the proceeds of corruption or related offences for the purposes of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the offence to evade the legal consequences of his or her action”
Also in article 8(1), the Convention provides that “subject to the provisions of their domestic law, State Parties undertake to adopt necessary measures to establish under their laws an offence of illicit enrichment”.

Regionally, the Inter-Governmental Action Group against Money Laundering (GIABA) is an institution of the Economic Community of West African States (ECOWAS) “responsible for facilitating the adoption and implementation of Anti-Money Laundering and Counter-Financing of Terrorism in West Africa.”

According to GIABA (July 9, 2013), over $300 billion had been laundered across ECOWAS countries since they attained independence.

2.10 Money Laundering and Financing of Terrorism in Ghana

Even though money laundering and financing of terrorism are international organised crimes, they are relatively new offences in the Ghanaian jurisprudence. Kwaku Addeah maintains that before the 1990s, money laundering was unknown as an offence as it is today. However, he stated further that “persons were prosecuted in respect of such underlying money laundering offences (predicate offences as drug trafficking, fraud, counterfeiting bribery and corruption, smuggling and banking system abuse)”. Money laundering and financing of terrorism are international crimes and Ghana being a player on the international stage, ought to cooperate to combat these menaces. With regard to these two menaces, money laundering is prevalent in Ghana because the FIC as of May 9, 2013 were handling 700 money laundering
related cases and out of these 300 had been successfully tackled; consequently leading to the confiscation of belongings valued over $2.8million.\textsuperscript{87}

The Anti-Terrorism Act 2008 (Act 762) established the Financial Intelligence Centre (FIC) to inter alia gather intelligence on suspicious transactions of certain suspicious persons and report them to the security agencies for further investigations and prosecution.\textsuperscript{88} The inception of FIC has brought money laundering to a minimal level as compared to the era without the FIC.\textsuperscript{89} However, Mr. Samuel Thompson Essel, the CEO of FIC maintains that “the war against transnational organized crime has just begun”.\textsuperscript{90}

Even though Ghana, was blacklisted in February 2012 as one of the Non-Cooperative Countries Territories (NCCT); it has been delisted from the blacklist because of its comprehensive measures in combating these crimes. The Attorney-General had announced the government’s intentions “to enact two new laws to check the menace of money laundering in the country”.\textsuperscript{91} Brett F. Woods maintains that “Ghana has established systems to identify, trace, freeze, seize or forfeit narcotics related assets”.\textsuperscript{92}

The role of law enforcement agencies to ensure compliance, detection, arrest and prosecution of money laundering and terrorist financing is crucial. The FIC receives reports from Accountable Institutions (AIs), analyses such Suspicious Transactions Reports (STRs), process them into intelligence reports and distribute same to relevant law enforcement agencies for the necessary action to be taken.\textsuperscript{93}
The Chief Executive Officer (CEO) of FIC, Mr. Samuel Essel Thompson is reported to have said that, reported cases to the police (EOCO) are left unprosecuted. According to him, EOCO lacks understanding of the relevant laws regulating money laundering and financing of terrorism, inadequate human resources and inadequate capacity of police prosecutors.

2.11 The Anti-Money Laundering Regime and Ghana’s Commitment

Money laundering and financing of terrorism as global phenomenon requires the commitment and cooperation of all countries in order to fight it. As a consequence, most countries including Ghana have instituted measures to combat money laundering and financing of terrorism. In Ghana, money laundering can be said to have been more prevalent than financing of terrorism. Although “terrorist financing has not been prominent, the inherent risks of terrorist financing are present.” In Ghana especially when, regional integration is highly pronounced among members of Economic Community of West Africa States (ECOWAS). With increased activities of criminal and terrorist groups in the sub-region; Ghana cannot be impervious to terrorism. The current oil found in commercial quantities is also an invitation to increase criminal or terrorist activities as it happened in the Niger Delta of Nigeria.

To ensure the soundness of the banking system against abuse by money launderers and financiers of terrorism, the government through the Parliament of Ghana has enacted laws as stated in section 2.12 of this study, to show its commitment in combating these menaces. But crucial in this fight is the
establishment of FIC which is a key requirement by FATF$^{96}$, to among other things monitor the country’s progress in the fight against money laundering and financing of terrorism.

However, the country’s commitment is being thwarted by non-prosecution of cases by the EOCO. According to Mr. Samuel Thompson Essel, the EOCO are yet to prosecute money laundering cases reported to them.$^{97}$ Notwithstanding, this obvious difficulty, Ghana has put in place the necessary tools to combat money laundering and financing of terrorism.

2.12 The Socio-economic Costs of Money Laundering and Financing of Terrorism on the Ghanaian Economy

Money laundering and financing of terrorism have socio-economic consequences on societies. The cost of money laundering and financing of terrorism on any state is dependent on the “strength, vitality, and freedom of economies”$^{98}$ that can serve as indicators of the relative vulnerability to penetration by money launderers, which will facilitate the financing of terrorism through that economy’s financial system. To protect the economy from the nefarious activities of money launderers and financiers of terrorist activities, various Ghanaian governments have instituted measures aimed at ending the scourge of money laundering and financing of terrorism.

Ghana’s economy is at risk of unlawfully being penetrated by the perpetrators of these crimes, especially with the present borderless global society. Indeed, globalisation has added to the boom to successfully launder money because
hitherto, organised crimes could easily be contained at the national level but with
globalisation, borders are irrelevant.99 The secretive acts of money launderers and
financing of terrorism makes it much complex for meaningful statistical
analysis100 by FIC and BSD and this had led to variations in quantifying the
enormity of these crimes even on the world’s economy. Detecting the actual
global amount of laundered money in Gross Domestic Product (GDP) terms has
produced differentiation in estimates. According to IMF’s recent estimates, the
cost of money laundering on the world’s GDP ranges between 2-5% that is
$1.3trillion to 3.3 trillion.101 Also in March 1998, Dow Jones News estimated that
money laundering amounted to between 2 to 5% of world GDP, thus between $1
and $3trillion.102

Min Zhu, a deputy Managing Director for IMF indicated the economic
consequences of money laundering on any economy as

“Money laundering and the financing of terrorism are financial crimes
with economic effects. They can threaten the stability of a country’s
financial sector or its external stability more generally. Effective anti-
money laundering and combating the financing of terrorism regimes are
essential to protect the integrity of markets and of the global financial
framework as they help mitigate the factors that facilitate financial abuse.
Action to prevent and combat money laundering and financing of
terrorism thus responds not only to a moral imperative, but economic
need”.103

This reinforces the vulnerabilities inherent in world economies especially those
countries with lax financial regulations. Integration into the international financial
system exposes countries to the risk of corrosiveness of money laundering.104
Firstly, money laundering reward criminals as it is a process which makes crime useful. It makes huge sums of money available that allows drug traffickers, smugglers, and other criminals to increase their operations. Money laundering transfers mass economic power from the market, government, and citizens to criminals. Also, because money launderers have access to huge sums of money, it can corrupt the law enforcement agencies and some elements of society. Thus, the Ghanaian legal system stands to fail because money launderers will have more money to buy their way out by corrupting the judiciary. In consequence, the vicious circle of sponsoring terrorism and money laundering is perpetuated.

Secondly, money laundering and financing of terrorism, undermines the integrity of financial markets especially the banks. The international banking system is under immense pressure to ensure compliance with global anti-money laundering policies and banking regulations to combat the incidence of money laundering and financing of terrorism. The urgent call has been necessitated by the fact that drug traffickers, smugglers and other economic criminals abuse the banking system to launder the proceeds of their illegal activities to give legitimacy to their income. The banks thus become the conduit through which the proceeds are laundered and this may lead to lose of confidence in the banking system. More so, it may also lead to the collapse of banks especially those which accept huge deposits from customers without any due diligence conducted on them. The BCCI collapsed due to its money laundering activities. Banks in Ghana might lose public confidence if, effective control measures are not put in place to ensure strict adherence of AML/CFT regime. Even though evidence could not be
adduced to the collapse of any bank in Ghana, inadequate control measures by banks might lead either to loss of integrity or collapse of a bank if these criminal activities are not contained.

In addition, these menaces, may pose reputational risks to both the banks in Ghana and the country as a whole. In February 2012, Ghana was blacklisted by FATF as NCCT country because, Ghana was not taking the needed measures with regard to the combat of money laundering and financing of terrorism. When a country is so blacklisted for inadequate controls to combat these menaces, the reputation of the country for international investors is tainted. Foreign investment may be kept off because foreign banks may limit their transactions with organisations that provides haven for money launderers.\textsuperscript{109} Also, the reputation of any bank identified with money laundering runs risking its reputation. The reputational risk resulting from criminal activities reduces global investment opportunities and sustainable growth from would-be investors in the Ghanaian economy. A damaged reputation is difficult to be regained and may require strenuous efforts in regaining it.\textsuperscript{110}

Furthermore, money laundering and financing of terrorism may lead to loss of revenue through tax evasion.\textsuperscript{111} Ghana might not have an effective tax system and in payment of taxes, one may have to disclose the source of income and since money laundering is a secret phenomenon; taxes are often evaded.
The activities of money laundering and terrorist financing may threaten the stability of a government. The Ghanaian government hopes to achieve political and economic stability, but these crimes especially money laundering pose a serious threat to the stability of the government since the activities of money laundering “threaten the cohesion, security and stability of the financial system [banks], the economy, and the value systems of the body politic and good governance of any country”. More so, these crimes are international crimes aiming at the economy and indeed the entire spectrum of governance of a country may destabilise the country owing to the underground nature of money laundering and terrorism financing. Money laundering can increase the risk of monetary instability due to the misallocation of resources from artificial alterations in asset and commodity prices.

All in all, money laundering and financing of terrorism negatively affects all economies and may pose more dangerous to the Ghanaian economy, especially because of seemingly ineffective implementation and enforcement of rules related to money laundering and financing of terrorism. According to Kwaku Addeah “money laundering has a corrosive effect on a country’s economy, government, and social well-being”. The phenomenon increase the risk of banks, may affect the reputation of Ghana and banks, leads to loss of revenue, may affect the economic and political stability of Ghana and it also rewards criminals.
2.13 The Legal Framework for Combating Money Laundering and Financing of Terrorism in Ghana

Ghana until the 1990s had no specific law dealing with money laundering and financing of terrorism. This could mean either there was no money laundering (doubtful) or it was not pervasive as pertains now. The watershed was in the 1990s when Ghana promulgated the Narcotics Drug (Control) Enforcement and Sanctions Law, 1990 (PNDCL, 236) to respond to the phenomenon of drug trafficking. Section 12 of PNDCL 236 states:

“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 part of that property was obtained or received directly or indirectly as a result of the commission of a drug offence” 116

This law intended to penalise persons who conceal the original source of illegal proceeds and dissociate the source from the crime.

In the 1990s, the Supreme Court of Ghana gave a ruling in Bonsu alias Benjillo vrs The Republic, which convicted the appellant and his accomplices to ten years imprisonment for the possession of heroin and had the appellant’s properties confiscated to the state. Per the same ruling, it was stated that the purpose of PNDCL 236 “was to prevent illicit drug dealers benefiting from their crimes”.117 According to Kwaku Addeah, this ruling became the precedent in “dealing with underlying money laundering offences such as narcotics drugs”.118
However, subsequent to the 9/11 attacks in the United States of America compelled nation states to take measures to combat money laundering and financing of terrorism to limit or curtail the flow of finances to terrorist activities. As a dualist state and to cooperate with the international community, on June 12, 2002 the Parliament of Ghana ratified the international Conventions related to “terrorism but with implication for money laundering”. In consequence, the Ghanaian Parliament ratified the UN Convention for the Suppression of the Financing of Terrorism, International Convention for the Suppression of Terrorist Bombing and the OAU Convention on Prevention and Combating Terrorism.

With increased regionalism, coupled with rapid expansion of terrorist activities within some African states, Ghana passed laws to combat money laundering and financing of terrorism to protect the reputation of Ghana from been abused for the purposes of money laundering and to protect the integrity of the financial system. However, to combat the activities of money launderers and financiers of terrorism, the Ghanaian government has passed laws to protect the economy especially the banking system from being abused by money launderers and financiers of terrorism. There are the Anti-Money Laundering Act, 2008 (Act 749), Anti-Terrorism Act, 2008 (Act 762), Economic and Organised Crime Office Act, 2010 (Act 804) and Anti-Money Laundering Regulations, 2011 (L.I.1987). In addition to these are Anti-Terrorism (Amendment) Act, 2012 (Act 842), Anti-Terrorism Regulations, 2012 (L.I. 2181), Criminal Offences (Amendment) Act, 2012 (Act 849), Immigration (Amendment) Act, 2012 (Act 848) and Economic and Organised Crime Office (Operations) Regulations, 2012 (L.I. 2183). These
laws and regulations are intended to protect the Ghanaian economy and the integrity of financial institutions especially the banks. Furthermore, Accountable Institutions (AIs) which includes the banks and allied institutions are enjoined by these laws and regulations to provide the needed data with regard to reporting of suspicious transactions to the FIC.\textsuperscript{12}
End notes


15. UN Report cited by Hussain J.


17. Ibid.


19. Ibid.


22. Ibid.


27. UNSCR S/RES/1373/2001


30. Ibid.

31. Ibid.


33. Ibid.


38. Ibid.


47. www.bog.gov.gh


63
55. Ibid.
56. Ibid.
57. Ibid.
58. Banking Act, 2004 (Act 673)
59. See section 87 (1) and (2) of the Banking Act, 2004 (Act673)
62. Ibid.
63. Ibid.
64. Ibid.
70. Ibid. pg.46
71. Ibid.
72. Ibid.
73. Ibid. pg.41
75. Ibid.
76. Ibid.
77. Ibid.
78. www.fatf-gafi.org
79. Ibid.
80. Ibid.
82. African Union Convention on Preventing and Combating Corruption
83. www.giaba.org
84. Ibid.
86. Ibid.
88. www.fic.gov.gh
91. www.fic.gov.gh
92. Daily Graphic, June 27, 2013 reported that “the police” were yet to prosecute the cases reported to them. However, during the research interview, the Head, Commercial Crime was surprised at the reportage and FIC also said it was misreported. It was EOCO and not GPS, which has not prosecuted the reported cases.
93. GIABA (2011): Annual Report, GIABA.
94. FATF Recommendation 26: Countries should establish a FIU that serves as a national centre for the receiving (and, as permitted, requesting), analysis and dissemination of STR and other information regarding potential money laundering or terrorist financing
95. Daily Graphic, Thursday, June 27, 2013. None of the 473 cases reported by FIC to the police since 2009 has been prosecuted
97. Ibid.
100. Ibid.
101. www.imf.org
103. Ibid.

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110. www.fic.gov.gh
112. Ibid.
113. Ibid.
114. Section 12 of PNDCL 236 read “Laundering Proceeds from Narcotic Drug Offences”
117. Ibid.
118. http://ghanaoonline.com
119. www.fic.gov.gh
121. www.fic.gov.gh
CHAPTER THREE

THE ROLE OF BANKS IN THE COMBAT AGAINST MONEY LAUNDERING AND FINANCING OF TERRORISM

3.0 Introduction

In all market economies, the significant role play by banks is phenomenal especially relating to the financing of projects, payment of salaries, transfer of funds from one location to another and taking of deposits. This noble notion for the existence of banks in almost all economies have resulted in gross abuse of the banking system by criminal gangs, politicians and certain individuals to serve their personal needs by using the banking system for money laundering and financing of terrorism.

Through the banking system, criminals launder the proceeds of their crime to make it appear legitimate; when the illegal proceeds have successfully been integrated into the legitimate economy to disguise the source of their illegal proceeds. The abuse of the international banking system for money laundering and financing of terrorism has instigated the international community to cooperate in order to protect the integrity of the international financial system. Consequently some countries have enacted laws and regulations to control the operations of banks so as to prevent abuse, thus protecting the integrity of the banking system.
This chapter also analyses the data collected from the field using structured interview as a methodology. The study looked at combating money laundering and financing of terrorism: The role of Banks in Ghana. Data was collected from six banks namely Access Bank, First Atlantic Bank, UT Bank, Energy Bank, Cal Bank and Energy Bank. The study also collected data from the Financial Intelligence Centre and the Banking Supervision Department of Bank of Ghana. The bank officials interviewed were Messrs Kojo Asare-Bedjabeng (Access Bank), Edwin Langmer (UT Bank), Isaac Kojo Asare (First Atlantic Bank), Philip Odoom (Energy Bank), Reindorf Gyamera (CAL Bank) and Felix Quaye (UBA). In addition, Messrs Joseph Amoa-Awuah (BSD), Philip Danso (FIC) and Superintendent Koku Mawusi of Ghana Police Service were interviewed.

3.1 An Overview of the Banking System in Ghana

The banking system in Ghana dates back to the colonial days and it has remained very pivotal in the developmental efforts of both now and then. Banks like Barclays Bank Ghana Limited and Standard Chartered Bank have operated since the colonial era. The latter for instance, had operated in Ghana since 1896.

The banking sector is an integral part of growth and development and it is imperative to create and re-energise for mobilization of economic resources.¹ According to the then governor of the Bank of Ghana, K. B. Amissah-Arthur; the banking sector is an “integral part of the payment and settlement system”.²

The Banking Act, 2004 (Act 673) defines a bank as “an institution whose current operations consist of granting loans and receiving deposits from the public”.

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Banks are established to serve the public (customers) but banking is yet to be fully appreciated by the majority of Ghanaians. Banking services are limited to just 30% of Ghanaians despite the presence of twenty-seven universally licenced banks in Ghana. The banking system in the country is regulated by the Central Bank of Ghana (BoG). In section 11 (1) of the Banking Act, 2004 (Act 673) of Ghana, “a bank shall not carry on any business other than any of the following: accepting deposits and other repayable funds from the public, lending financial leasing, investment in financial securities, money transmission services, issuing and administering means of payment including credit cards, travellers cheques and bankers’ draft, electronic banking among others.

Hitherto, banks were the preserve of the very few, where, as recent as the 1990s, the banking system comprised of few banks as the Bank of Ghana, Ghana Commercial Bank, Barclays Bank, and Standard Chartered Bank. The liberalisation of the Ghanaian economy under the Kufuor regime witnessed the influx of foreign banks especially from Nigeria. The liberalisation brought banking to the doorsteps of average Ghanaians which have been expedited by the increased competition among banks in Ghana. The majority of banks in Ghana are mostly privately owned.

According to a survey by PricewaterhouseCoopers, Ghana in 2012, much of the deposits in the banks came from mid-tier income retail customers (i.e. mass affluent retail customers) who contribute cheap deposits. The report stated further that deposit rates in 2008 and 2009 ranged between 14% and 20% but in 2011, the deposit rate declined between 6% and 9% and this has compelled the banks “to
continue to seek for inexpensive sources of funds”. In the quest of attracting customers who might bring in inexpensive funds, the propensity to accept deposits from customers without due diligence, may encourage money launderers to bring in handy the required deposits to stay afloat.

There are among the banks in Ghana many departments such as Institutional and Corporate Banking and Private Banking, which attracts corporate and high net worth individuals. The private banking departments are mostly for high net worth persons especially Politically Exposed Persons (PEPs). The PEPs bring in huge sums of money, which in Africa might be suspected of economic crimes such as corruption, fraud and other predicate crimes.

Technological advancement has become a common feature of contemporary Ghanaian banking. Customer behaviour has changed with complex taste for complex services. There are ATMs, VISA and MASTER cards, internet banking and even electronic deposits from Barclays Bank Ghana Limited. This innovation is fully exploited by customers and criminal gangs alike to facilitate money laundering and financing of terrorism, which requires extreme anonymity to avoid detection at all stages of money laundering and financing of terrorism.⁶

3.2 Some Rules and Regulations Relating to Banking in Ghana

To ensure the “safety and soundness of the banking system”⁷, the government of Ghana has passed banking laws such as Bank of Ghana Act 2002 (Act 612), Banking Act 2004 (Act 673), Banking Amendment Act 2007 (Act 738), Banking and Financial Laws of Ghana: 1998-2006 and Banking and Financial Laws of
Ghana: 2006-2008. Furthermore, there is the Anti-Money Laundering Act, 2008 (Act 749) to maintain the integrity of the financial system from abuse by criminals like money launderers. Linked to this is the Ant-Terrorism Act, 2008 (Act 762).

Aside ensuring safety and soundness in the banking system by protecting the integrity of the banking system against any criminal abuse, these laws are meant to regulate the banks to among other things, instill customer confidence and to protect the reputation of Ghana in the international arena in order to attract foreign investors.

The supervisory arm of BOG, the Banking Supervision Department (BSD) is mandated to regulate the activities of banks in Ghana to ensure compliance to rules and regulations relating to banking in Ghana. The BSD supervises the banks and cause sanctions to be applied when there is any infraction of banking rules and regulations. For instance in 2012, the foreign trading licence of Access Bank, Ghana was withdrawn when the bank breached the Foreign Exchange Act, 2006.

In accordance with section 2 (1) of the Banking Act, 2004 (Act 673) the BOG shall have supervisory and regulatory mandate in all matters relating to banking in Ghana and shall further be responsible for:

(a) Promoting an effective banking system;

(b) Dealing with any unlawful or improper practices of banks, and
(c) Considering and proposing reforms of the laws relating to banking business

The Banking Amendment Act, 2007 (Act 738) was enacted by the Parliament of Ghana to among other things establish offshore banking services, to make Ghana the financial hub of West Africa and to integrate with the global financial system.10

3.3 The Role of Banks in the Combat against Money Laundering and Financing of Terrorism

In all capital economies banks play central roles in the smooth functioning of that economy. A boom in an economy results in an increase in crime rate and this may lead to the abuse of the banking system by criminals to serve their criminal-intended needs. Ill-gotten revenues must be laundered using the banking system in order to disguise its illegal source and integrated the laundered proceeds into legitimate businesses. Terrorists use the banking system to transfer money to members of their (terrorists) clique to carry out their crimes. The banks are seen as the core system through which these crimes could be combated as banks are pivotal in the collection and movement of cash.11 Reuter and Truman intimated that “money launderers subvert the legitimate financial mechanisms and banking relationships by using them [banks] as protective covering for the movement of criminal proceeds and the financing of crime and terrorism”.12 It is in this sense that the “oft-stated goal of AML/CFT regimes is to protect the integrity of the financial system [particularly the banks]”.13
In the interest of the public good and to maintain the confidence of the public, the banks in Ghana are called upon to help combat money laundering and financing of terrorism.

3.3.1 Inherent Weaknesses in Banks in Ghana

The general susceptibility of banks to crimes such as laundering of criminal proceeds and financing of terrorism remains unquestionable. The weaknesses are inherent in many factors. Mr. Philip Danso and Joseph Amoa-Awuah of FIC and Banking Supervision Department (BSD) of BOG respectively, during the interview mentioned the following as some of the inherent weaknesses of banks in Ghana:

Firstly, the banking system legitimises illegal proceeds of crime. Banks accept deposits from the public and for money launderers and other criminals to launder the proceeds of their illegitimate funds; the banking system is used. The three stages of laundering money, that is, placement, layering and integration are used to launder the proceeds of their crime. When the ill-gotten money is not detected at the placement and the layering stages, the otherwise dirty money will be washed to make it clean. The laundered money is then moved into other legitimate businesses in the economy.

Secondly, the banking system offers criminals convenience to perpetuate their crimes. Convenience comes in handy due to the degree of anonymity the banking system provides and these criminals used the anonymity that the banking system provides as a shield to launder their proceeds. Related to convenience, is the kind
of products and services rendered by the banks in Ghana to their customers. Services such as electronic transfer of money and internet banking enable criminals to transfer in most cases huge sums of money to other jurisdictions conveniently without detection. Terrorists also take advantage of the anonymity in the banking services to transfer cash to their group and terrorist group such as Al Qaeda was able to transfer cash to its members in the USA by easily defeating the detection mechanisms through money wiring.\textsuperscript{14}

Thirdly, the desire of the officials of banks to carry out transactions without regard to AML/CFT regulations polarise the already volatile banking system. The unbanked population is higher than the banking population in Ghana. As a result, there is pressure on the relationship managers and officers to bring in the unbanked Ghanaians. Money launderers have taken advantage of the deposits drive, to place their illegal money through the processes of smurfing to avoid detection. In Ghana, banks run promotions to attract deposits. For instance, as of the time of this study, CAL Bank was running a deposit mobilization, where the public were encouraged to deposit GHS\textcurrency{300.00} or more for at some attractive prizes. Money launderers can take advantage of this period to launder their illegitimate proceeds, because the likelihood of doing due diligence on such depositors may be less; thus flouting AML/CFT regulations. In addition, huge transactions by banks encourage money laundering because; most transactions on daily basis across banks are in huge volumes.

Fourthly, it was intimated further that staff collusion with criminals encourage criminals to use the banks for the purposes of money laundering and financing of
terrorism. The collusion may be taking the form of huge deposits from criminals by relationship managers and officers to meet their huge deposit targets. In consequence, the proclivity to collude with criminals to disregard AML/CFT regulations to meet their targets is high. Also, to make undeclared profits, even top management members may collude with criminals to abuse the banking system for laundering and other criminal purposes.

Furthermore, lack of adequate training for staff contribute to the inherent weaknesses existing in the banking sector. FATF’s recommendation provides that:

“Financial institutions [banks] should develop programmes against money laundering and terrorist financing. These programmes should include: (a) The development of internal policies, procedures and controls, including appropriate compliance management arrangements, and adequate screening procedures to ensure high standards when hiring employees (b) an ongoing employee training programme”.

In addition, BOG/FIC’s Guidelines provides in section 1.25 (a) that

“Financial institutions [banks] shall design comprehensive employee education and training programs not only to make employees fully aware of their obligations but also to equip them with relevant skills required for the effective discharge of their AML/CFT tasks. Indeed, the establishment of such an employee training program is not only considered as best practice but also a statutory requirement”.

The same Guideline provides in 1.25 (b) that:

“The timing, coverage and content of the employee training program should be tailored to meet the perceived needs of the financial institutions. Nevertheless, a comprehensive training program is required to encompass staff/areas such as reporting officers; new staff (as part of the orientation program for those posted to the front office); banking operations/branch office staff (particularly cashiers, account opening, mandate, and marketing staff); internal control/audit staff and managers. Financial Institutions are required to submit their annual AML/CFT employee
training program to the BOG and FIC not later than the 31st of December every financial year against the next year”.

These Recommendation and Guidelines buttress the importance of training for staff in the AML/CFT regime. However according to FIC and BSD staff are not adequately trained on laws, rules and regulations relating to AML/CFT, as a result most staff are not familiar and abreast of the regulations and new typologies in AML/CFT.

Lastly, the weaknesses in the banking sector could be attributed to lack of adequate controls. According to these officials, Know Your Customer (KYC) and Customer Due Diligence (CDD) on customers are not adequately carried out, therefore, facilitating the swift and smooth laundering of criminal proceeds.

The above may graphically be presented in Fig.1 below

![Graphical representation of weaknesses in the banking sector]

**Source:** Interviews conducted from 29th July to 1st August, 2013
The graph above indicates that weaknesses are more likely to result from inadequate attention to AML/CFT measures such KYC and CDD. These are the key fulcrum pillars around which the AML/CFT policies and measures revolve. Training of staff is also an important policy banks must adhere to reduce their risk of exposure to money laundering. When staff are properly and adequately trained, they will be able to identify the red flags when a suspicious transaction is or about to be carried out. Even though, deposit drive create avenue for laundering of funds, it is believed that quest for deposits should not prevent a bank from carrying out KYC and CDD on their customers.

3.3.2 Control Measures for Banks to Combat AML/CFT

The Ghanaian economy has witnessed phenomenal growth, which is attributed to recent discovery of oil in commercial quantities. This growth has a concomitant increase in economic crimes such as money laundering and other crimes that tend to undermine economic gains that Ghana might have made within the last decade. Banks in Ghana are therefore not immune from predicate crimes such as bank fraud, smuggling, and possible financing of terrorism in other countries. Consequently, there must be adequate control measures by banks to effectively combat money laundering and financing of terrorism. The December 2011 BOG/FIC Guidelines to banks, make it obligatory for banks to adopt policies connoting their preparedness to comply with relevant AML/CFT requirements under the relevant laws. The said Guideline provides further that “every financial institution shall formulate and implement internal rules procedures and other controls that will deter criminals from using its facilities for money laundering
and terrorist financing and to ensure that its obligations under the relevant laws and regulations are always met”.¹⁸

During the interview all eight interviewees posited that, control measures are significant to combat AML/CFT. To this extent, the managements of their various banks have devoted adequate resources for the implementation of the necessary controls. FATF Recommendations and BOG/FIC Guidelines provide some of the control measures as the appointment of AML Reporting Officer, KYC, CDD, record keeping, filing of suspicious transaction reports and training of staff.

3.3.2.1 Appointment of AML Reporting Officers (AMLRO)

Internal controls of banks are to be superintended by an AML/CFT Reporting Officer. The BOG/FIC Guideline, 2011 makes it mandatory that:

“Each financial institution shall appoint a person of senior status as an anti-money laundering reporting officer (AML/CFT Reporting Officer - AMLRO) in accordance with Regulation 5(1) of L.I.1987 and such an officer shall receive suspicious or unusual transaction reports from persons handling transactions for the financial institution”.¹⁹

The duties of AMLRO shall include inter alia the following:

“Developing an AML/CFT Compliance Programme, receiving and vetting suspicious transaction reports from staff; filing suspicious transaction reports with the FIC, ensuring that the financial institution’s compliance programme is implemented; co-ordinating the training of staff in AML/CFT awareness, detection methods and reporting requirements; and serving both as a liaison officer with the BOG and the FIC and a point-of-contact for all employees on issues relating to money laundering and terrorist financing”.²⁰
During the study, it was observed from BOG/FIC officials that all banks in Ghana have AMLROs to ensure that the bank’s control measures are complied with. However, it was realized that, most of the AMLROs were not of senior statuses as required by BOG/FIC Guidelines. Thus these AMLROs may not be powerful enough to resist certain transactions being carried out especially from a senior management member.

3.3.2.2 Know Your Customer (KYC) Controls

Customer identification should be established at the beginning of the establishment of financial relationship. The bank’s officials must satisfy himself or herself that the customer is who he or she claims to be. Banks are not to establish a business relationship with a new customer unless all parties to a financial transaction have been duly identified. The KYC regime further requires that if a bank cannot obtain the adequate details about a customer or there is any suspicion of phony transaction, business relationship should not be established. A review of some of the account opening documents of the sampled banks revealed that KYC documentation involves; taking personal identification of the customer such as passport, voters’ ID card, drivers’ licence, student ID with an introduction letter, a utility bill among others. KYC is thus “the basic tenet of all anti-money laundering legislation and regulation over the world”. Some KYC Red Flags include reluctance on the part of the new customer to provide relevant information with regard to source of income, nature of business, location of business; diplomatic passport from obscure countries, presentation of
photocopied documents; and suspicions should be aroused if an individual opens multiple business accounts.24

According to the interviewees, KYC is carried out at on-boarding, that is, KYC is carried out at the establishment of new business transactions with all new customers. It is practically difficult to ensure absolute compliance with this requirement because some of the transactions require urgent attention. For instance, where a customer has to carry out a huge transaction with good profit returns; it will be very difficult to go through all the KYC procedures before carrying out the transaction. In some circumstances, businesses suffer and it is difficult to turn away customers (when a relationship officer is yet to meet deposit targets) especially walk-in-customers, because of the absence of certain documents. A critical review of some of the account opening documents indicated a portion for deferred items and this may include essential documents like business permit and residence permit (in the case of a foreigner). Section 2.3 of BOG/FIC Guideline requires banks to apply commercial judgment and take risk-based approach towards KYC requirements. In essence this means accessing the risk involved in the business of the customer, but in the deposit mobilization drive, all manner of cash may be accepted oblivious of the risk involved.

3.3.2.3 Customer Due Diligence (CDD) Procedures

CDD is “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 [bank]”.25 FATF recommendation 10 requires banks
to carry out due diligence on their customers including “verifying and identifying their [customers] identities” and not to “keep anonymous accounts or accounts in obviously fictitious names”. CDD is carried out when establishing business relationships, carrying out occasional business transactions and there is suspicion of money laundering or terrorist financing. As a control measure, CDD is carried out to ensure consistent monitoring of the transactions of customers to ensure that, unusual transactions of a customer are detected. As an enhanced procedure, banks are required to know the legal names of the client, landmarks to a client business location, hometown of the client, telephone number, signature and the nature of business among other requirements the banks might deem necessary. Further on, banks are required to at least confirm the date of birth from official documents, contact the customer either by telephone or by email and confirm the validity of documents presented from an official source- for example the Registrar General’s Department. It was revealed that sometimes even government sources do not have reliable data for the banks to access and use.

Government agencies do not have reliable softwares that allow easy verification of documents. With the exception of the Electoral Commission, which has a software that allows electronic verification of voters’ ID, verifications are carried out manually. However, should a customer present a national ID that is different from, the voters’ ID card verification is difficult.
Although, there is no threshold for customer transactions, CDD measures should ensure that cash transactions report (CTR) above GHS 20,000.00 or $10,000 are reported to FIC as unusual.

3.3.2.4. Suspicious Transactions Reporting (STRs)

One of the control measures is for banks to have in place measures to report suspicious transactions. Compliance measures to combat money laundering and financing of terrorism is for banks to continuously monitor and report suspicious transactions about their customers. FATF’s Recommendation 20 provides that “if a financial institution [banks] suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to terrorist financing, it[bank] should be required, by law, to report promptly to the financial intelligence unit[FIC]”.  

What constitute a suspicious transaction is subjective but suspicious transactions are unusual and irregular. The compliance officers interviewed described it as an unusual transaction with irregular account operation pattern and anything unknown about the customer appearing in the customer’s transaction trail.

Red Flags for suspicious transactions cannot be exhaustive but as Peter Lilley states that “of crucial relevance is where the activities of the customer are not consistent with his/her apparent business”. However, FATF, BOG and FIC enumerate as Red Flags the following:

“Transactions involving high-risk countries/jurisdictions vulnerable to money laundering, subject to this being confirmed (b) transactions involving shell banks/companies (c) transactions with correspondents that
have been identified as higher risk, (d) large transaction activity involving monetary instruments such as traveller’s cheques, bank drafts, money order, particularly those that are serially numbered,(e) transaction activity involving amounts that are just below the stipulated reporting threshold or enquiries that appear to test an institution’s own internal monitoring threshold or controls”.

Banks are therefore to be watchful of unusually huge deposits, customers who deposit cash using many deposit slips, branches that record unusual cash transactions and customers transferring large sums of money from overseas with instructions for payment of cash. From the study, it was revealed that suspicious transactions are reported to FIC/BOG within 24 hours as and when it occurs. Most of the interviewees responded that although all suspicious transactions are to be reported, the subjective nature of what constitute suspicious transaction makes it difficult to report all. The materiality and significance of the transaction is a key determining factor and may require further investigations. The researcher agrees with Mr. Asare Bedjabeng of Access Bank Ghana that in some cases, it does not make business sense to report all suspicious transactions. Banks may lose their private banking clients, whose activities by their very nature, timing and pattern is suspicious. This could be where certain transactions from certain Politically Exposed Persons (PEPs) and high net customers are shielded from their corrupt and criminal activities.

PEPs are variously defined but in Ghana they comprise; both local and foreign persons politically connected. Politicians are prone to corruption ostensibly due to their control or access to the public purse; they thus pose serious challenge to AML/CFT. Recommendations 12 of FATF stipulate that “financial institutions
[banks] should be required…in addition to performing normal customer due diligence measures, to:

(a) Have appropriate risk-management systems to determining whether the customer or the beneficial owner is a politically exposed person;
(b) Obtain senior management approval for establishing (or continuing, for existing customers) such business relationships;
(c) Take reasonable measures to establish the source of wealth and source of funds;
(d) Conduct enhanced ongoing monitoring of the business relationship.

The above additional enhanced CDD measures on PEPs buttress the high risk associated with doing business with PEPs and its possible consequences of abusing the banking system for money laundering and financing of terrorism purposes. PEPs may include Members of Parliament (MPs), Ministers of State, relatives of politicians, Ambassadors and High Commissioners among others.

3.3.2.5 Recording of Transactions

Record keeping is an essential exercise in the AML/CFT regime. Keeping record aids investigations and also to show that a customer’s transaction was either suspicious or not suspicious. As a control measure, section 2.17 of the BOG/FIC encompasses recording of evidence relating to all customer transactions to ensure an audit trail. All transactional documentations obtained during CDD in physical and electronic forms are to be kept for a period of six (6) years. However, FATF’s Recommendation 11 requires such record to be kept for five years to assist transaction monitoring and investigations. From the research, it was learnt that such records are being kept and the banks studied have archives with archivists.
3.3.2.6 Training of Staff

Effective implementation and success of the AML/CFT regime hinge on training of staff of banks to be able to identify the typologies of money laundering and terrorist financing. Without adequate and comprehensive training for staff especially the front line staff, the AML/CFT may not achieve its desired goals because staff should be able to identify suspicious transactions. In accordance with section 1.25 of BOG/FIC Guidelines, banks are required to design comprehensive training programmes for new hires, back office staff, internal control staff and managers. Some of the training must meet specific needs of particular staff especially the ROs, RMs and CSOs. The training programme covers control areas like “AML regulations and offences, the nature of money laundering, customer due diligence, risk-based approach to AML/CFT, record keeping and retention policy and reporting requirements”.\(^34\)

The study showed that, the banks are training their staff including even the board members and drivers. There are generic and tailor-made training for staff on yearly, quarterly and continuous basis. However, it ought to be appreciated that crime is an evolving phenomenon and money laundering and financing of terrorism is rapidly changing with time; thus to achieve success with AML/CFT policies, training programmes must be regularly updated.

3.4.3 Compliance with International Standards and BOG/FIC Regulations

To maintain the integrity of the international financial system, FATF was established “to set standards and to promote effective implementation of legal, regulatory and operational measures for combating money laundering and
terrorist financing”.\textsuperscript{35} FATF Recommendations are the international standards to regulate the international banking system; thus banks are required to comply with these standards; in addition to domesticated ones by member countries. In addition to these standards, BOG and FIC as local regulators have developed compliance manuals to ensure compliance by banks in Ghana.

Compliance measures include all FATF Recommendations and BOG/FIC Guidelines for banks.\textsuperscript{36} The compliance officers maintained that they comply with all compliance policies called the Regulatory Universe regulating the AML/CFT regime. To ensure compliance, they use regular circulars such as ‘AML/CFT Dash Board’ (as used at CAL Bank), memos, compliance reports and other metrics to educate staff.

From the perspectives of the regulators, with the exceptions of some few misreporting and compliance breaches; banks especially those with international incorporations, are complying. It must however be noted that irrespective of the robustness banks are prone to criminal abuse. For instance, Barclays Bank Plc is known for its good compliance culture, yet the bank is being investigated by the USA authorities for money laundering activities.\textsuperscript{36} In essence this means, if there is no commitment on the part of bank management and officials and without adequate training on the typologies of money laundering and financing of terrorism, the AML/CFT regime will be futile.
Mr. Amoa-Awuah of BSD mentioned that, to ensure compliance by the banks, BSD undertakes both off-site and on-site examination of the activities of banks to ensure compliance with AML/CFT policies. The off-site involves the use of Risk Self-Assessment Questionnaire and the on-site examination comprises Risk Base Assessment and high risk banks are given wider scrutiny than low risk banks. As a regulator, BSD rated compliance level at 70%.

Surprisingly, the interview revealed that no bank has yet been sanctioned for non-compliance with AML/CFT violations. This however, does not mean that the compliance level by banks is total and absolute. Mr. Amoa-Awuah did not hesitate to add that, even the BOG does not have administrative sanctions and the judicial sanctions are not attractive to be pursued; because it is laborious.

In addition, some compliance officers were of the view that banking secrecy does not inhibit AM/CFT regime. Also FATF Recommendation 37 (d) provides that banks are:

“Not refuse to execute a request for information for mutual assistance on the grounds that laws require financial institutions [banks] or DNFBPs to maintain secrecy or confidentiality (except where the relevant information that is sought is held in circumstances where legal professional privilege or legal professional secrecy applies)”. 37

On the other hand, other compliance officers also opined that banking secrecy really inhibit AML/CFT because even within the industry, some banks refuse to provide information to assist internal investigations. The FATF Recommendation 37 (d) cited above gives a caveat that “except where the relevant information that is sought is held in circumstances where legal professional privilege or legal
professional secrecy applies; bank officials are not to divulge information about their customers and banks may use the secrecy as a cover in shielding certain criminals who happen to be their customers. This is so because how does one distinguish between legal privilege and non-legal privilege? This is the avenue for money laundering and financing of terrorism because anonymity is key in this criminal enterprise.

3.5.4 Cooperation between Banks and Law Enforcement Agencies

Money laundering and financing of terrorism as organised crimes are borderless crimes and are fuelled by political, economic, cultural and technological changes. Globalisation has made money laundering and financing of terrorism a global issue because of its borderless nature and also the fact that; these crimes evolve with changing trends especially with technological changes. According to Phil Williams and Roy Godson, states are not evolving with changes in time and are shielding behind the doctrine of sovereignty at the expense of legitimate enterprises.

Cooperation between the public and private enterprises is therefore required to ensure that criminals are denied access to abusing the financial system for criminal businesses. This is where the banks should cooperate with the law enforcement agencies to nib in the bud the activities of criminals from abusing the financial system for their criminal motives. The AML/CFT regime can only succeed when there is complete cooperation between the relevant partners.
Recommendations 36 to 40 of FATF encompasses international cooperation, which comprises international instruments, mutual legal assistance, freezing and confiscation, extradition and other forms of international cooperation.

From the study, the compliance officers interviewed responded that they are cooperating with the law enforcement agencies and the regulators as far as sharing of information are required. However, FIC maintains that to a larger extent, banks are cooperating except that some suspicious transactions especially those relating to threshold for Cash Transaction Report (CTR) and Electronic Transfer Report (ETR). Banks are not cooperating because of willful blindness on the part of front liners to increase their deposit and to make profit. In effect, cooperation which should be absolute is not and this seriously impedes the effective functioning of the FIC and according to the FIC, lack of cooperation means absence of data for the FIC to analyse and disseminate to the law enforcement agencies. In consequence, criminals will benefit from the crime because there will be lack of intelligence report upon which reasonable assessment could be made. The responses of the compliance officers were affirmative because, they also report on what has been reported to them and an RO or RM, who need to meet their deposit targets, may disregard AML/CFT policies.

The Head, of the Commercial Crime Unit of the Criminal Investigations Department posited that money laundering and financing of terrorism is a global phenomenon. Thus, there must be collaboration between public and private partners to combat these crimes. This then should be accompanied by thorough
investigations and prosecution. According to him, the Commercial Crime Unit has the requisite capacity to handle money laundering cases.

Banks are the gatekeepers for ensuring that AML/CFT regime succeeds because banks are the main conduit for the perpetuation of these crimes. When banks comply with the directives of the Regulatory Universe, the fight against AML/CFT will be a success.

3.5.5 The Role of Banks in AML/CFT Regime

Banks are known for their central role in AML/CFT across the globe and Ghana in particular. The banks have become the conduit for money laundering and financing of terrorism because of the legitimacy it provides for laundered funds, convenience it offers to criminals with regard to huge transactions, services and products banks offer and the competitive nature of deposit drives. Notwithstanding these weaknesses, the pivotal role played by banks cannot be underestimated.

In the first instance, banks must ensure strict adherence to the AML/CFT regime. The entire AML/CFT regime is aimed at protecting the safety and soundness of the banking system. The preventive role of banks are embedded in ensuring comprehensive internal control measures such as KYC, CDD, adequate and effective training of staff, record keeping and reporting of suspicious transactions. Adherence to the AML/CFT regime is not mere existence of policies and AMLRO but real commitment and willingness on the part of management by
ensuring that AML/CFT policies are complied with and implemented. In addition, banks must closely monitor their branches located at certain geographical areas noted for their criminal activities. Branches located at Nima, Abgobloshie, New Town, Sukura/Russia all in Accra must be closely monitored because of the propensity of criminals patronizing the services of these branches for money laundering purposes.

Secondly, compliance is an essential requirement in the fight against money laundering and financing of terrorism. The existence of the control measures alone is woefully inadequate without compliance. Management’s willingness to genuinely comply with FATF and BOG/FIC and other laws is essential.

Cooperation is a sine qua non, if in fact; the AML/CFT regime is to succeed. Cooperation as stipulated in FATF Recommendation 36-40 comprises international cooperation, mutual legal assistance, mutual assistance to seize and confiscate, extraditing money launderers and financiers of terrorism who are using other jurisdictions as their safe haven and other forms of cooperation. Banks as gatekeepers in this whole AML/CFT regime must fully cooperate with all relevant partners to ensure a successful AML/CFT regime.

In summary, the pivotal role of banks in AML/CFT lies in adherence to AML/CFT guidelines and standards provided by FATF, BOG/FIC and other laws and regulations relating to money laundering and financing of terrorism. This will thus call for robust internal control measures such as comprehensive KYC, CDD,
adequate training of staff, record keeping and reporting of suspicious transactions.

Once done, these would contribute to building a transparent banking system.
End notes

1. www.bog.gov.gh
2. Ibid.
3. www.pwc.com/gh
4. www.bog.gov.gh
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8. www.bog.gov.gh
10. Banking Act, 2004 (Act 673) see s.3
12. Ibid.
13. Ibid.
17. Ibid. pg 17
18. Ibid. pg 1
19. Ibid.
20. Ibid. pg 1
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23. Ibid.
25. www.fatf-gafi.org
26. FATF Recommendations 10
28. Ibid.
29. FATF Recommendation 20
31. Ibid.
32. FATF 40 Recommendations and BOG/FIC Guidelines
34. FATF 40 Recommendations
35. FATF 40 Recommendations as updated in February 2012 and BOG/FIC Guideline, December, 2011
36. The Telegraph, August 7, 2013. Mr. Arthur Budovsky is alleged to have laundered and transferred $6 billion through the Liberty branch of Barclays Bank to drug dealers and other criminals.
37. FATF Recommendations
38. Ibid.
CHAPTER FOUR

SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

4.0 Introduction

This chapter comprises the summary of findings gathered from the field, conclusions and recommendations.

4.1 Summary of Findings

The study was carried out to ascertain whether the level of financial control measures existing in the banks are deterring enough to discourage money launderers and financiers of terrorism, to identify the weaknesses in the banks that encourages money laundering and financing of terrorism and to determine whether regulations from the regulatory authorities are being complied with.

Banks are required by FATF and BOG/FIC to have robust internal control measures to inter alia prevent money laundering and financing of terrorism and to ensure the safety and soundness of the banking system. The study revealed that the control measures consisted of appointment of AMLRO, KYC, and CDD, training of staff, recording and keeping of data and reporting of suspicious transactions.

Regulation 5(1) of L.I. 1987 requires all banks to appoint a senior member of staff, with the requisite experience as an AMLRO to among other things to ensure...
the development of internal AML/CFT policy for the bank, be a liaison between the bank and FIC and training of staff. It was revealed during the study that, all banks have AMLROs but majority of them are not of the required seniority as required by L.I.1987. In effect, this was observed to be a great handicap to AMLROs because they do not have the necessary powers to carry out their duties and they may be subject to managerial abuse especially if the commitment of management is not strong enough.

As part of the control measures, banks are required to undertake KYC for all their customers to identify and verify the true identity of the customer. Banks shall not transact business without carrying out KYC to ensure that all parties to the transaction have been duly identified as to the nature and level of business. The study showed that banks are carrying out KYC on their customers but there were challenges. Some of the challenges had to do with the country’s poor address systems, lack of appropriate software to electronically establishing the identity of customers and non-cooperation from state agencies.

Customer due diligence was another control measure, which the banks are mandated by law to carry out. Customer due diligence is the identification and verification of both the client and beneficiary to ensure continuous monitoring of transaction to determine suspicious or unusual transactions by customers. Banks are not required to establish transactions with anonymous or fictitious persons and are to report any CTR above GHS20,000.00. It was also revealed during the research that banks are undertaking CDD on their customers and FIC and BSD confirm that.
Closely related to CDD is the filling or reporting of suspicious transactions. The study revealed that as required by international standards and local guidelines and laws, banks in Ghana to a larger extent are reporting suspicious transactions. In addition, the study realised that, there was no threshold for suspicious transactions but CTRs above GHS20,000.00 or $10,000 must be reported. To strengthen the AML/CFT regime and to ensure that the banks are not abused for criminal purposes, most of the banks have softwares and other mechanisms of detecting people on the sanction list and to monitor suspicious transactions. The study revealed that, what constitutes a suspicious transaction is a matter of perspectives and reporting or non-reporting of a suspicious transaction is dependent on the materiality or significance of the transaction. However as normal with all business entities to make profit, some banks are not reporting all suspicious transactions. Some interviewees admitted that stringent control rules affect business; consequently not all STRs are filed.

Furthermore, the research revealed that another key control measure is continuous training of staff. Staff training is aimed at educating staff on the red flags of suspicious transactions to help combat money laundering and financing of terrorism. Training and re-training of staff will go a long way in maintaining the safety and soundness of the banking system, because if staff are abreast of AML/CFT typologies, suspicious transactions may go undetected. During the study, it came out that banks have varied training programmes for different classes of staff. Consequently, banks have generic and tailor-made training programmes for staff and in some cases the board members of the bank.
The last control measure that the study revealed was recording and keeping of data about customers. The audit trail of all transactions must be maintained to enable continuous monitoring of customers’ transactions to detect money laundering and terrorist financing transactions. Banks in Ghana according to this study are recording and keeping data obtained during CDD about customers. As a result of this requirement, banks now have in their employ, archivists manning archives.

It was yet another objective of the study to determine the weaknesses in the banks that encourage money laundering. During the study it was appreciated that all banks in Ghana are prone to money laundering and financing of terrorism. Some of the weaknesses inherent in the banks were inordinate desire to increase deposit base and increase their assets, inadequate training for staff, lack of comprehensive KYC and CDD, staff complicity, products and services risk and banks give legitimacy to criminal proceeds.

To increase their deposit base, banks are competing for the few banking populations because banking is an anathema to majority of Ghanaians for varied reasons. In the Nigerian banks for instance, the ROs and the RMs are given unachievable deposit targets to meet and they are therefore compelled to bring in all manner of accounts some of which ends being suspicious accounts.

Another weakness that was identified during the study was that banks are target because they give legitimacy to the ill-gotten proceeds of money launderers and financiers of terrorism. The three stages of money laundering, that is, placement, layering and integration facilitate laundering through the banks.
Lack of comprehensive training for staff was yet another weakness. Training is paramount yet according to BSD, some banks are not providing the relevant training to their staff to enable the staff identify suspicious transactions.

One of the key control measures identified through the study was comprehensive KYC and CDD. But from the study, even though, the banks’ perspective was that KYC and CDD were being carried out, the BSD maintains that some of the KYCs and CDDs lacked thoroughness.

In addition, the study sought to establish whether banks were complying with FATF and BOG/FIC Recommendations and Guidelines respectively. The study concludes that to a larger extent; banks were complying but the level of compliance is not absolute. The BSD rated the level of compliance at 70%. Furthermore, it was learnt that no bank has yet been sanctioned for non-compliance with AML/CFT policies because of BSD’s lack of administrative sanctions.

On the level of cooperation between the banks and the law enforcement agencies, it was realized that banks are cooperating relatively. Some compliance officers complained that even exchange of information within the industry is camouflaged with the banking secrecy doctrine. The GPS for instance complained that banks should be very collaborative as partnership is required to combat money laundering and financing of terrorism. Lack of cooperation from the banks is a does not help in the AML/CFT regime.
Furthermore, it was realized that these crimes have economic, political and social consequences on Ghana. Some of the consequences include: reputational risks for both the country and the banks, reward criminals, affects foreign direct investment, investment to the banks, unemployment, increase corruption and crime rate generally increases.

4.2 Conclusions of the Study

The study revealed that even though banks have control measures in place, they are not deterring enough to discourage money launderers and financiers of terrorism. Control measures such as KYC, CDD, training of staff and reporting of suspicious were not adequate to help attain the goals of AML/CFT. The political, economic and social impact of these crimes on the economy, inefficient control measures by the banks will defeat the purpose of AML/CFT. When these control measures are not comprehensively carried out, it gives room to bank officials to collude with criminals to launder money and other criminals to abuse the banking system for criminal purposes.

It can also be concluded from these study that banks are not cooperating with the law enforcement agencies. Bank officials are hiding behind the banking secrecy laws to withhold information even upon request. This is in contravention to FATF recommendation 37 (d), which provides that financial institutions [banks] should:

“Not refuse to execute a request for information for mutual assistance on the grounds that laws require financial institutions [banks] or DNFBP to maintain secrecy or confidentiality (except where the relevant information that is sought is held in circumstances where legal professional privilege or legal professional secrecy applies)”\(^1\)
The exemption clause in this provision does not allow smooth cooperation because it stands to be used to deny request for information.

Notwithstanding the pervasiveness of money laundering in Ghana, banks penchant for deposits has increased in many folds. The unhealthy rivalry in banks for deposits is a recipe for perpetuating money laundering in Ghana. Various promotions are held on regular basis asking for smaller deposits from the public and money launderers can do smurfing by depositing smaller amounts into various accounts to avoid detection by detection mechanisms installed.

Lack of administrative sanctions by the regulators does not bode well for smooth supervision exercises to be carried out. Although, it may not be the aim of BSD to sanction banks but it should be able to sanction banks for violating AML/CFT regulations. The BSD should have adequate regulatory, supervision and monitoring powers as well as effective, proportionate and dissuasive sanctions for banks who wittingly and unwittingly flout its Guidelines and FATF’s 40 Recommendations, which are recognised as the international standards for the AML/CFT regime.

There are a lot of laws and regulations relating to money laundering and financing of terrorism. In spite of this, prosecutors lack the understanding of laws and regulations on money laundering and financing of terrorism. Different legal systems provide different interpretations and sanctions across nations; thus enabling criminals to use disjoints in the laws to their advantage. The
international legal system should be harmonised as far the AML/CFT regime is concerned.

Finally, money laundering and financing of terrorism has political, economic and social ramifications for Ghana. These crimes affect the reputation of Ghana and the banks, increase public corruption, crime rate increase and unemployment is likely to increase.

4.3 Recommendations

The AML/CFT regime hopes to ensure the safety and soundness of the international banking system. The aftermaths of the attacks on the USA on 11th September, 2001 gave great impetus to the international community to take drastic measures to ensure non-recurrence of these criminal activities. Subsequently, many international laws, conventions and regulations were promulgated to contain the activities of money laundering and financing of terrorism. However, Phil Williams and Dmitri Vlassis maintains that international efforts to “contain and combat such contagion have, for the most part, been futile”. In like manner, Reuter and Truman emphasise that; “this idealization of the global anti-money laundering (AML) regime is unattainable” because of “differences in institutions, perspectives and priorities”.

Money laundering and financing of terrorism are international crimes, and combating these menaces will require international cooperation. It is recommended that there should be harmonisation of rules to facilitate expeditious
prosecution of these criminals. International cooperation entails mutual assistance, mutual assistance for seizing and confiscation, extradition and other forms of international cooperation. However, the doctrine of sovereignty has resulted in different criminal jurisdictions, and do not ensure expeditious and fruitful cooperation among states and public and private partnerships. Also there must be information sharing to achieve an international communal goal. Locally, all relevant partners must ensure compliance with the AML/CFT regime through mutual cooperation for the safety and soundness of the banking system to avoid abuse by money launderers and financiers of terrorism.

Banks should ensure strict adherence to FATF’s 40 Recommendations and BOG/FIC Guidelines on having effective control measures. It must be appreciated though that, irrespective of the robustness of control measures, money laundering and financing of terrorism will continue unabated. This is the more reason why, banks must ensure that KYC and CDD are comprehensively carried out to effectively monitor the transactions of customers. Also, banks should ensure regular and prompt reporting of all suspicious transactions. Even with good compliance culture, banks such as Broadway National Bank and Royal Bank of Scotland were sanctioned by the Financial Services Authority (FSA) of the United Kingdom for their lax regulations and the BCCI also collapsed for money laundering related transactions.4

The banking regulators (BOG/FIC) and supervisors should have administrative sanctions to enable them apply the appropriate sanctions when banks in Ghana
flout the AML/CFT regulations. A regulator without sanctioning powers does as good as not exist at all. In the United Kingdom for instance, the Financial Services Authority (FSA) have sanctioning powers. In 2002 for example, the FSA fined the Royal Bank of Scotland, £750,000 for failing to undertake KYC documentation on a customer.\(^5\)

There a lot of laws, rules and regulations covering the AML/CFT regime, but the prosecutors and investigators do not understand these relevant laws to ensure thorough investigations and prosecution of money laundering and terrorist financing related cases. The FIC was on June 27, 2013 bemoaning the fact that out of the 473 cases reported to EOCO, none had been prosecuted. There should be harmonisation of these laws, rules and regulations to ensure easy applicability.

It is further recommended that, the FIC should be equipped and their capacity increased. The GIABA’s 2011 annual report stated that “Ghana’s AML regime still has a number of deficiencies”.\(^6\) The report called for adequate staffing of FIC, their powers clarified and enhanced. Currently, the FIC does not have prosecution powers and it is recommended that an act of parliament should properly create FIC and decoupled from the Anti-Terrorism Act, 2008 (Act 762), which merely create FIC and assign it functions. As far as Act, 762 is concerned FIC do not have prosecution powers and must rely on EOCO to prosecute money laundering cases and this could affect the operational effectiveness of FIC.
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5. Ibid.
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APPENDIX

UNIVERSITY OF GHANA

LEGON CENTRE FOR INTERNATIONAL AFFAIRS AND DIPLOMACY

(LECIAD)

INTERVIEW GUIDE FOR COMPLIANCE OFFICERS

This interview is aimed at accessing data on Combating Money Laundering and Financing of Terrorism: The role of Banks in Ghana.

Please, this is an academic exercise for the partial fulfillment for the award of M.A. degree in International Affairs (LECIAD), University of Ghana. Your confidentiality is assured of any information that you may give. I shall therefore be grateful if you could assist by giving me your full cooperation in this exercise.

Name: ______________________________________________________

Institution: ___________________________________________________

Position: _____________________________________________________

Section A: Control Measures in Banks

1. To what extent does your bank consider money laundering and financing of terrorism as a serious concern that needs to be prevented or fought to protect the integrity of the bank?
2. If it is a serious concern, what are some of the control measures put in place to combat these menace?
3. What kind of PEPs are your customers?
4. One of the key control measures is K.Y.C. When do you carry it out, i.e. prior to accepting deposits or post-deposit?
5. Reporting of suspicious transactions is mandatory, how do you determine a suspicious transaction? That is, key features of suspicious transactions.
6. What is the threshold that may warrant reporting?
7. How many cases of suspicious transactions do you record in a month or per annum?
8. How do your staff especially relationship officers, managers and customer service officers determine suspicious transactions?
9. How do you measure the effectiveness of your control measures?
10. How often do you train your staff on AML/CFT?
11. Does the bank sanction a staff for AML/CFT infraction(s)?

Section B: Compliance with International Standards and other Regulations

1. What measures do you have in place to ensure compliance with BOG/FIC and FATF Guidelines and Recommendations respectively?
2. Has the bank ever been sanctioned for non-compliance?
3. What is the nature of punishment (if any)?
4. Do you think banking secrecy inhibit AML/CFT?

Section C: Cooperation with law enforcement agencies

1. How do you cooperate with the law enforcement agencies?
2. At what intervals do you report suspicious transactions?
3. Do you report all suspicious transactions?
4. What are some of the reasons that may account for non-reporting of suspicious transactions?
5. In what way can the existing cooperation between your bank and the law enforcement agencies be improved?

Section D: Role of Banks in AML/CFT

1. What specific roles does the bank play in AML/CFT?
2. How does your bank ensure transparency in the banking system?
UNIVERSITY OF GHANA

LEGON CENTRE FOR INTERNATIONAL AFFAIRS AND DIPLOMACY

(LECIAD)

INTERVIEW GUIDE FOR FINANCIAL INTELLIGENCE CENTRE (FIC)

This interview is aimed at accessing data on Combating Money Laundering and Financing of Terrorism: The role of Banks in Ghana. Please, this is an academic exercise for the partial fulfillment for the award of M.A. degree in International Affairs (LECIAD), University of Ghana. Your confidentiality is assured of any information that you may give. I shall therefore be grateful if you could assist by giving me your full cooperation in this exercise.

Name: ______________________________________________________

Institution: ___________________________________________________

Position: _____________________________________________________

Section A: Inherent Weaknesses in the Banking System

1. What motivate money launderers and financiers of terrorism to use banks as conduit for money laundering and financing of terrorism?
2. What are some inherent weaknesses in the banking system that encourages money laundering and financing of terrorism?
3. Are the banks in Ghana prone to money laundering and financing of terrorism?
4. Are these weaknesses artificially created or due to operational gaps, i.e. do you blame the weaknesses on bank officials or are they systemic?
5. Are the banks used by PEPs for money laundering purposes?
Section B: Compliance by banks

1. FATF Recommendations are recognised as international standards. Do BOG/FIC Guidelines comply with that of FATF?
2. Are the banks complying with BOG/FIC 2011 Guidelines?
3. KYC and STRs are essential elements in combating ML/TF. With the country’s poor address system, how effective can banks carry out a comprehensive KYC on customers?
4. Are they supposed to carry out KYCs before opening an account or may be done after the account is opened?
5. What is the threshold for an amount to be regarded as suspicious transaction?
6. Do Reporting Officers provide your outfit with accurate information?
7. Are the banks sanctioned for non-compliance?

Section C: Cooperation from banks/law enforcement agencies

1. Does FIC enjoy the full cooperation of the banks in the AML/CTF crusade?
2. What may account for non-cooperation from the banks FIC?
3. To what extent does reluctant cooperation hinder the operations of FIC?
4. What could be the role of banks in AML/CFT?
5. FIC disseminate intelligence to Ghana Police Service for possible arrest and prosecution. What has been the level of cooperation between FIC and the GPS?
6. What is the level of cooperation among FIC, Egmont, GIABA and FATF?

Section D: Accountable Institutions

1. What agencies are likely to be the conduit for money laundering?
2. What are the inherent characteristics of such agencies?
3. How much is laundered by these agencies?
4. Has the Accountable Institutions (AIs) been cooperative with regard to reporting suspicious transactions?

Section E: Consequences of ML/TF on the Economy

1. What are some of the economic effects of ML/TF on the Ghanaian economy?
2. What measures are in place to prevent abuse of the banking system by money launderers and financiers of terrorism?
3. How much money is laundered annually in Ghana as per the suspicious reports received?

Section F: The future of Money Laundering/TF
1. What are some of the achievements of FIC? Have there been successfully prosecuted cases?
2. Recommendations
This interview is aimed at accessing data on Combating Money Laundering and Financing of Terrorism: The role of Banks in Ghana.

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Name: ______________________________________________________

Institution: ___________________________________________________

Position: _____________________________________________________

Section A: Inherent Weaknesses in the Banking System

1. What motivate money launderers and financiers of terrorism to use banks as conduit for money laundering and financing of terrorism?
2. What are some inherent weaknesses in the banking system that encourages money laundering and financing of terrorism?
3. Are the banks in Ghana prone to money laundering and financing of terrorism?
4. Are these weaknesses artificially created or due to operational gaps, i.e. do you blame the weaknesses on bank officials or are they systemic?
5. Are PEPs involved in money laundering in Ghana?
Section B: Compliance by banks

1. In December 2011, BOG and FIC issued guidelines to all banks and non-financial institutions in Ghana to combat ML/CTF. Are the banks complying with those Guidelines?
2. The FATF Recommendations are regarded as internationally approved standards, are Ghanaian banks complying with those Recommendations.
3. What mechanisms do you have in place to ensure compliance?
4. Have there been cases of non-compliance by some banks in Ghana?
5. If yes, what was the punishment? Alternatively, what is the sanction for non-compliance?

Section C: Controls in Banks

1. As a regulator, what are some of the inherent weaknesses in the banks that encourage money laundering and financing of terrorism?
2. What are some of the tools or controls put in place to enhance transparency of the banking system?
3. From the perspective of a regulator, do banks in Ghana have adequate controls to deter money launderers and financiers of terrorism?
4. How effective has the guidelines on CDD and KYC been, bearing in mind the fact that banks need ‘such’ huge deposits to prop up their deposits.
5. How important is the issue of collaboration between the relevant partners in the combat against money laundering and financing of terrorism?
6. What could be the role of the banks in AML/CFT

Section D: Consequences of Money Laundering and Financing of Terrorism on the Economy

1. What are the possible consequences of money laundering and terrorist financing on the Ghanaian economy?
2. Recommendations
UNIVERSITY OF GHANA

LEGON CENTRE FOR INTERNATIONAL AFFAIRS AND DIPLOMACY

(LECIAD)

INTERVIEW GUIDE FOR HEAD, COMMERCIAL CRIME UNIT

This interview is aimed at accessing data on Combating Money Laundering and Financing of Terrorism: The role of Banks in Ghana.

Please, this is an academic exercise for the partial fulfillment for the award of M.A. degree in International Affairs (LECIAD), University of Ghana. Your confidentiality is assured of any information that you may give. Your full cooperation is highly expected.

Name: ______________________________________________________

Institution: ___________________________________________________

Position: _____________________________________________________

Section A: Receiving of information

1. How does your outfit receive information about money laundering and financing of terrorism?
2. Does such information come from FIC, BOG, EOCO or informants?

Section B: Capacity

1. The FIC says (Daily Graphic June 27, 2013) the police are not cooperating in AML/CFT because of lack of capacity. Are your staff conversant with AML/CFT regulations and laws?
2. Have you had a successful prosecution?
3. What is the level of cooperation from the relevant AIs?
4. Do your staff have the relevant training to prosecute money launderers?

Section C: comments

1. Any other comments?

Thank you