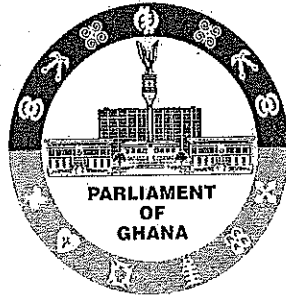


**IN THE SECOND SESSION OF THE SIXTH
PARLIAMENT OF THE FOURTH REPUBLIC OF
GHANA**



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**REPORT OF THE COMMITTEE ON
CONSTITUTIONAL, LEGAL AND
PARLIAMENTARY AFFAIRS**

**ON THE
ANTI-MONEY LAUNDERING (AMENDMENT)
BILL, 2013**

FEBRUARY 2014

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1.0 INTRODUCTION

- 1.1 The **Anti-Money Laundering (Amendment) Bill, 2013** was presented to Parliament and read the first time on **Thursday, 21st November, 2013**. In accordance with Article 106(4) and (5) of the Constitution and Order 179 of the Standing Orders of the House, Mr. Speaker referred the Bill to the Committee on Constitutional, Legal and Parliamentary Affairs for consideration and report.
- 1.2 The Committee during the consideration of the Bill, was assisted by the Minister for Justice and Attorney-General, Mrs. Marietta Brew Appiah-Oppong, her Deputy, Dr. Dominic Akuritinga Ayine and the Chief Executive Officer of the Financial Intelligence Centre (FIC), Mr. Samuel Thompson Essel. Also in attendance were Officials from the Ministry of Justice and Attorney-General's Department and FIC. The Committee is grateful to them for their assistance.

2.0 REFERENCE

- 2.1 The Committee referred to the following documents during its deliberations.
- i. The 1992 Constitution
 - ii. The Standing Orders of Parliament
 - iii. The Anti-Money Laundering Act, 2007 (Act 749)

- iv. The Anti-Money Laundering Regulations, 2011 (L.I. 1987)
- v. United Nations Convention Against Transnational Organized Crime, 2000 (Palermo Convention)
- vi. EGMONT Group of Financial Intelligence Centre Charter
- vii. Economic and Organized Crime Office Act, 2012 (Act 804)
- viii. Economic and Organized Crime Office (Operations) Regulations, 2012
- ix. Interpretation Act, 2009 (Act 792)

3.0 BACKGROUND

3.1 Money laundering, that is, "the processing of ... criminal proceeds to disguise their illegal origin in order to legitimize ... the ill-gotten gains of crime," is a great challenge to economies of countries worldwide. It creates opportunities for terrorism, drug trafficking and other transnational organized crimes. It is a derivative offence that is committed after the predicate offence had been committed.

3.2 Relentless and concerted efforts including the establishment of an independent inter-governmental body called the Financial Action Task Force (FATF) are being made globally to curb the phenomena. The FATF

was set up among other things, to develop international standards and policy framework for combating money laundering and terrorist financing. The FATF recommends these standards and policies to member states to enact legislations and establish institutions to create a global legal framework to protect the global financial system against money laundering; terrorist financing; and similar offences. The FATF also encourages and supports the establishment of regional groupings.

3.3 The Authority of Heads of State and Government of West Africa (ECOWAS) responded by establishing Groupe Intergouvernemental d'Action contre le Blanchiment d'Argent en Afrique de l'Ouest (GIABA) in 2000 for the prevention and control of money laundering and terrorist financing in West Africa. This formed the sub-regional FATF. Each country was also required to enact laws to establish the right framework for combating money laundering and terrorist financing.

3.4 In 1995, a group of Financial Intelligence Units (FIUs) met at the Egmont Arenberg Palace in Brussels and decided to establish a group whose goal is to facilitate international cooperation in the fight against money

laundering, terrorist financing and other related crimes. This group is called the Egmont Group. As part of the Recommendations of FATF, Financial Intelligent Units are required to apply for membership into the EGMONT Group.

3.5 Ghana enacted the Anti-Money Laundering Act, 2008 (Act 749) in compliance to the Guidelines of GIABA and FATF. The Law was enacted specifically to prohibit money laundering; establish the Financial Intelligence Centre (FIC) to receive, analyse and disseminate information on activities of money launderers among other functions. The Anti-Money Laundering Regulations, 2011 (L.I. 1987) were also made in pursuance of Act 749.

3.6 Since money laundering and its related crimes are intertwined, adequate and comprehensive measures are needed to address them as per the standards set by the FATF. Recent events in the international community have however shown that both Act 749 and L.I. 1987 are not adequate to deal with money laundering because they do not meet the standards set by the FATF and the EGMONT Group of FIUs. This is partly because the laws do not give the FIC the authority to exchange financial intelligence on such

criminal activities with Financial Intelligence Units in other jurisdictions. More so, FATF, EGMONT Group and GIABA identified the following strategic deficiencies in the operations of the FIC in Ghana:

- (i.) Inadequate measures for the confiscation of funds related to money laundering.
- (ii.) Inadequate procedures for the identification and freezing of terrorist assets.
- (iii.) Money laundering and terrorist financing were not adequately criminalized.
- (iv.) A weak and ill-funded and supported FIC.

3.7 The deficiencies in our laws caught the attention of GIABA, FATF, the International Monetary Fund (IMF) and the EGMONT Group of FIUs. Ghana was consequently blacklisted by the FATF in February 2012.

3.8 The Government issued Executive Instrument 2 of 2013 (E. I. 2) to establish the Inter-Ministerial Committee on Anti-Money Laundering and Counter-Financing of Terrorism. Efforts were also made by key stakeholder institutions to get Ghana off the blacklist. Institutional and legal measures were taken to improve the regime on money laundering and related crimes. A Seven-Member Team from the International Co-operation Review Group of the FATF was sent to evaluate the

legal and institutional environment in Ghana on fighting these crimes. Ghana was said to have exhibited exceptional political and strategic commitments and high level of awareness on money laundering. Ghana was subsequently taken off the blacklist by the FATF in January 2013. This dispensation was however subject to Ghana addressing other concerns raised in the Report. Hence this amendment Bill.

4.0 OBJECT OF THE BILL

- 4.1 The Bill seeks to update the Law on money laundering to make it consistent with the international standards set by FATF. The amendments are meant to improve the legal regime to enhance financial integrity in the country to make Ghana better positioned to fight these crimes. This would also make the Ghana (FIC) worthy of admission into the prestigious EGMONT Group to foster collaboration and facilitate the expeditious exchange of financial intelligence.

- 4.2 It also seeks to strengthen the FIC in its operations in combating money laundering, terrorist financing and other transnational organised crimes more effectively.

5.0 OBSERVATIONS

- 5.1 The Committee observed that the Bill seeks to amend a number of the provisions of the existing law such as the provision of more details in the definition of money laundering, expansion of the objects and functions of the FIC, and the inclusion of some new provisions to improve the legal regime of fighting money laundering terrorist financing and other predicate offences.
- 5.2 For instance, Section 5(c) of the Anti-Money Laundering Act, 2007 (Act 749) gives the FIC the power to exchange information with financial intelligence units in other countries as regards money laundering activities and **similar offences**. The Committee however noted that there was no definition for "similar offences" in Section 51 of the Act making it impossible to classify transnational organized crimes such as terrorist financing as part of similar offences. As this Honourable House is aware, Article 19(11) of the Constitution provides that no person shall be convicted of any criminal offence unless it is defined and the penalty for it prescribed in a written law. The implication is that FIC has no legal basis to exchange intelligence on terrorist financing with financial intelligence units in other jurisdictions. The Committee noted that the phrase "similar offences" have been defined in the Bill

to cover other transnational organized crimes including terrorist financing.

- 5.3 Regulation 42 of the Anti-Money Laundering Regulations, 2011 (L.I. 1987) further provides that the Minister of Finance shall within three (3) months after the commencement of L.I. 1987 apply to the EGMONT Group of International FIUs for membership for the FIC. Ghana duly applied but its application was declined due to the deficiencies identified in Act 749. The Committee observed that the Bill seeks to address the issue to enhance Ghana's chances of being admitted into the EGMONT Group of FIUs.
- 5.4 The Committee further observed that the Bill introduces a very key provision to empower Accountable Institutions to preserve funds, other assets and instrumentalities of crimes that are subjects of investigations. The object of this provision is to facilitate investigations. The existing situation is that Accountable Institutions are under no obligation to preserve such items which in itself creates problems for the FIC.
- 5.5 Finally, the Committee observed that submission of Cash Transactions Reports that is very vital in the


investigation of transnational organized crimes and the operations of the FIC was not provided for in Act 749. This has made it difficult for the FIC to compel the Accountable institutions to submit reports on their cash transactions to the Centre. The defect is however cured by Section 13 of the Bill which mandates the FIC to determine the thresholds of currency transactions for each Accountable Institution. The Accountable Institutions are to report to the FIC all currency transactions whether conducted as a single transaction or several transactions that exceed the threshold determined by the FIC. The Report must be submitted twenty-four (24) hours after the occurrence of the transaction. This would allow the Centre to follow up on all suspicious transactions and bring offenders to book.

6.0 CONCLUSION

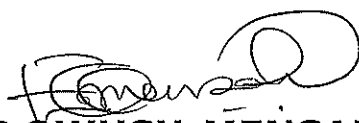
6.1 The Committee having examined the Bill vis-à-vis other international requirements in combating money laundering, terrorist financing and other transnational organised crimes, is satisfied that the Bill if passed, will further affirm Ghana's commitment to the fight against the money laundering.

6.2 The Committee therefore recommends to the House to adopt its Report and take the Bill through all the stages. In doing so the Committee proposes the attached amendments for the consideration of the House.

Respectfully submitted.



HON. ALBAN S.K. BAGBIN
*Chairman, Committee on
Constitutional, Legal and
Parliamentary Affairs*



ERIC OWUSU-MENSAH
*Clerk, Committee on
Constitutional, Legal and
Parliamentary Affairs*

FEBRUARY 2014

APPENDIX

AMENDMENTS PROPOSED TO THE ANTI-MONEY LAUNDERING (AMENDMENT) BILL, 2013

- i. Clause 3 – Section 6 of Act 749 – Amendment proposed – Sub-clause 1, Paragraph (b), line 1, before “take” Delete “on request”.
- ii. Clause 3 – Section 6 of Act 749 – Amendment proposed – Sub-clause 1, after Paragraph (e) add the following new Paragraphs:
 - “(f) retain the information in the manner and for the period required under this Act; and
 - (g) inform, advise and co-operate with investigating authorities, supervisory bodies, the revenue agencies, the intelligence agencies and foreign counterparts.”
- iii. Clause 5 – Section 23 of Act 749 – Amendment proposed – Sub-clause 14, delete Paragraph (c) and substitute “(c) conduct an assessment of the quality controls in respect of anti-money laundering, combating of the financing of terrorism and combating of the financing of proliferation of weapons of mass destruction or any other serious offence applicable to the foreign respondent financial business.”

- iv. Clause 5 – Section 23 of Act 749 – Amendment proposed – Sub-clause 22, line 2, after “and” insert “within twenty-four hours”.
- v. Clause 6 – Section 23A of Act 749 – Amendment proposed – line 2, after “crime” insert “for a period of one year”.
- vi. Clause 7 – Section 24 of Act 749 – Amendment proposed – delete “Duration of keeping records” being Head note and substitute “Record Keeping”.
- vii. Clause 7 – Section 24 of Act 749 – Amendment proposed – Sub-clause 5, line 1, after “subsection” delete “(5)” and substitute “(4)”.
- viii. Clause 7 – Section 24 of Act 749 – Amendment proposed – Sub-clause 6, line 2, after “shall” insert “within seven days”.
- ix. Clause 9 – Section 28 of Act 749 – Amendment proposed – Sub-clause 2, line 2, after “Centre” delete “to the Centre”.
- x. Clause 10 – Section 29 of Act 749 – Amendment proposed – Sub-Clause 1, lines 7 and 8, after “shall” delete “without delay” and substitute “within twenty-four hours”.
- xi. Clause 10 – Section 29 of Act 749 – Amendment proposed – Sub-clause 4, line 2, after “shall” insert “within seven days”.
- xii. Clause 11 – Section 30 of Act 749 – Amendment proposed – Sub-clause 4, Paragraph (b), line 1, after “engaging in” delete “illegal” and substitute “unlawful”.

- xiii. Clause 15 – Section 36 of Act 749 – Amendment proposed – Sub-clause 1, lines 1 and 2, after “shall” delete “refrain from proceeding” and substitute “not proceed”.
- xiv. Clause 15 – Section 36 of Act 749 – Amendment proposed – Sub-clause 1, line 3, after “related to” delete “or involve proceeds of”.
- xv. Clause 15 – Section 36 of Act 749 – Amendment proposed – Sub-clause 2, line 4, after “seven” delete “business” and substitute “working”.
- xvi. Clause 15 – Section 36 of Act 749 – Amendment proposed – Sub-clause 4, line 1, after “Where” delete “refrain from proceeding” and substitute “failure to discontinue”.
- xvii. Clause 15 – Section 36 of Act 749 – Amendment proposed – Sub-clause 5, line 2, delete “business” and insert “working”.
- xviii. Clause 18 – Section 39 of Act 749 – Amendment proposed – Sub-clause 1, re-number Paragraphs “(h), (i) and (j)” as “(i), (j) and (k)”.
- xix. Clause 18 – Section 39 of Act 749 – Amendment proposed – Sub-clause 2, Paragraph (c), line 5, delete “revealed” and substitute “disclosed”.
- xx. Clause 18 – Section 39 of Act 749– Amendment proposed – Sub-clause 2, Paragraph (e), line 1, delete “refrain from proceeding” and substitute “discontinue”.

- xxi. Clause 19 – Section 40 of Act 749 – Amendment proposed – Sub-clause 6, line 1, after “country” delete “where” and substitute “in which”.
- xxii. Clause 22 – Section 51 of Act 749 – Amendment proposed – Paragraph (a), line 2, delete “facility or”.
- xxiii. Clause 22 – Section 51 of Act 749 – Amendment proposed – Paragraph (a)(d), line 1, delete “or arrangement”.
- xxiv. Clause 22 – Section 51 of Act 749 – Amendment proposed – Paragraph (d)(d), line 1, delete “the Customs Division of”.
- xxv. Clause 22 – Section 51 of Act 749 – Amendment proposed – after Paragraph (p), insert a definition for “United Nations Consolidated List” as follows:
- “United Nations Consolidated List” means the list of persons and entities designated under United Nations sanctions regimes relating to terrorism and the financing of the proliferation of weapons of mass destruction.”
- xxvi. Clause 22 – Section 51 of Act 749 – Amendment proposed – Paragraph (q), line 2, delete “weapons” and substitute “weapon”.
- xxvii. Clause 23 – First Schedule to Act 749 – Amendment proposed – after “Accountable” in the opening statement delete “institutions include” and substitute “institution includes”.