

IN THE FOURTH SESSION OF THE SEVENTH PARLIAMENT OF THE FOURTH
REPUBLIC OF GHANA

REPORT OF THE FINANCE COMMITTEE ON THE ANTI-MONEY
LAUNDERING BILL, 2020

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1.0 INTRODUCTION

The Anti-Money Laundering Bill, 2020 was first presented to Parliament and read the first time on Thursday, 5th November, 2020.

Rt. Hon. Speaker referred the Bill to the Finance Committee for consideration and report in accordance with the 1992 Constitution and the Standing Orders of Parliament.

The Committee met with a Deputy Minister for Finance, Hon. Kwaku Kwarteng and a team of officials from the Ministry of Finance, Bank of Ghana, Financial Intelligence Center, Economic and Organised Crime Office, the Attorney-General's Department and the Association of Bankers.

1.1 Urgency of the Bill

The Committee met and determined that the Bill is of an urgent nature and therefore certifies that it must be taken through all the stages of passage in one day in accordance with Article 106 (13) of the 1992 Constitution and Order 119 of the Standing Orders of Parliament.

2.0 DOCUMENTS REFERRED TO

The Committee referred to the following documents in order to consider the Bill:

1. The 1992 Constitution;
2. The Anti-Money Laundering Act, 2008 (Act 749);
3. The Anti-Money Laundering (Amendment) Act, 2014;
4. The Financial Action Task Force (FATF) Recommendations; and
5. The Standing Orders of Parliament.

3.0 OBJECT OF THE BILL

The Object of the Bill is to amend and consolidate the laws relating to money laundering and to provide for related matters.

4.0 STRUCTURE OF THE BILL

The Bill contains Sixty-Seven Clauses.

Clause 1 of the Bill prohibits a person from engaging in money laundering. Clause 2 creates the offence of abetment of money laundering. Clause 3 is on conspiracy to commit money laundering. The penalty for contravening clause 1, 2 or 3 is provided in clause 4.

Clause 5 provides for the confiscation of the proceeds of money laundering. Clause 6 establishes the Financial Intelligence Centre as a body corporate. The objects of the Centre are set out in clause 7. The functions of the Centre is enumerated in clause 8.

Clause 9 provides for the composition of the governing body of the Centre. The functions of the Board is captured in clause 10. Clause 11 is on duties and liabilities of a member of the Board. Clause 12 provides for tenure of office of the members of the Board. Meetings of the Board is in Clause 13. Disclosure of interest is captured in Clause 14. Clause 15 provides for Committees of the Board. Allowances for the members of the Board is provided for in Clause 16. Policy directives is captured in Clause 17.

Clause 18 makes provision for the appointment of a Chief Executive Officer for the Centre and clause 19 spells out the functions of the Chief Executive Officer.

Clause 20 provides for the appointment of a Deputy Chief Executive Officer for the Centre. The appointment of a Secretary to the Board is provided for under clause 21. Clause 22 provides for the appointment of other staff of the Centre.

The Internal Audit Unit is established under clause 23. The funds of the Centre is provided under clause 24. Clause 25 provides for the opening of a bank account of the Centre. Clause 26 deals with the expenses of the Centre. Clause 27 is on Accounts and Audit. Clause 28 deals with Annual Reports and other reports. Financial Intelligence Account is captured in Clause 29. Clause 30 is on Accountable Institutions. The Register of Accountable Institutions is provided for in Clause 31. Customer due diligence is enumerated in Clause 32. Preservation of funds, other assets and instrumentalities of crime is provided for in Clause 33.

Clause 34 is on Record Keeping. Clause 35 prohibits unauthorized access to computer system or application data. Clause 36 also prohibits unauthorized modification, erasure or destruction of computer system or data. Clause 37 places a duty on operators of games of chance. Clause 38 empowers the Centre to Request for Information. Clause 39 is on Information held by competent authorities or other public agencies. Clause 40 provides for Suspicious Transaction Report. Clause 41 prohibits persons from conducting transaction to avoid giving rise to a reporting duty. Clause 42 mandates the Centre to determine the thresholds of currency transactions for each accountable institution. Clause 43 is on the Conveyance of currency to or from the country. Clause 44 deals with Electronic transfer of currency. Reporting procedures is dealt with in Clause 45. Clause 46 is on the protection against civil or criminal liability. Continuation of transactions is provided for in Clause 47. Clause 48 deals with monitoring orders. Clause 49

is on Referral of a suspected offence to an investigating authority and other public bodies. Clause 50 creates offences in relation to records and information.

Clause 51 provides for formulation and implementation of internal rules. Clause 52 is on training and monitoring for compliance. Breaches in relation to compliance is catered for in Clause 53. Supervisory powers of the Centre is provided for in Clause 54 whilst Clause 55 is on Administrative penalties. Clause 56 provides for Extraditable offence. Trial court and proceedings are spelt out in Clause 57. Clause 58 is on Freezing of a transaction or account Oath of secrecy is in Clause 59.

Clause 60 is on co-operation by public officers. Clause 61 prohibits the Obstruction or interference with authorized officers, agents and employees of the Centre. Protection from liability and indemnification is provided for in Clause 63. Clause 63 provides for general penalty.

Clause 64 is on Regulations whilst Interpretation is provided for in Clause 65. Repeals and savings is captured in Clause 66 whilst transitional provisions is provided for in Clause 67.

The Bill has two schedules.

5.0 OBSERVATIONS

5.1 Rationale for the Bill

The Committee observed that in April 2009, Ghana was blacklisted by Financial Action Task Force (FATF). This was as a result of a first round of mutual evaluation exercise on Ghana by the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA) in respect of the compliance with the Financial Action Task Force (FATF) 40+9 recommendations. Ghana scored zero out of the Sixteen (16) key and core FATF recommendations which required a minimum pass mark of 10 out of 16. This score led to the blacklisting of the country.

In a swift response, the Government initiated measures to address the strategic deficiencies including amending all relevant laws and enacting other enforceable measures to deal with the issues of money laundering.

Due to the pragmatic measures taken by the country, the FATF Plenary recommended that Ghana should be taken off the blacklist permanently for exhibiting exceptional political and strategic commitment coupled with a high level of awareness of anti-money laundering and counter financing of terrorism measures.

In 2016, Ghana was again subjected to another round of anti-money laundering and countering the financing of terrorism mutual evaluation exercise by GIABA. The focus of the exercise was on technical compliance. It also assessed the effectiveness of the anti-money laundering and counter financing of terrorism regime of the country. The report of the evaluation exercise identified some strategic deficiencies in the anti-money laundering regulatory framework. Even though the result reflected significant improvement, it still did not meet the revised FATF methodology. Ghana was accordingly placed on the FATF “grey” list.

In order to address these strategic deficiencies and comply with the FATF recommendations, Government has decided to repeal the current Anti-money Laundering Act, 2007 (Act 749) and submit to Parliament a new Bill. This is to also avoid piecemeal legislation in addressing all the deficiencies in Act 749.

5.2 Impact of the “Grey” List

The Committee enquired about the implications of being on the “grey” list of FATF. The Ministry explained that being on the FATF grey list implies that there are some degree of weaknesses and risks in a country’s legal framework and are likely to be found as attractive places for money laundering activities. The inclusion on the grey list also serves as a warning to the country that it may enter the blacklist.

The Committee observed that whilst the grey list is not a black list, it serves as a major disincentive for businesses and large corporations as these entities are subjected to stricter accountability rules when dealing with grey listed countries. These accountability requirements intend increase the cost of doing business with grey listed countries. Businesses therefore turn to shy away from such countries. This negatively impact on foreign direct investments flow.

In order to attract the needed foreign direct investment and promote growth, there is the need therefore to comply with the FATF recommendations to ensure that Ghana is taken off the grey list.

5.3 Sanctions

The Committee enquired as to whether any sanctions has been applied to Ghana by reason of the grey status. The Ministry indicated that the country is not under any sanctions. However, being on the grey list imposes some form of implied restrictions on the ease of doing business with Ghana.

6.0 RECOMMENDATIONS

The Committee having carefully scrutinized the Bill proposes the following amendments for the consideration of the House:

Amendments

1. Clause 1- **Amendment Proposed** - Subclause (3) *delete* and *insert* the following:

“(3) Where a person under investigation for money laundering is in possession or control of property which that person cannot account for and which is disproportionate to the known sources of income of the person that person shall be deemed to have committed an offence under subsection (2).”

2. Clause 4 – **Amendment Proposed** - Paragraph (a) line 1, *delete* “or” and *insert* “and”.

3. Clause 15 - **Amendment Proposed** - Subclause (2), *delete* “may” and *insert* “consisting of members of the Board and non-members shall”.

4. Clause 22 – **Amendment Proposed** - Subclause (1), line 2, *delete* “proper and effective” and *insert* “effective and efficient”.

5. Clause 24 – **Amendment Proposed** - *delete* and *insert* the following:
“Funds of the Center
24. The Funds of the Center are
 - (a) Moneys approved by Parliament
 - (b) Up to two percent of the revenue retained by the Ghana Revenue Authority under the Ghana Revenue Authority Act, 2009 (Act 791);
 - (c) Moneys provided by the Bank of Ghana in consultation with the Minister
 - (d) any other moneys determined by the Minister and approved by Parliament

6. Clause 27 – **Amendment Proposed** - Subclause (2), line 2, *delete* “within three months” and *insert* “at”.

7. Clause 29 – **Amendment Proposed** - *delete*

8. Clause 32 – **Amendment Proposed** - Subclause (2), lines 1 and 2, *delete* “in the following situations.”.

9. Clause 32 – **Amendment Proposed** - Paragraph (a), *insert* “in” before “establishing”.

10. Clause 32 – **Amendment Proposed** - Paragraph (b), *insert* “in” before “carrying”.
11. Clause 32 – **Amendment Proposed** - Paragraph (c), *insert* “in” before “carrying”.
12. Clause 32 – **Amendment Proposed** - Paragraph (d), *insert* “where” before “there”.
13. Clause 32 – **Amendment Proposed** - Paragraph (e), *insert* “where” before “the”.
14. Clause 32 – **Amendment Proposed** - Subclause (14), paragraph (c) *delete* “of” and *insert* the following:
“(c) conduct an assessment of the quality controls in combating money laundering, financing of terrorism, financing of proliferation of weapons of mass destruction, tax evasion or any other unlawful activity applicable to the foreign respondent financial business,”.
15. Clause 32 – **Amendment Proposed** - Subclause (15), *delete* and *insert* the following:
“(15) An accountable institution shall document the responsibilities of the accountable institution with regard to anti-money laundering, countering the financing of terrorism, financing of proliferation of weapons of mass destruction, tax evasion or any other unlawful activity.”.
16. Clause 33 – **Amendment Proposed** - Subclause (2) line 1, *delete* “Chief Executive Officer” and *insert* “investigative authority”

17. Clause 36 – **Amendment Proposed** - *delete and insert* the following:

“Unauthorised modification of computer programme or electronic record

36. (1) A person who does any direct or an indirect act without authority which the person knows or ought to have known will cause an unauthorised modification of any programme or electronic record held in a computer commits an offence and is liable on summary conviction to a fine of not more than five thousand penalty units or a term of imprisonment of not more than ten years or to both.

(2) It is immaterial that the act in question is not directed at

- (a) any particular programme or electronic record;
- (b) a programme or electronic record of any kind;
- (c) a programme or electronic record held in any particular computer; or
- (d) any unauthorised modification which is, or is intended to be permanent or merely temporary.

(3) A modification of a programme or electronic record occurs if by the operation of a function of the computer concerned or any other computer

- (a) a programme or electronic record held in the computer is altered or erased;
- (b) a programme or electronic record is added to or removed from a programme or electronic record held in the computer; or
- (c) an act occurs which impairs the normal operation of any computer.

(4) An act which contributes towards causing a modification is regarded as causing it.

(5) A modification is unauthorised if the person who causes it

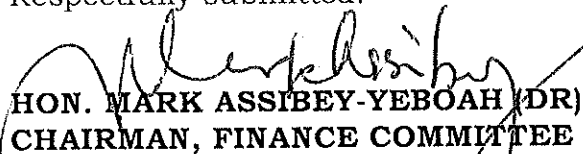
- (a) is not entitled to determine whether the modification should be made;
- (b) is not authorised to make the modification or knowingly acted in excess of the authorised modification; or
- (c) does not have consent to the modification from the person who is entitled.”

- 18. Clause 54 – **Amendment Proposed** - Headnote, *delete* “of the Centre”.
- 19. Clause 57 – **Amendment Proposed** - Subclause (1), line 1, *delete* “try” and *insert* “trial”
- 20. Clause 65 – **Amendment Proposed** - Interpretation of “tax evasion”, *delete*

7.0 CONCLUSION

After careful consideration, the Committee is of the view that the Bill will go a long way to address and combat money laundering and terrorism and therefore recommends to the House to adopt its Report and pass the Anti-Money Laundering Bill, 2020 in accordance with the 1992 Constitution and the Standing Orders of the House.

Respectfully submitted.


HON. MARK ASSIBEY-YEBOAH (DR)
CHAIRMAN, FINANCE COMMITTEE

5th November, 2020


EVELYN BREFO-BOATENG
CLERK TO THE COMMITTEE