Mapping the laws on anti-money laundering and combating financing terrorism to determine appraisal skills of accountable institutions

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In this paper evidence is offered to show that the national legislation on Anti-Money Laundering (AML) and Combating Financing of Terrorism (CFT) are too many, and therefore difficult to operationalize. An assessment was carried out to determine if the practitioners and the personnel of the “Accountable Institutions” could appraise AML and CFT events to be able to identify when such activities are initiated by their customers. The mapping of national legislation on AML and CFT was carried out. A comparison of the national legislative framework on AML/CFT against that of the international legal framework on AML and CFT was done to identify similarities between them. Literature review was carried out to assess the control mechanisms against money laundering and financing of terrorism in other jurisdictions. The result shows that the legal framework for AML and CFT is expansive, needs concerted effort on the part of all the stakeholders to intercept activities under AML and CFT. Perhaps, those without legal skills and prior knowledge about the legislation that are implicated in AML and CFT would not be able to appraise situations involving AML or CFT activities. Recommendations are made to inform policy and empower the first responders.

Key words: Anti-Money laundering legislation, concealment of financial offences, conversion of tainted money or property

INTRODUCTION

This paper was begun with the theory that the national laws on Anti-Money Laundering, AML and Combating of Financing Terrorism, CFT, are too many. Compliance is required of the stakeholder institutions with not only of the national legislations, but also with international regulations such as the Banking Secrecy Act of 1970, the Money Laundering Control Act of 1986, the Anti-Drug Abuse Act of 1988, the Crime Control Act of 1990, Federal Deposit Insurance Corporation Improvement Act of 1991, Housing and Community Development Act of 1992 and the Patriot Act of 2001; all of the United States of America. This situation does not only apply to Ghana but all the nations in Sub-Saharan Africa.

The already complex national laws are compounded by the regional laws between those from the common law tradition and those whose monetary and socio-economic policies are influenced by Codes, such as the Napoleonic Code. This situation presents multi-faceted challenges to the implementation of AML and CFT mitigation measures to the personnel of accountable institutions. If the modalities dictated under the national legislation on the issues are to be operationalized in the mundane activities of the accountable institutions, then the practitioners and the personnel of these institutions need to understand the legislation on AML and CFT very well (Norman, 2014; South District v. Ellissa 2011; Levi, 2010; Luna, 2008).

Although it would have been preferred that each of the Acts Forming part of the legal framework was analyzed in this
paper in detail, in the interests of brevity and time, we could not report on each Act. We have reported the findings after the Act-by-Act review in Table 1 in this paper in the form of a summary of the salient sections and subsections that affect AML and CFT implementation directly. To continue the discussion, however, we selected a few of the laws implicated in AML and CFT regulations to show the breadth of each Act in relation to the oversight responsibilities of the Central Bank and its enforcement agencies such as Economic and Organized Crime Office (EOCO) and the Financial Intelligence Centre (FIC) in terms of investigative powers and its consequences.

**International Banking Laws that affect local banking operations**

The Banking Secrecy Act of 1970 (BSA) allows currency transaction report. It sets up a paper trail for transactions of USD$10,000 or more, the abuse of which exposes the individual or institution to civil and criminal penalties. The law allows federal banking investigators to access information from foreign nations and banking systems. The Money-Laundering Control Act of 1986 was introduced to close back door transactions that might not have been covered within the reach of BSA. The Money-Laundering Control Act introduced three new federal offenses including offering assistance in money laundering, engaging in USD$10,000 transactions or less involving property or cash from criminal activity and; structuring transactions to avoid BSA rules and restrictions on disclosure. In addition to requiring record keeping of large transactions, it increased civil and criminal sanctions, forfeiture of property involved in violating BSA rules or other Anti-Money Laundering statute. The Crime Control Act of 1990 allows the Federal Bank regulators the authority to negotiate with foreign banking regulators for help in certain criminal investigations. The Federal Deposit Insurance Corporation Improvement Act of 1991, Section 206 allows federal regulators to disclose information to foreign banking regulators to enforce anti-money laundering laws against suspected customers. Public Law 102-550, 106 Stat 3672, the Housing and Community Development Act of 1992, or Title XV, Annu nzio-Wiley Anti-Money Laundering Act, Section 1500 authorizes the seizure, closure and or the revocation of the charter of financial institutions that are found guilty of BSA offences. The Patriot Act of 2001 broadens the definition of terrorism and money laundering, the program of training as well as introduced tougher civil and criminal penalties. The Financial Action Task Force (FATF), an inter-governmental body has 33 members. Its role is to monitor the compliance of members to international banking standards and identify non-co-operative countries and territories.

The British and European Banking regimes have their own list of laws that are operative on international banking transaction in so far as Ghana and nations like it are concerned, and of which the staff of accountable institutions are supposed to have working knowledge.

**The Legal Framework on AML and CFT in Ghana**

Attention is now turned to the legal framework on AML and CFT in Ghana, which could stand in as a case for the English speaking nations of Sub-Saharan Africa. Money laundering is a transaction designed with the goal of converting, concealing and disguising proceeds or cash payment or property acquired through illegal operations or activities. Normally, the concealment or conversion is executed through the aid, acquiescence or combination with banks, brokerage firms, money remitters, insurance companies, financial services companies, lawyers and accountants, as well as a large host of businesses and individuals. To follow the money and to punish the perpetrators of money laundering activities, it is not always easy to go after the beneficiaries/customers. The new approach has been to follow the money through these intermediary institutions or the so-called accountable institutions.

For the purpose of illustration, the First Schedule (§ 21) of the Anti-Money Laundering (Amendment) Act, 2014 (Act 874) defines “Accountable Institution” to include:

(a) An entity or person that conducts as a business one or more of the following activities or operations for or on behalf of a customer:

(i) Accepting deposits of money from the public, repayable on demand or otherwise and withdrawable by check, draft, orders or by any other means;

(ii) Financing, whether in whole or in part or by way of short, medium or long term loans or advances of trade, industry, commerce or agriculture;

(iii) Issuing and administration of means of payment including credit cards, travelers’ checks, bank drafts and other financial instruments;

(iv) Providing services in respect of financial guarantees and commitments;

(v) Trading in foreign exchange, currency market instruments, transferable securities, or commodity futures;

Or,

(xiii) Any other business activities that the Bank of Ghana may prescribe or recognize as being part of banking business

(c) Lawyers, notaries or accountants when they prepare for, engage in, or carry out a transaction for a client concerning any of the following activities:

(i) Buying and selling of real estate;

(ii) Managing of client money, securities or other assets;

(iii) Managing a bank, savings or securities account;

(iv) Organizing contributions for the creation, operation or management of a legal person;

(v) Creating, operating or managing a legal person or arrangement, or buying and selling of a business entity;

The section goes on to list religious bodies, non-governmental entities, gambling operators, insurance companies, dealers in precious metal, motor vehicles, trust
Table 1. Scaling of EOCO’s impact on the Legislative Framework on AML and CFT, Ghana

<table>
<thead>
<tr>
<th>No.</th>
<th>Title of Legislation</th>
<th>Act</th>
<th>AML</th>
<th>CFT</th>
<th>EOCO’s Impact, Scale: 1-5</th>
<th>EOCO/Effect/Impact/Encroachment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1992 Constitution</td>
<td>Nil</td>
<td>Yes</td>
<td>Yes</td>
<td>5</td>
<td>Some authorized EOCO activities may not be in consonance with personal liberties provisions of the constitution such as warrantless searches and seizures of assets before ratification by a court.</td>
</tr>
<tr>
<td>2</td>
<td>Banking Act, 2004</td>
<td>673</td>
<td>Yes</td>
<td>Yes</td>
<td>4</td>
<td>§ 34-36; 39; 41; 45-48; 51-64; 70-73; 84-89 in addition to international banking requirements.</td>
</tr>
<tr>
<td>3</td>
<td>Anti-Money Laundering, 2008</td>
<td>749</td>
<td>Yes</td>
<td>Yes</td>
<td>5</td>
<td>Entire Act proscribes modalities against Money Laundering and Financing of Terrorism.</td>
</tr>
<tr>
<td>4</td>
<td>Anti-Money Laundering (Amendment), 2014</td>
<td>874</td>
<td>Yes</td>
<td>Yes</td>
<td>5</td>
<td>Entire Act proscribes modalities against Money Laundering and Financing of Terrorism.</td>
</tr>
<tr>
<td>5</td>
<td>Anti-Terrorism Act, 2008</td>
<td>762</td>
<td>Yes</td>
<td>Yes</td>
<td>5</td>
<td>Entire Act proscribes modalities against Money Laundering and Financing of Terrorism.</td>
</tr>
<tr>
<td>6</td>
<td>Economic and Organized Crime Office Act, 2010 (Repealed</td>
<td>804</td>
<td>Yes</td>
<td>Yes</td>
<td>n/a</td>
<td>Entire Act proscribes modalities against Money Laundering and Financing of Terrorism, § 1-3 provides for the reach of EOCO; § 19-27 provide for Subpoena powers of EOCO, and § 33-40 Freezing of asset powers. § 72 provides for Restitution of aggrieved or wrongly accused/investigated entity leading to loss of business and other interests.</td>
</tr>
<tr>
<td>7</td>
<td>Economic and Organized Crime Office (Operations)</td>
<td>2183</td>
<td>Yes</td>
<td>Yes</td>
<td>n/a</td>
<td>Entire Act proscribes modalities against Money Laundering and Financing of Terrorism. § 25-27 The Emergency Powers to search for tainted property without warrant is particularly worrisome</td>
</tr>
<tr>
<td>8</td>
<td>Financial Administration Act, 2003</td>
<td>654</td>
<td>Yes</td>
<td>Yes</td>
<td>3</td>
<td>Entire Act could easily be co-opted under EOCO due to the mandate to regulate public funds on behalf of government and society. Recent cases of laundering of official government funds to Swiss banks: Marcos of the Philippines, Swiss Banks returned ±$700m, Abache of Nigeria, ±$200m returned</td>
</tr>
<tr>
<td>9</td>
<td>Narcotics Drugs (Control, Enforcement and Sanctions) Law,</td>
<td>236</td>
<td>Yes</td>
<td>Yes</td>
<td>5</td>
<td>§ 10-27; 35-41; 56-59. Parts of the Act proscribe modalities against Money Laundering and Financing of Terrorism, but read in conjunction with EOCO, the entire Act falls under the reach of EOCO.</td>
</tr>
<tr>
<td>10</td>
<td>Insurance Act, 2006</td>
<td>724</td>
<td>Yes</td>
<td>Yes</td>
<td>4</td>
<td>§ 72-78; 80-89; 118; 137-139; 155, 162-166; 205-206, First Schedule</td>
</tr>
<tr>
<td>11</td>
<td>Borrowers and Lenders Act, 2008</td>
<td>773</td>
<td>Yes</td>
<td>Yes</td>
<td>4</td>
<td>§ Parts of the Act proscribe modalities against Money Laundering and Financing of Terrorism through related entities. § 4 (a) to (d); § 9 – 12 allows entry of the Bank of Ghana, therefore EOCO into investigations under L.I. 2183 and Act 804</td>
</tr>
<tr>
<td>12</td>
<td>Securities Industry Law, 1993 (P.N.D.C.L.)</td>
<td>333</td>
<td>Yes</td>
<td>Yes</td>
<td>5</td>
<td>Entire Act falls under EOCO crime investigative oversight due to the fact that Money Laundering activities can be hidden in stocks through brokerage firms.</td>
</tr>
<tr>
<td>13</td>
<td>Human Trafficking Act, 2005</td>
<td>694</td>
<td>Yes</td>
<td>Yes</td>
<td>3</td>
<td>§ 1-5; 21 (e); 39-40, EOCO seizure and freezer powers can be invoked in a suspected case against the trafficker.</td>
</tr>
<tr>
<td>14</td>
<td>National Disaster Management Organization Act, 1996</td>
<td>517</td>
<td>No</td>
<td>Yes</td>
<td>3</td>
<td>Perpetrators of events that pose threat to the Homeland Security come into the catchment claws of EOCO</td>
</tr>
<tr>
<td>15</td>
<td>Emergency Powers Act, 1994</td>
<td>742</td>
<td>No</td>
<td>Yes</td>
<td>3</td>
<td>§ Read together with Anti-Terrorism Act, 2008 Act 762, certain powers of the Act 742 come under EOCO’s interventions</td>
</tr>
</tbody>
</table>
companies and other agencies including those in consultancy capacities and roles. However, it is within such a legal framework that the practitioner and the financial industry worker is supposed to operate with the sophistication of a well trained criminologist capable of conducting financial and accounting forensics. How is that possible, really?

**Appraising the occurrence of AML and CFT activity**

The personnel of accountable institutions could have been given the template of how to identify the ‘placement’ or the conversion of illegal funds into other assets as compared to the placement of legally obtained funds from the activities of a legitimate business. ‘Layering’ of funds or moving funds from one institution to another or to another account to obscure the origin of the funds is another appraisal indicator. However, this does not differ from moving funds from one legitimate account to another with funds placed from identifiable origin of legitimacy. ‘Integration’ of funds is where the illegal funds are used to acquire legitimate assets either through a brokerage firm, insurance or other financial institution. Within the appraisal indicators should be also, the overall behavior of the client or customer where there is no collision between the accountable institution and the perpetrator. There should also be a pattern of such transactions over a considerable length of time involving large sums of money. There should be normative evaluation of the performance of the client in the particular industry in which he or she is engaged, compared to others similarly situated. There should be a complete forensic assessment of the operations, revenue returns, stamp duties on imports and on raw materials, payroll list and so many other running costs that a normal, legitimate business has. Without such indicators, appraisal would be nothing more than a witch hunt. All such indicators would become inputs for profiling.

**Of bankers, insurers and criminal profiling customers**

The financial industry worker under the current regime for AML and CFT in Ghana is also presumed by the legislative framework to have the capacity to understand and work with tools such as criminal profiling, forensic accounting, and the capacity for eaves-dropping on client’s communications by 'monitoring' such activities. It appears the personnel of accountable institutions are to understand the chaotic algorithms underlying their client’s unpredictable and random financial transactions. Then by looking for patterns in the transactions, make a determination as to the illegality of the activity in an enormous sea of international financial transactions in any

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**Table 1. Cont.**

<table>
<thead>
<tr>
<th>No</th>
<th>Act</th>
<th>Score</th>
<th>Yes/No</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>16</td>
<td>Ghana Promotion Centre Act, 1994</td>
<td>478</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>17</td>
<td>Consolidated Criminal Code, 1960</td>
<td>29</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>18</td>
<td>Whistleblower Act, 2006</td>
<td>720</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>19</td>
<td>Electronic Communication Act, 2008</td>
<td>775</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>20</td>
<td>Home Mortgage Finance Law, 1993 (P.N.D.C.L.)</td>
<td>329</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>21</td>
<td>Home Mortgage Finance Law, 2008</td>
<td>770</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>22</td>
<td>Long-Term Savings Scheme Act, 2004</td>
<td>679</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

**Total Score of EOCO’s reach no various Acts and legislations**

80/110

EOCO is probably the most impactful single legislation in Ghana on the encroachment of civil liberties after the 1992 Constitution of Ghana

given day. The Act presumes that the average staff of the accountable institutions is savvy enough to know that unpredictable and random client activities are not necessarily random or unpredictable; and that within what appears as chaotic and unrelated, lies their relationships and un-randomness (Lorenz 1975; AML Amendment Act, 2014). Therefore, he or she is charged by Act 874 of 2014 Section 1 of Act 749 amended, with the ‘reasonable person's standard’ and the ability to identify pre-crime illegal activities which are about to be in play or which are already set in motion by his or her customers.

In calling for the creation of Financial Intelligence Centre (FIC) and as part of the core mandate of FIC-GH, Act 874 of 2014 defined "Money-laundering' as:

1. (1) A person commits an offence of money laundering if the person knows or ought to have known that property is or forms part of the proceeds of unlawful activity and the person
(a) Converts, conceals, disguises or transfers the property;
(b) Conceals or disguises the unlawful origin, disposition, movement or ownership of rights with respect to the property; or
(c) Acquires, uses or takes possession of the property.
(2) For the purposes of this Act, unlawful activity means conduct which constitutes a serious offence, financing of terrorism, financing of the proliferation of weapons of mass destruction or other transnational organized crime or contravention of a law regarding any of these matters which occurs in this country or elsewhere.

The Act has elevated the skills, knowledge and abilities of the practitioners from law enforcement and financial industry, engaged in AML and CFT mitigation, to a very high level of sophistication. This result was achieved by simply invoking the reasonable person's standard as the basis of assigning actual or constructive knowledge of illegality to the accountable institution (Norman et al. 2014; World Bank 2008).

As already stated, the Ghana legal framework on AML and CFT is reasonably big and it is likely that many of the practitioners and first responders are oblivious of what the AML and CFT legislation entails. The 22 separate pieces of national legislation on AML and CFT contain sections and subsections with additional schedules and notes. For the busy banker or insurance broker, finding the time and resources to review and map out the sensitive dependencies of client’s activities and their connection to AML/CFT is a daunting task (Norman 2014). Despite the occasional continuing professional development courses offered by the Financial Investigation Centre, these may not sufficiently build the capacities of the practitioners and those with oversight responsibilities in the oversight agencies themselves let alone those of the bankers, insurance brokers and executives and allied staff. The Financial Intelligence Centre, FIC is an arm of the Ghana Central Bank and an extension of the Securities and Exchange Commission. The employees of these institutions are dynamic and with constant in-flows and out-flows of new entrants and job changes and re-assignments.

Therefore, once or twice a year training for the staff of accountable institutions on AML and CFT for three or four hours over five days, which is the usual duration of such training, may not fill the knowledge gaps and may not even fulfill the requirements of the legislative mandate. Without a sufficient appraisal of the expectations of the laws on their operations, it is hard to appreciate how their duties, obligations and responsibilities under the legislative framework could be aligned with the legal expectations towards AML and CFT.

It is hoped this paper would enable the staff to first learn to appraise money laundering and financing of terrorism activities in as far as the legal framework is concerned by becoming conversant with the laws through continual professional development. Our review of the 22 Acts and Legislative Instruments forming the legal framework would add to the store of knowledge and help inform the first responders and experts alike.

Method and Procedure

In this mapping exercise, we focused on how the banks and other financial institutions are to operate under the law. The modalities or standard operating procedures are generally alluded to in the national legislative framework on AML and CFT. These need to be teased out of the legislation since they are not specifically provided. The inclusion criteria of the national legislation in this mapping exercise were that the specific legislation must address either AML or CFT. It should have any combination or grouping of any; or all of the following keywords in its establishment sections and subsections: money; terrorism; money laundering; financial offences; concealment of money or property; fraud; organized crime; wire transfer; white collar crime; bribery of government official; financial intermediation; human trafficking; terrorism; terrorist cells; terrorist organization; financing terrorism; narcotics drug trade; drug smuggling; and financing of terrorism through organized crime.

We obtained copies of the list of Acts, Legislative and Executive Instruments, which were available at the Government of Ghana Printers and reviewed them. Each of the specific legislation, legislative or executive instrument was read and briefed after a step-by-step and page-by-page investigation and reading to assess how it impacted or affected the national legislation on AML and CFT. Then the salient points were jotted down, measured, reviewed and interpreted according to our skills in law and public policy.

We also carried out documentary search on the internet using carefully designed phrases like, perpetration of money laundering and financial offences in Ghana; concealment of money or property by financial and other institutions; fraud; organized crime proceeds and wire transfers of tainted money activities in Ghana; white collar crime in Ghana; bribery of government official; financial intermediation by political figures; human trafficking; terrorism; terrorist cells; terrorist organization; financing terrorism; narcotics drug
trade; drug smuggling.

We found a few pertinent grey and published literature on Ghana in relation to AML and CFT. For this reason, we did not develop an inclusion criterion but used all the materials we could access. We segregated the dossier, read them and selected the ones that dealt with the topic. After that we grouped them into their respective units, summarized the findings into their respective units, and interpreted them based upon our education, skills, knowledge in law, homeland security matters, economics and risk communication.

RESULTS

The National legal framework on Money Laundering


Constructive or Actual knowledge Test under Act 874

Knowledge of the client or customer’s business is imputed to the Accountable Institution (AI). By combing through the Anti-Money Laundering (Amendment) Act, 2014 (Act 874) we noticed that the FIC presumes that Accountable Institutions (AI) and other professionals have actual and constructive knowledge of their clients and customers business intent. It appears FIC may offer proof of such knowledge by demonstrating that the banks and financial institutions had hired and retained Relationships Managers, Account Executives, Sales Crew, Marketing Staff, and Branch Managers whose duties include knowing the client or customers well.

Financial Intelligence Centre’s Requests for Information

The FIC can request for information from the AI at any time that it has probable cause that a serious offence has taken place or it is about to take place. In such a scenario, because the FIC already presumes that the AI has inside knowledge of the client or customer activities or intentions, the AI would know or should have know the kind of information that the FIC desires to obtain upon its requests.

Under § 28-35, the FIC mandate allows it to be arbitrary in its request.

Section 28 of Act 749 as amended in Act 874 as thus:
(1) The Centre shall obtain from an entity or person subject to the reporting obligation set forth in section 30 any information that the Centre considers necessary to carry out the functions of the Centre in relation to any information that the Centre has received in accordance with the functions of the Centre as set out in section 6.
(2) An entity or person shall provide the information requested by the Centre within the time limits set and in the form specified by the Centre.

Under the general requirement for information as articulated under Sections 28 through 35, but particularly under § 30 which addresses ‘Suspicious transaction report’, the inter-play between Act 874 and the Whistleblower Act, 2006 (Act 720) comes out. Section 30 states:
(1) A person or an accountable institution that knows or reasonably suspects that a property is:
(a) Terrorist property,
(b) The proceeds of money laundering,
(C) For financing of proliferation of weapons of mass destruction,
(d) Intended for any other serious offence Shall submit a suspicious transaction report to the centre within twenty-four hours after the knowledge or suspicions was formed.
(3) A person or accountable institution shall not, except as required by law, disclose to its customers or to a third party that
(a) a report under subsection (1) or (2) or any other information concerning suspected money laundering, terrorism financing or financing of proliferation of weapons of mass destruction or any other serious offence will be, is being or has been submitted to the Centre.

Cross Purpose Legislation or Conflict of laws issues

As an example of two legislation with more or less the same focus, but having cross purposes are the Anti-Money Laundering (Amendment) Act of 2014 (Act 874) and the Whistleblower Act, 2006 (Act 720). Although Act 874 of 2014 did not make reference to Act 720 of 2006 on being a whistleblower, it sought to compensate those who aid the FIC to conduct its business with immunity against criminal or civil liability. The Whistleblower Act of 2006 was enacted to “provide for the manner in which individuals
may in the public interest disclose information that relates to unlawful or other illegal conduct or corrupt practices of others; to provide for the protection against victimization of persons who make these disclosures; to provide for a Fund to reward individuals who make the disclosures and to provide for related matters’. In Section 1, it states:

(1) A person may make a disclosure of information where that person has reasonable cause to believe that the information tends to show
(a) an economic crime has been committed, is about to be committed or is likely to be committed;
(b) another person has not complied with a law or is in the process of breaking a law or is likely to break a law which imposes an obligation on that person;
(c) a miscarriage of justice has occurred, is occurring or is likely to occur;
(3) A person who makes a disclosure of impropriety is in this Act referred to as a “Whistleblower”.
In Act 874 of 2014, it states that:

32. (1) An accountable institution or its directors, officials or employees who in good faith submit a report under section 30 or section 31A to the Centre or provide information in accordance with the provisions of this Act shall not be held liable in criminal, civil, disciplinary or administrative proceedings for breach of banking or professional secrecy or contract.
(2) Criminal action for money laundering, terrorism financing, financing of proliferation of weapons of mass destruction or any other serious offence shall not be brought against an accountable institution or its directors, officials, or employees in connection with the execution of a transaction that has been reported to the Centre in good faith under section 30.

Although freedom from criminal and civil liability is a good incentive to the accountable institutions to aid the FIC, it may not go far enough as an incentive to motivate some to voluntarily report such conduct. They may persist in it due to the financial benefits to the accountable institution for managing such an account until caught by law enforcement. Under Section 23 and 24 of the Whistleblower Act of 2006, Act 720, “a whistleblower who makes a disclosure that leads to the arrest and conviction of an accused person shall be rewarded with money from the Fund”. Section 24 was more specific in the entitlement to payment to the whistleblower that, “a whistleblower whose disclosure results in the recovery of an amount of money shall be rewarded from the Fund with (a) ten percent of the amount of money recovered or (b) the amount of money that the Inspector-General shall, in consultation with the Inspector-General of Police determine”.

This kind of incentive is a strong attraction for cooperation with law enforcement which EOCO or FIC did not seem to incorporate. In order for the AI staff to even get to this point, they should have been in position to profile their customers and to understand the narratives of their dealings. To achieve this goal, EOCO and FIC suggest profiling customers with suspicious transactions.

**Criminal Profiling as the Start Point for developing Probable Cause**


2. (1) An officer conducting an investigation into an alleged serious offence may profile and shall as part of the docket file a report in accordance with Form 1 of the Second Schedule;
(2) The officer shall, among other things;
(a) Record the personal antecedents of the suspect, including information about the relatives of the suspect;
(b) Take the suspect’s finger print electronically or manually;
(c) Take a photograph of the suspect, and
(d) Record the business dealings of the suspect including bank accounts.

As part of the basic demographic information, L. l. 2183 provided a template or a matrix based upon the ‘antecedents of the suspect’. Though these so-called antecedents are basic building block in the profiling of the suspect, the antecedents alone would not be that helpful in profiling a suspect. In nowhere in the Ghana Act or the accompanying L. l. 2183 was there a mention of the psychological or behavioral aspects of the suspect as other more sophisticated jurisdictions have provided in their definition of profiling.

In other jurisdictions, criminologists and psychologists have provided different definitions for criminal profiling. Beza et al. (2000) defined criminal profile as a report that describes the investigative relevance and or probable characteristics of the offender responsible for a particular crime, or a series of related crimes. Offender characteristics include any attributes that the examiner ascribes specifically to the unknown person or persons responsible for the commission of particular criminal acts, including those that are physical, psychological, social, geographical or relational. The U.S. Federal Bureau of Investigations, FBI calls profiling Criminal Investigative Analyses. It defines it as “... an investigative process that identifies the major personality and behavioral characteristics of the offender based on the crimes he or she has committed” (Burgess et al., 1992; Turvey, 2008).

The records of accountable institutions also contain the profile of the record owner and the executor of that record. The record profile contains its date, the date and time of its receipt, the date and time of its transmission, the matter, attachments, records identifier, and security protection.

It appears what the Legislative Instrument 2183 of 2012 has succeeded in achieving is that it has provided a checklist of the series of tasks that needs to be done as part of the basic requirement for profiling another without defining what profiling is. If an AI were to renege on this duty, then the long arm of the EOCO law would be upon it.
The legislative environment for AML and CFT vis-à-vis EOCO's Subpoena powers

In order to meet the compliance of EOCO and Anti-Money Laundering and Combating Financing Terrorism legislation, it is imperative to understand the judicial powers vested in EOCO and how that can be used against individuals and corporate operations in relation to each of the laws in the legal framework. These are again presented here for convenience in the Table 1 below showing the offending sections contained in the Acts. As shown in the Table 1, the impact of the EOCO law on AI is quite significant and it is important for the AI to master their duties under the law.

Warrantless searches, seizures, criminal investigations and EOCO's subpoena Powers

Criminal investigation is the tracking or tracing of those responsible for a criminal offence. It typically starts with a systematic and thorough investigation, with openness and willingness to consider all forms of information (Turvey 2008). This would be followed by a potential line of inquiry in order to develop a particular theory and fix on a particular suspect or a group. Under FIC and EOCO, it appears the mere suspicion, the mere hunch that a crime is about to be committed or is being committed seems to be enough probable cause to deplore the subpoena powers on the suspect and related persons of the suspects as provided for in the Second Schedule to L. I. 2183 of the EOCO Operations. The Ghana Financial Intelligence Centre, FIC and Economic and Organized Crime Office, EOCO are designed to address: Critical law enforcement problems, including organized crime, official corruption, bribery, narcotics drugs, policing of civil conduct that may cause emergencies whether human caused or terrorism (Brodeur 2007; U. S. DOD: Global War on Terrorism 2005). They are more concerned with sophisticated crimes, and try to engage in pre-crime interventions, espionage of certain classes of people in civil society and continuous monitoring. To realize these ends, they are given extra-judicial powers such as search and seizure without the production of a warrant guaranteed by the 1992 Constitution of Ghana. All that EOCO needs to have before issuing its subpoena and serving it on an accountable institution is probable cause that a crime is about to be committed or is already set in motion. Such sowing powers allows EOCO too much sniffing rights against the civil and constitutional rights of even legitimate, law abiding companies and citizens which does not augur well with constitutional rule or procedural law.

Asset Freezing Powers on Probable Cause

In addition to warrantless searches and seizures, EOCO has the mandate to freeze the financial accounts or property of a person of interest or a suspect under Sections 33 through 40. Section 33 offers that:

(1) Where the Executive Director considers that freezing of property is necessary to facilitate an investigation or trial, the Executive Director may in writing direct the freezing of

(a) The property of a person or entity being investigated, or
(b) Specified property held by a person or entity other than the person or entity being investigated or tried.

(2) The Executive Director shall within fourteen (14) days after the freezing of the property apply to the Court for a confirmation of the freezing. The Figure 1 below is provided to show the steps EOCO takes to freeze the assets of a suspect.

Borrowers and Lenders Dilemmas

The Borrowers and Lenders Act, 2008 (Act 773) does not make any reference to AML and CFT. But a careful reading of § 1 §§ 4, it is noticed that it is related to AML and CFT in the sense that it proscribes lending modalities between related entities and individuals. When is a loan not an "arm's length deal"? Section 4 a-d defines this as:

For the purpose of this Act parties are not dealing at arm's length in the case of:

(a) a shareholder loan or other credit agreement between a corporate body as borrower and a person who has a significant shareholding in that corporate body as lender;
(b) a loan to a shareholder, or other credit agreement between a corporate body as lender, and a person who has a controlling interest in that corporate body, as borrower;
(c) a credit agreement between persons who are in familial relationship; or
(d) any other arrangement that is of a type that has been held in law to be between parties who are not dealing at arm's length

Once any of the conditions listed under Section 4 (a) through (d) occurs, then the long arm of the EOCO provision is activated. Notice that once a loan is made to a related person or entity, under Sections 9 through 12 of Act 773, the Bank of Ghana would examine the books of the entity. EOCO is a proxy for the Bank of Ghana and would most likely conduct the investigations on the improper loan transaction between related entities.

Terrorism vis-a-vis AML and CFT

When financing of terrorism is discussed in theoretical terms, it tends to obfuscate the real threat of terrorism as a big issue confronting all economies. However when the abstraction of how terrorism is financed gives way to ideographical analyses of the activities leading to actual distribution of laundered funds; such as individual company's payments and clandestine transfers to shadowy groups, deposits of funds from no known sources of economic activities, then the transactions are given cloaks of traceable realities. But before we focus on this aspect of
Under the "necessity test" EOCO can freeze tainted property § 33 to aid investigation and protect integrity of property.

EOCO can freeze property with or without a Court order or warrant, then within 14-days apply to the court for ratification/confirmation of its action.

Property can be frozen for 12 months or if longer with court order § 38.

Respondent ought not know the reasons of application to the court for ratification or confirmation of the freeze § 39.

EOCO may elect to lift the veil of Incorporation under § 35 and go after personalities involved.

Obstruction, refusal to surrender, intimidation of EOCO personnel leads to Summary Conviction of fine or both § 37.

Restitution to victims of EOCO under § 72.

**Figure 1:** Flow chart of EOCO’s ability to freeze tainted asset without due process, Courtesy, Norman ID (2015)

The menace, it is important to obtain working definition of what terrorism is all about.

Universal definition of what terrorism is; is difficult to obtain (Norman et al. 2014). The United Nations Policy Working Group on Terrorism defines terrorism loosely that, “terrorism is, in most cases, essentially a political act. It is meant to inflict dramatic and deadly injury on civilians and to create an atmosphere of fear, generally for a political or ideological (whether secular or religious) purpose. Some researchers consider terrorism as a criminal act (Bjorn and Sandler 2008; Tanielian et al. 2006; UN Office on Drugs and Crime 2002; Justice Department 2003; Shawn 2006; Schaefer 2003; Tiefenbrun 2003). However; terrorism is more than mere criminality. The United Nations cautioned in 2002 that “to overcome the definitional problem of terrorism, it is necessary to understand its political nature as well as its basic criminality and psychology”. Tiefenbrun (2003) wrote in support that, there was no ‘coordinated position on the meaning of the term’ by even the US government or Congress. Tiefenbrun added that ‘the absence of a generally accepted definition of terrorism in the United States allows the government to craft variant or vague definitions which could result in an erosion of civil rights and the possible abuse of power by the state in the name of fighting terrorism and ensuring national security’ (Tiefenbrun 2003).

The Ghana Terrorism Act suffers from the same design defect as those of other nations. It was found that the Ghana Act’s definition of terrorism is perambulatory and overly broad in its reach and may breach the due process clause of the 1992 Constitution. *Ghana Anti-Terrorism Act, 2008, (Act 762)* defines terrorism as:

1. An act is a terrorist act if it is performed in furtherance of a political, ideological, religious, racial or ethnic cause and:
   a. Causes serious bodily harm to a person
   b. Causes serious damage to property;
   c. Endangers a person’s life;
   d. Creates a serious risk to the health or safety of the public;
   e. Involves the use of firearms or explosives.

Section 40 of the Anti-Terrorism Act, 2008 defines “Property” to mean:

An asset of any kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible and legal documents or instruments in any form including electronic or digital, evidencing title to, or interests in such assets including but not limited to bank credits, travelers checks, bank checks, money orders, shares, securities, bonds, drafts, letter of credit;

The section further defines “ideological cause” to include racial or ethnic cause. Such a definition is simply too broad for the purposes of the administration of justice.

A terrorist organization is managed like any hierarchical entity. The Figure 2 below is provided to illustrate how the organogram of a terror organization might look like.
Terror organizations have branch operations or cells, which could be manned by either a small band, or as in the case of “Lone Wolf” perpetrator, a single individual or a group as in the case of 9/11 terrorists who came from different destinations to perpetrate that deed. Please see Figure 3 above. Jeh Johnson, U.S. Homeland Security Secretary told
ABC’s Martha Raddatz on “This Week”, “We’re very definitely in a new phase in the global terrorist threat, where the so-called lone wolf could strike at any moment.” “It is a new environment, but we are not discouraging Americans from doing the things they do on a daily basis” (http://nypost.com/2015/05/11).

How does this fit into AML and CFT? To establish the linkages between terrorism and money laundering in the modern era, one needs to back-track to the events leading to 9/11 World Trade Center attack by Al-Qaeda in 2001 and how the actual attackers in that event were financed. U.S. Public Law, “Uniting and Strengthening America, (USA Patriot Act) has provided a lot of the back-story to the 9/11 attack. Though Ghana has not had a terror attack as yet, it makes strategic sense for the nation to prepare its legal framework and other systems against such an eventuality.

DISCUSSION

The legal framework for AML and CFT in Ghana contains too many laws the harmonization of which might go a long way to simplify its implementation and reduce the cost of capacity building associated with it. Although the Financial Intelligence Centre in collaboration with the Bank of Ghana and allied agencies do conduct periodic training for those in the banking and insurance industry on compliance with the AML and CFT legislation, it appears not much impact is being made on these accountable institutions. This is particularly so when it comes to white collar crimes, bribery and corruption of government officials and the movement of large volumes of foreign currencies either through the normal banking system or through the only international airport in Ghana, the Kotoka International Airport as exemplified by South District v. Ellissa, 2011 case.

Although the law appears to make bold statements about monitoring clients activities, even eaves dropping on client conversations and other communications, the law did not go far enough. This is because the law did not empower the EOCo as to how to go about collecting voice and data information on persons of interests, POI and or institutions of interest, IOI. Such a mandate should have been part of the schedule of permissible activities in the law with a template as to its operationalization. Providing a template for profiling POI is not enough when the IOI part is not adequately tackled. In investigations, it is important to learn that skill and discipline are necessary to avoid a pre-mature closure of an investigation. It is also not proper settling on a suspect too early in the course of the investigation. It is important to avoid the danger of developing a theory that may not fit the crime or even the suspect. The mining of data captured by modern technologies and tools in criminal investigations such as Close Circuit Television, CCTV and advances in DNA, Criminal profiling are not uncommon events. For the criminologist to conduct a successful investigation, the criminologist may have to act at times as a detective, a community member helping to solve a problem, an empathetic social worker to reassure the community that all would be well, psychologist to help offer counseling when need be, lawyer to interrogate the facts and evidence collected, and crime scene officer to manage the scene so that it does not become tainted or adulterated.

It appears the national legal framework expects bankers, accountants, lawyers and cashiers to become experienced criminal investigators capable of profiling suspects, capable of understanding the entire range of banking and investment products, check clearing house rules, treasury rules and regulations and be able to isolate unusual transactions as suspicious.

Though there was no empirical data collected in this paper to assess the knowledge and awareness of accountable institutions on AML and CFT, there seems to be a general consensus that those without legal skills and prior knowledge about the implicated legislation would have a difficult time seeing the linkages between one legislation and the other on AML and CFT.

Third, it shows that those without legal training or prior exposure to the laws on AML and CFT would not see the seriousness of the legislative impetus.

Fourth, those without legal training or prior exposure to the legal framework on AML and CFT would not be able to appraise the situation when AML and CFT activities are taking place through them or their supervisory roles or their organizations, irrespective of their proximal nexus to the transactions involved.

Recommendation

To the Bank of Ghana

1. The harmonization of the various legislation on AML and CFT, would lead to cost reduction in staff development and capacity building associated with AML and CFT. To this extent, the Bank of Ghana together with other stakeholders should review the separate laws on AML and CFT and synthesized them into one Act.

2. The incentive for reporting AML and CFT activity is not attractive enough, compared to the transactional cost/benefit draw a financial institution could make in maintaining a client account over a period.

3. The realization of the goals of the various Acts on AML and CFT ride on the strengths of the personnel of accountable institutions. Though this can be veritable strength, it shows the weak governmental investigative skills into the matters under AML and CFT.

To the Supreme Court of Ghana through the Attorney-General’s:

1. The various Acts on AML and CFT have in-built sections and subsections that are designed to encroach upon the substantive rights of the people. This may run counter to the expectations of the 1992 Constitution of Ghana. Attention may have to be drawn on the laws on AML
and CFT to amend the offensive sections and subsections as contained in the various Acts under interrogation in this paper.

2. The freedoms of the people cannot be sacrificed to win the war on financing of terrorism or anti-money laundering. While it is in the interest of both fiscal policy and the population to minimize if not completely eradicate the harmful practice of money laundering and financing terrorism, the rights of the people is inviolable and must be protected against any other interests at stake.

To the Banks, Insurance Industry and other Financial Institutions

1. In order for these institutions play decisive roles in AML and CFT as required by the laws, there has to be a paradigm shift. The institutions may have to hire experts with statistical and econometrics skills to analyze data aggregates, isolate the sensitive dependencies of client activities and develop the theory for investigating outliers within a given aggregate of clients. It is not feasible to expect the average staff worker to also take on this responsibility of studying trends in the affairs of clients and analyzes such trends to attempt to make sense out of the multiplicity of transactions.

2. It is a well known fact that some sales executives of certain banks use unwholesome sales tactics to meet their sales budgets from month to month. It is a pressure cooker mentality sometimes when it comes to the tactics of getting bank clients to make deposits into their account particularly before the end of the month, because the sales executives are sometimes fired for not meeting their depositor targets. This situation could entice the bank into accepting already tainted funds, since it appears the banks are at the mercy of the depositors. Due diligence would be missing in the banks’ evaluation of such clients. The banks engaged in such sales tactics should find a much more effective and efficient way of attracting deposits that can stand to the test of ethics and a reduction of criminal associations.

To the Financial Intelligence Centre

1. The extra-judicial powers of warrantless searches and seizures and freezing of the account of suspected serious offence perpetrator vested in the FIC is awesome. If it is correctly applied towards the investigation of serious economic fraud in our nation, bribery and corruption would be a thing of the past. Forensic accounting, random review of personal asset, property, investments and bank accounts of identifiable public figures as part of routine audit but devoid of politics, would go a long way to arrest the runaway perception of corruption in high places in Ghana. It could also lead to uncovering major corruption and pay-out to government officials, directors of certain public corporations and line-managers of public institutions.

2. Like the Central Bank, FIC may help in harmonizing the legal framework on AML and CFT.

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