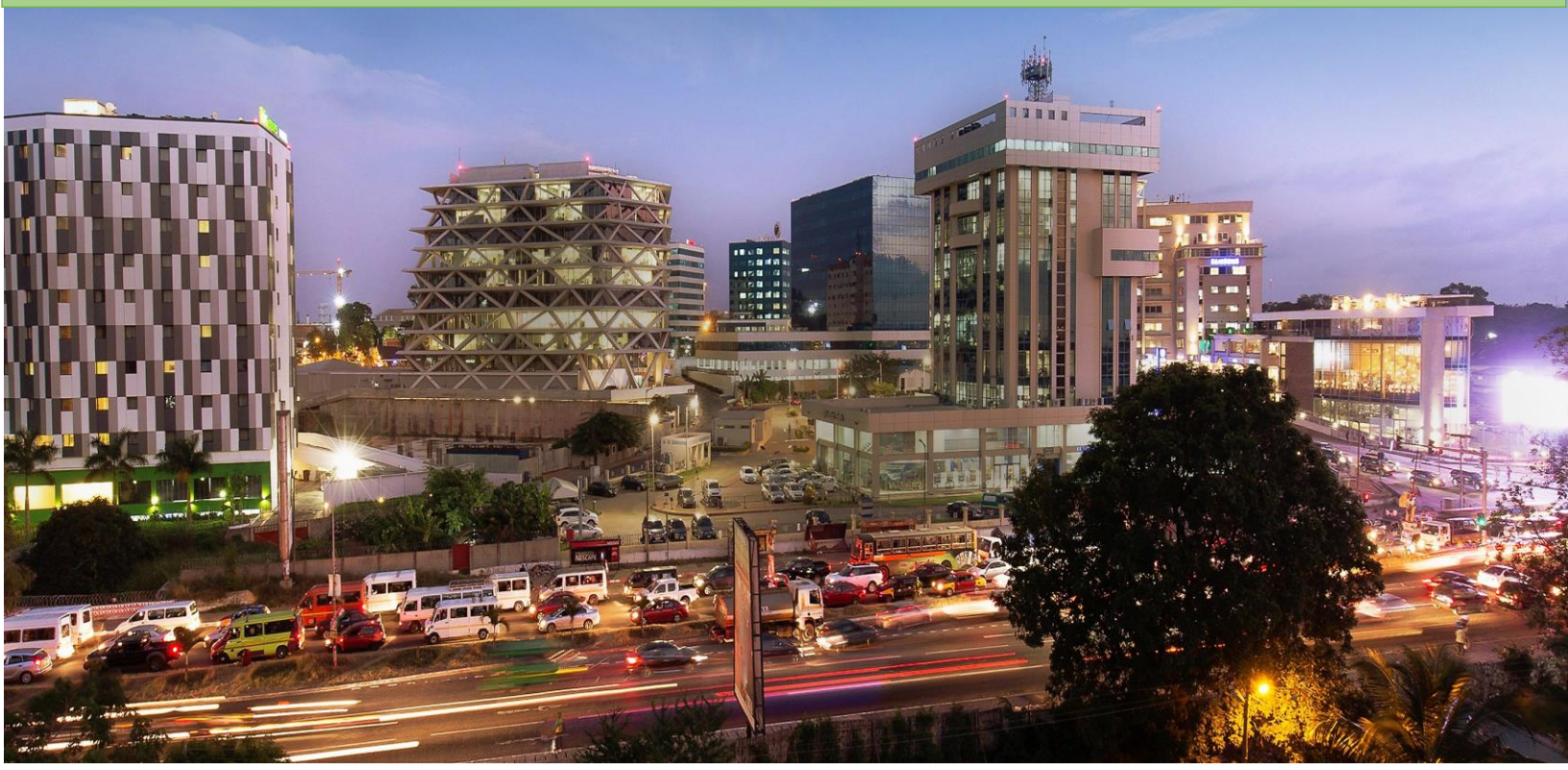
Anti-money laundering and counter-terrorist financing measures

Ghana

Mutual Evaluation Report

May 2017



The Inter-Governmental Action Group against Money Laundering (GIABA) is a specialized institution of ECOWAS and a FATF Style Regional Body that promotes policies to protect member States financial system against money laundering, terrorist financing and the financing of the proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter terrorist financing (CTF) standard.

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LIST OF ABBREVIATIONS AND ACRONYMS

AG	Attorney-General
AIs	Accountable Institutions
AMLA	Anti-Money Laundering Act
ATA	Anti-Terrorism Act
BNI	Bearer Negotiable Instrument
BoG	Bank of Ghana
C	Compliant
CDD	Customer Due Diligence
CEO	Chief Executive Officer
CEPSA	Customs Excise and Preventive Service (Management) Act
CEPS	Customs Excise and Preventive Service
CSO	Civil Society Organisation
CTRs	Cash Transaction Reports
DNFBPs	Designated Non-Financial Businesses and Professions
EA	Extradition Act
ECTRs	Electronic Cash Transaction Reports
E.I.	Executive Instrument
EMIs	Electronic Money Issuers
EOCO	Economic and Organised Crime Office
FATF	Financial Action Task Force
FIs	Financial Institutions
FIC	Financial Intelligence Centre
FT	Financing of Terrorism
FTFs	Foreign Terrorist Fighters
GDP	Gross Domestic Product
GHAMF1N	Ghana Micro Finance Institutions Network
GIABA	GroupeIntergouvernemental d'Action contre le Blanchiment d'Argent en Afrique de l'Ouest) (Inter-Governmental Action Group against Money Laundering in West Africa)
GREDA	Ghana Real Estate Developers Association
GSE	Ghana Stock Exchange
ICA	Institute of Chartered Accountants
ICRG	International Co-operation Review Group
ICT	Information and Communication Technology
IMC	Inter-Ministerial Committee
IMF	International Monetary Fund
IO	Immediate Outcome
INTERPOL	International Criminal Police Organisation
KYC	Know Your Customer
LC	Largely Compliant
LEAs	Law Enforcement Agencies

LTD/GTE	Limited Liability Companies/Companies Limited by Guarantee
MDAs	Ministries, Departments and Agencies
MER	Mutual Evaluation Report
ML	Money Laundering
MOJ/A-Gs	Ministry of Justice and Attorney General's Department
MOFEP	Ministry of Finance and Economic Planning
MVTS	Money Value Transfer Services
NACOB	Narcotics Control Board
NC	Non-Compliant
NGO	Non-Governmental Organisation
NIC	National Insurance Commission
NPO	Non-Profit Organisation
NRA	National Risk Assessment
NRAAP	National Risk Assessment Action Plan
NSCS	National Security Council Secretariat
OFIs	Other Financial Institutions
PC	Partially Compliant
PEP	Politically Exposed Person
PF	Proliferation Financing
PMMC	Precious Minerals Marketing Company
R.	Recommendation
RBA	Risk- Based Approach
RBS	Risk- Based Supervision
R-G	Registrar -General
R-G D	Registrar-General's Department
S&L	Savings and Loan
SEC	Securities and Exchange Commission
SRB	Self-Regulatory Body
SCDD	Simplified Customer Due Diligence
STRs	Suspicious Transaction Reports
TFS	Targeted Financial Sanctions
UNCAC	United Nations Convention against Corruption
WMD	Weapons of Mass Destruction

EXECUTIVE SUMMARY

1. This report provides a summary of the anti-money laundering and combating the financing of terrorism (AML/CFT) measures in place in Ghana at the date of the onsite visit (19 September, 2016 - 4 October, 2016). It analyses the level of compliance with the FATF 40 Recommendations, the level of effectiveness of Ghana's AML/CFT system, and provides recommendations on how the system could be strengthened[1].

A. Key Findings

- Relevant competent authorities in Ghana have a sound understanding of most of the ML/TF risks it faces which is informed by the good quality of the National Risk Assessment (NRA). Though a National Risk Assessment Action Plan (NRAAP) which seeks to prioritize the deficiencies identified in the NRA has been developed, a comprehensive national AML/CFT policy based on the risk identified in the NRA is yet to be developed.
- The TF threat in Ghana is generally moderate. Nevertheless, the country recently experienced a few cases of nationals joining the Islamic State (ISIS) as foreign terrorist fighters and Ghana's proximity to terrorism-prone countries, such as Nigeria, Cote d'Ivoire, Mali, Niger and Chad potentially increases the vulnerability of Ghana to the risk of terrorism and terrorist financing. Ghana has developed a national counter - terrorism strategy however, the strategy is not directly linked to TF.
- Ghana has a strong AML/CFT coordination mechanism that is inclusive of all relevant competent authorities and driven by the AML/CFT Inter Ministerial Committee. The mechanism is a valuable tool in AML/CFT policy development and operational cooperation.
- Overall, the banks in Ghana have a good understanding of ML/TF risks they face and the larger banks are strongest in their mitigation efforts. However, there is a significant difference in the level of understanding of the ML/TF risks and application of preventive measures between the banks and other institutions within the financial sector. More robust risk-based AML/CFT controls are needed to ensure that AML/CFT obligations are being adequately applied across the financial sector.
- Majority of DNFBPs do not understand their ML/TF risks and AML/CFT obligations. Implementation of preventive measures remains weak and a major concern. DNFBPs constitute a weak link and the significant shortcomings in this sector have serious implications on the effectiveness of the implementation of preventive measures and the AML/CFT regime in Ghana.

[1] This evaluation report has been prepared based on the 2013 FATF Methodology. In other words, it is substantially different in nature and form from the report of previous assessment. It includes the new obligations introduced in the 2012 revision of the FATF Recommendations, and therefore the technical compliance assessment is not directly comparable to the previous evaluation. It also assesses the effectiveness of Ghana's AML/CFT system on the basis of the immediate outcomes in new effectiveness methodology, which takes a fundamentally different approach to the technical compliance assessment. Also, the report sets out conclusions on how well the AML/CFT measures are working in practice, based on comprehensive analysis of the extent to which Ghana had achieved a defined set of outcomes that are central to a robust AML/CFT system. The analyses in the report are supported by both qualitative and quantitative information.

- The supervisory authorities implement measures to prevent criminals from controlling FIs and generally undertake AML/CFT supervision. The banking sector is generally subject to risk sensitive AML/CFT supervision. Supervision of the Securities and Insurance sectors is not sufficiently risk based. The supervisory tools and methodologies used by Securities Exchange Commission (SEC) and the National Insurance Commission (NIC) are biased towards prudential indicators and lack the sophistication to provide comprehensive information on the nature of ML/TF risks at the level of individual institutions. The frequency and intensity of compliance inspections by SEC and NIC are limited in scope, which in part, reflects a lack of capacity and supervisory resources. While the regulatory authorities have a wide range of administrative sanctions and remedial measures that can be imposed on FIs for non-compliance, sanctions are rarely applied. AML/CFT supervision has not been conducted in the DNFBP sector.
- The Sector Guidelines issued jointly by the FIC and supervisory authorities and the AML Regulations, 2011 preceded the revised FATF standards and the publication of NRA report, thus, do not reflect the changes to the FATF Standards and outcome of the NRA to appropriately guide accountable institutions.
- The FIC plays a central role in generating financial intelligence. The analysis products generated by the Centre are of good quality and have been used by Law Enforcement Agencies (LEAs) to initiate or support investigations, especially in relation to predicate offences. In general, financial intelligence and other relevant information are available and used by LEAs for financial investigation, including asset tracing in relation to money laundering. However, Ghana should significantly increase the use of financial intelligence to identify ML and TF cases, in accordance with its risk profile and in particular, its TF risk.
- Ghana has a comprehensive legal framework and sound institutional structure for investigating and prosecuting ML, and for seizing and confiscating criminal proceeds. However, investigation and prosecution appear to focus more on predicate offences, thus leading to few ML convictions.
- The establishment of dedicated Financial and Economic Crimes Courts that handle matters on economic and financial crime, including money laundering in a timely manner, was noted as a good practice by the assessors.
- Ghana does not actively follow a policy of pursuing confiscation of criminal proceeds.
- Ghana has a comprehensive mechanism to implement targeted financial sanctions without delay and has also established a legal framework for implementing targeted financial sanctions regarding TF and proliferation financing. While the Bank of Ghana monitors the implementation of the former, there is a limited understanding of proliferation risks and proliferation financing among reporting entities, supervisors and other relevant competent authorities.
- Ghana has not conducted a comprehensive review of its NPO sector in order to identify those NPOs that are at risk of being abused for TF purposes. The dual registration and licensing regime of NPOs is not well integrated and is not supported by a comprehensive legal framework. Inadequate monitoring of NPOs makes the sector vulnerable to misuse for TF and other criminal purposes.
- Competent authorities can obtain adequate, accurate and current basic information on all types of legal persons created in Ghana in a timely manner. Beneficial ownership information on legal persons and arrangements are largely available in FIs, especially banks and are accessed via the FIC or EOCO. Beneficial ownership information on foreign legal persons is not

typically available and competent authorities have challenges obtaining such information during investigation.

- Ghana takes a collaborative approach to international cooperation. It provides in a timely manner, constructive and high quality information and assistance, including mutual legal assistance (MLA), extradition and other forms of cooperation when requested. Though, there is some limitation in extradition matters as extradition in Ghana is based on treaties. Ghana also utilizes informal channels of information exchange and the LEAs, FIC and financial supervisors are generally well engaged in making and receiving requests.

B. Risks and General Situation

2. Ghana has taken good steps in identifying, assessing and understanding its ML/TF risks and has put in place some measures to mitigate these risks**.** Ghana is exposed to a range of ML and TF risks. The geographic location, predominant cash-based economy, large informal sector, and porous land borders, are some of the factors that increase Ghana's exposure to these risks. As indicated in the NRA, fraud, stealing, robbery, tax evasion, corruption, and drug trafficking are the most prevalent predicate crimes. The ML threat assessment of these crimes was rated as high. Other predicate offences that pose medium ML threats include human trafficking and migrant smuggling.

3. The key sectors exposed to significant ML/TF risk in Ghana are casinos, real estate developers/agents, and non-profit organizations. Ghanaian financial institutions, especially the banks, are well-connected with the international financial system, and face the usual risks associated with such relationships. Other Financial Institutions, such as Bureaux de Change, whose operations are largely cash intensive present significant ML risk to Ghana.

4. Although the incidence of terrorism and terrorist financing in Ghana is low, the TF risk was rated high in the NRA due to Ghana's proximity to terrorism-prone countries including Nigeria, Cote d'Ivoire, Mali, Niger and Chad and the emergence of ISIS and its campaign via social media.

C. Overall Level of Technical Compliance and Effectiveness

5. Since its 2009 evaluation, Ghana has made considerable progress in bringing its AML/CFT legal and institutional framework in line with international standards. Ghana has a fairly strong legal and regulatory framework for preventative measures and a relatively high level of technical compliance with the FATF standards. Certain improvements are needed in the framework for NPOs and transparency of legal arrangements. In terms of effectiveness, Ghana has achieved substantial levels of compliance with the standards under the use of financial intelligence; and international cooperation, and moderate levels of compliance under risk, policy and coordination; supervision, and ML investigation and prosecution. Major improvements are need in other areas particularly confiscation, supervision and monitoring of non-bank financial institutions, designated non-financial businesses and professions and NPOs.

C.1 Assessment of Risks, Coordination and Policy Setting (Chapter 2—IO.1; R.1, R.2, R.33)

6. Ghana has assessed its ML/TF risks through a National Risk Assessment and a number of key competent authorities have a good understanding of the risks the country faces. The process for the conduct of the NRA was inclusive, involving all critical stakeholders in the public and private sectors thus, ensuring ownership of the process and a broad understanding of the ML/TF risks. The NRA identified drug trafficking, robbery/ stealing, tax evasion, bribery and corruption as high risk or major

proceeds-generating crime and to some extent law enforcement efforts are commensurate with the high-risk offenses identified in the NRA.

7. The NRA did not sufficiently take cognizance of risks associated with hoteliers and interconnectedness of the financial sector and certain emerging areas such as fun clubs, petroleum sector, NGOs, faith-based organizations, timber trade and the cocoa industry. The TF threat in Ghana is generally moderate. Nevertheless, the country recently experienced cases of nationals joining the Islamic State (ISIS) as foreign terrorist fighters. The country's proximity to terrorism-prone countries potentially increases the vulnerability of Ghana to the risk of terrorism and terrorist financing. Thus, Ghana needs to further strengthen coordination and cooperation with neighbouring countries, especially in information exchange and operational matters.

8. Ghana has developed a National Risk Assessment Action Plan (NRAAP) following the NRA, however, the country is yet to develop a comprehensive national AML/CFT Policy based on the risks identified. The NRAAP seeks to prioritize identified deficiencies for urgent attention and highlights the funding agency, expected outcome, and implementation time frame for each activity, as well as duly assigned responsibilities between stakeholder institutions.

9. Ghana has a strong AML/CFT domestic coordination mechanism led by the AML/CFT Inter-Ministerial Committee (IMC). The IMC comprises all relevant stakeholder-institutions and drives both AML/CFT policy development and operational matters in Ghana including initiating the revision of some AML/CFT laws, leading the process for the conduct of the National Risk Assessment (NRA), the adoption of the NRA report and the coordination and organization of the mutual evaluation exercise. However, Ghana needs to further strengthen cooperation and feedback mechanisms amongst competent authorities, especially between LEAs, to enhance information sharing in the investigation and prosecution of ML/TF cases, as well as, confiscation of proceeds of crime. In particular, there is the need for the Bureau of National Investigation (BNI) to be actively involved in AML/CFT coordination issues.

10. The authorities have a generally good level of understanding of Ghana's main ML/TF risks. The public version of the 2016 NRA is of good quality. It is based on dependable evidence and sound judgment, and supported by a convincing rationale. In many respects, the NRA confirmed the authorities' overall understanding of the sectors, activities, services and products exposed to ML/TF risk. While the NRA's findings did not contain major unexpected revelations, the process was useful in clarifying the magnitude of the threat, in particular the threat affecting the real estate sector and those emanating from third-party money launderers. The authorities nevertheless may be underestimating the magnitude of some key risks, such as the risk emanating from tax crimes, and corruption and money laundering risks emanating from other jurisdictions.

C.2 Financial Intelligence, Money Laundering and Confiscation (Chapter 3—IOs 6–8; R.3, R.4, R.29–32)

11. Ghana has a well functional financial intelligence unit (the FIC) which analyzes and disseminates good quality financial intelligence (operational and strategic intelligence) to competent authorities, especially the LEAs. The intelligence generated are from STRs received and additional information received from financial institutions, administrative and law enforcement agencies and other sources. The FIC has analytical and data mining tools but has initiated actions to acquire a more sophisticated analytical tool to enhance its operational efficiency. The weak compliance by DNFBPs and some non-bank financial institutions (NBFIs) with their reporting obligation limits the number of STRs available to the FIC for its operations.

12. Financial intelligence and other relevant information are available and used by law enforcement agencies for financial investigation, including asset tracing in relation to money laundering, predicate offences and development of policies. Nevertheless, in accordance with the country's risk profile, and in particular, its TF risk, law enforcement agencies need to significantly increase the use of financial intelligence to identify ML and TF cases. Also, feedback on intelligence disseminated by the FIC is often not timely.

13. The FIC and other competent authorities cooperate effectively and exchange information and financial intelligence (upon requests & spontaneously) through dedicated officers with tested level of integrity. The FIC also shares information with its foreign counterparts in a timely and secure manner via the Egmont Secure Web for all Egmont members and registered mail for non-Egmont members.

14. Ghana has criminalized money laundering in line with the Palermo and Vienna Conventions. The Ghanaian authorities have prosecuted self-laundering offences. However, other types of money laundering offences including standalone offences are seldom prosecuted and the weak regulatory framework for DNFBPs limits law enforcement officers' ability to investigate and prosecute third-party facilitators such as "professional" money launderers.

15. EOCO, the lead agency for investigating money laundering offences often, shares expertise and collaborates with the other LEAs, including the Ghana Police Service. Ghana has also established dedicated Financial and Economic Crimes Courts that handle matters relating to economic and financial crimes, including money laundering, thus, allowing these cases to be dispensed with in a timely manner. To some extent, investigation and prosecution of money laundering reflect the risk profile in Ghana. The recent establishment of the Cybercrime Unit within the Ghana Police Service is an illustration of how the money-laundering risks related to internet fraud is being addressed.

16. Law Enforcement Agencies readily identify and investigate money laundering in clear cut cases. Nevertheless, law enforcement agencies, prosecutors and judges seek the best possible outcome in a potential money laundering case and will often consider a conviction on the predicate offence which sometimes carries a stiffer sentence, or other measures such as confiscation, restitution and fines.

17. Ghana has recorded some level of success in the prosecution and adjudication of ML cases. The sanctions imposed in these cases are fairly proportionate and dissuasive. Nevertheless, the number of ML convictions is quite modest.

18. Ghana has a comprehensive legal framework for provisional freezing and confiscation measures.

19. Law Enforcement Agencies generally understand the importance of taking the profit out of crime and tend to pursue confiscation from the investigation stage. Ghana also utilises other legal tools to deprive the criminals of illicit proceeds including seizure, fines, tax surcharges and restitution. LEAs have standard operating procedures (SOP) which provide guidance on confiscation and they are able to seize assets that are proceeds of crime or instrumentalities of crime on reasonable suspicion. Nevertheless, the authorities do not actively pursue confiscation as a policy objective, and the lack of capacity to adequately conduct financial investigations limits the extent to which the authorities are able to confiscate criminal assets.

20. Ghana's legal framework prescribes management and disposal of assets by the Attorney General. However, in practice, assets are managed by the competent authority that conducts the investigation which may not always have the capacity to manage the confiscated asset.

21. The Customs Division of the GRA also confiscates funds where there is a breach of the obligation to declare cross-border transportation of currency and bearer negotiable instruments although the obligation to declare cross-border movement of currency/BNI is not being implemented consistently at all entry and exit points. Overall, the low level of confiscation of funds, including currency and bearer negotiable instruments is not consistent with the ML/TF risks in the country.

C.3 Terrorist Financing and Financing Proliferation (Chapter 4—IOs 9–11; R.5–8)

22. The National Risk Assessment (NRA) highlighted the TF risk emanating from Ghana's proximity to countries where terrorist attacks have taken place and those related to the emergence of Foreign Terrorist Fighters. Ghana concluded that the risk of TF is high. Ghana is currently investigating some terrorism related cases but the country has not prosecuted any TF cases.

23. Ghana has a dedicated team of legal officers that are adequately trained to prosecute TF cases. Nevertheless, the extent to which Ghana pursues TF offences and identifies and investigates TF offences is unclear.

24. A number of competent authorities are aware of the TF risks that Ghana faces. However, regulatory authorities for DNFBPs do not fully understand the exposure of DNFBPs to TF risk.

25. Ghana has developed a national counter terrorism strategy. Even though the counter terrorism strategy is not directly linked to TF, the national intelligence picture is shared regularly with relevant agencies, including the FIC.

26. Ghana has a comprehensive mechanism to implement targeted financial sanctions without delay and financial institutions screen customers and transactions against UN targeted financial sanctions lists and other sanctions lists. Banks generally implement targeted financial sanctions adequately. The Bank of Ghana monitors the implementation of these measures. However, an adequate sanctions regime for non-compliance is yet to be set, and there is a lack of implementation of targeted financial sanctions by the non-bank financial institutions and DNFBPs.

27. Ghana has not conducted a comprehensive review of its NPO sector in order to identify those NPOs that are at risk of being abused for TF purposes. The dual registration and licensing regime of NPOs is not well integrated and inadequate monitoring of NPOs make the sector vulnerable to misuse for TF and other criminal purposes although the licensing authority has conducted outreach to some NPOs on TF issues.

28. Ghana has established a legal framework for implementing targeted financial sanctions regarding proliferation financing. Financial institutions routinely screen customers and transactions against UN and other sanctions lists, and supervisors review the application of these measures. There is however, a limited understanding of the risk of proliferation among supervisors and reporting entities and there is not much to demonstrate that export control authorities have a comprehensive understanding of proliferation risks and proliferation financing.

C.4 Preventive Measures (Chapter 5—IO.4; R.9–23)

29. Generally, the level of awareness of ML/FT risk and strength of preventive measures applied by AIs in Ghana is most significant in the banking sector. All AIs in Ghana are required by law to identify,

assess and understand their money laundering and terrorist financing risks. Commercial banks, especially the foreign banks, have risk assessment frameworks, demonstrated good understanding of their ML/TF risks and responsibilities to mitigate the risks and have adopted a risk based approach in the implementation of AML/CFT measures. The level of ML/FT risk awareness and application of preventive measures in the NBFIs, securities and insurance sectors is generally low. Most of the NBFIs and operators in the insurance and securities sectors do not have robust risk assessment frameworks. In general, the level of knowledge and understanding of ML/FT risks and the application of mitigating measures vary greatly amongst the AIs.

30. On the whole, financial institutions (especially banks) understand their obligations to identify and verify their customers (including application of enhanced and simplified CDD) and comply with record keeping and reporting requirements. However, in practice, the CDD procedures in the insurance and securities sectors as well as in the NBFIs are not well developed, while transaction monitoring and suspicious transactions reporting mechanisms are weak. In all, other than the banking sector, the identification of beneficial owners still presents a ~~major~~ challenge to other accountable institutions.

31. The NRA identified the DNFBPs as a high-risk sector. There is low level of awareness across the DNFBPs about their vulnerability to ML/TF. Similarly, majority of DNFBPs do not adequately understand their AML/CFT obligations while implementation of preventive measures remains weak and a major concern. On the whole, the DNFBPs constitute a weak link and the poor implementation of AML/CFT measures in this sector impacts adversely on the effectiveness of the implementation of preventive measures and, indeed, the AML/CFT regime in the Ghana.

32. Guidelines issued jointly by the FIC and supervisory authorities (BOG, SEC, and NIC) are comprehensive and have assisted financial institutions to better understand their AML/CFT obligations and facilitated implementation. However, the guidelines preceded the revised FATF standards and the publication of NRA report, and thus do not reflect the changes to the FATF standards and outcome of the NRA.

33. Financial institutions have appointed Anti-Money Laundering Reporting Officers (AMLROs) and have internal controls and training programmes. The level of implementation varies amongst NBFIs and depends largely on the size of the institutions. The regulatory authorities and FIC have provided continuous support to AIs, including guidance and training on AML/CFT issues to raise awareness and facilitate compliance. However, the lack of designated supervisor for the DNFBPs sector limits the support to facilitate compliance by DNFBPs.

34. Banks offer some financial inclusion products under the New Payments Products and Services (NPPS), such as mobile money, pre-payment cards and internet payments. These products facilitate financial inclusion and its usage rate is growing rapidly in Ghana. However, ML/FT risks associated with these products are not well understood by the banks. Furthermore, the banks apply Simplified ~~Customer~~ Due Diligence (SDD) measures on these products without any underlying assessment or analysis to support such decision.

C.5 Supervision (Chapter 6 -IO3; R.26-28, R. 34-35)

35. The measures for prevention of criminals and their associates from participating in the ownership, control or management of financial institutions are generally sound. The respective sector supervisors conduct fit and proper tests, including security and criminal checks on directors and senior managers of financial institutions during licensing and registration process. With the exception of the Gaming Commission, Minerals Commission, GREDA, and Ghana Legal Council that appear to conduct some fit and proper test on senior management of entities under their purview as part of

prudential/membership registration requirements, it is not clear whether adequate fit and proper tests are being conducted on senior management of other DNFBPs. In addition, it appears the fit and proper measures applied by regulators do not extend to beneficial owners.

36. The Bank of Ghana (BOG) has a good understanding of ML/TF risks present in the institutions it supervises and the institutions, especially the banks, are generally subject to appropriate risk sensitive AML/CFT supervision. AML/CFT supervision of the insurance and securities sectors is not sufficiently risk based. The supervisory tools/methodologies used by SEC & NIC are biased towards prudential indicators and lack the sophistication to provide comprehensive information on the nature of ML/TF risks at the level of individual institutions. Thus, SEC and NIC do not comprehensively understand the ML/TF risk associated with the institutions they supervise. The risk assessment framework that is being developed with the support of the IMF is expected to address this concern.

37. There is limited number of on-site AML/CFT inspections, especially within the securities and insurance sectors, the NBFIs/Other Financial Institutions and none for the DNFBPs. This makes the determination of the extent to which AIs are effectively implementing AML/ CFT prevention measures difficult. It also limits the ability of regulatory authorities to comprehensively understand the risks within these sectors.

38. AML/CFT supervision of the banking sector is robust, with off-site and on-site examinations and follow-up actions being undertaken. The BOG is yet to commence the conduct of consolidated supervision of financial institutions belonging to group ownership structure. The supervision of NBFIs, insurance and securities operators is limited. Also, no AML/CFT supervision has been conducted on DNFBPs. The Minerals and the Gaming Commissions each have the legal mandate to issue licence to operators in their sectors, and actually carry out some supervision; however, the level of awareness of risks remains low and no AML/CFT supervision has been undertaken. The Institute of Chartered Accountants, GREDA, and Ghana Legal Council that have been designated as competent authorities in Act 874 are yet to undertake AML/CFT supervision for their respective sectors. Furthermore, resources for AML/CFT supervision are limited across regulatory authorities (BOG, SEC, and NIC).

39. The sector specific guidelines and feedbacks provided by the regulators and the FIC have enhanced AML/CFT awareness and deepened compliance by financial institutions, except amongst smaller NBFIs. However, the guidelines preceded the revised FATF standards and the publication of NRA report, and thus do not reflect the changes to the FATF standards and outcome of the NRA. In addition, the level of awareness and compliance by DNFBPs remains generally low due to weak implementation of AML/CFT measures and lack of monitoring of the sector.

40. The legal and regulatory framework governing AML/CFT supervision is generally robust, and there are a wide range of administrative sanctions which regulators can apply in case of a breach. It appears pecuniary sanctions have not been clearly spelt out in laws or regulations, thus limiting the ability of regulators to apply such sanctions. Currently, other than the application of remedial actions, there is little evidence that sanctioning powers of the regulators are being used. In addition, fines provided for in the AML Act are low and do not appear to be dissuasive. However, the new law "The Banks and Specialized Deposit Taking Institutions Act, 2016 (Act 930)", enacted after the on-site has strengthened the administrative sanctions regime in Ghana.

C.6 Transparency of Legal Persons and Arrangements (Chapter 7—IO.5; R.24–25)

41. The registration process for legal persons in Ghana requires companies to provide basic information, thus, basic information on most types of legal entities is publically available at the Registrar General's Department Website.

42. Ghana has identified and assessed some elements of the vulnerabilities of the misuse of legal person and arrangements. However, a deeper assessment is required to enable competent authorities to comprehensively understand the risks of misuse of these entities for ML/TF purposes.

43. Competent authorities can obtain basic information on all types of legal persons created in Ghana in a timely manner. However, the mechanisms in place need to be enhanced to ensure that records are adequate, accurate and current.

44. The lack of a requirement for legal persons to provide beneficial ownership information during incorporation has been addressed by the Companies (Amendment) Act, 2016 (Act 920). Pursuant to the Companies (Amendment) Act, 2016, legal persons are to maintain information on beneficial owners in its register of members. The Act also requires the R-GD to obtain beneficial ownership information of legal persons however, implementation at the R-GD is yet to commence. Ghana has a range of measures available to collect information on the control and ownership structures of legal entities through the FIs, R-GD Office and GRA, among others.

45. Beneficial ownership information on legal persons and arrangements that are created in Ghana are largely available in FIs, especially banks and are accessed via the FIC or EOCO. Beneficial ownership information is not typically available for foreign legal persons and competent authorities have challenges obtaining such information during investigation.

46. As regards legal arrangements, there is no legal requirement under Ghana's laws for trustees to maintain beneficial ownership information on trusts.

C.7 International Cooperation (Chapter 8—IO.2; R.36–40)

47. Ghana provides a wide range of international cooperation, including mutual legal assistance (MLA), extradition and other forms of cooperation. There is some limitation in extradition matters as extradition in Ghana is based on treaties.

48. The central authority for MLA and extradition is the Ministry of Justice (MoJ) and Attorney General's Department. The International Cooperation Unit at MoJ has a team of lawyers that handles matters on MLA and extradition. The Unit has a case management system that ensures timely processing of incoming requests.

49. Feedback received from international partners confirms that the assistance provided by Ghana was in general timely and of a good quality.

50. Law enforcement cooperation is processed through relevant agencies, including the EOCO and the Ghana Police Service CID. Ghana also leverages international networks like West African Police Information System (WAPIS), INTERPOL, and the Camden Asset Recovery Inter-Agency Network (CARIN) and utilizes liaisons at diplomatic missions in Ghana.

51. The FIC's cooperation with foreign counterparts is constructive and timely. Information exchange takes place through a shared platform (the Egmont Secure Web) and at a bilateral level.

52. Ghana proactively seeks international cooperation when intelligence or evidence is needed from foreign partners although a number of competent authorities pointed out that international cooperation was not reciprocated by some countries.

53. The Bank of Ghana collaborates with its counterparts in the sub-region and also home country supervisors when supervising financial institutions. The Bank conducts joint on-site inspections.

54. Ghana generally has the ability to cooperate and respond to international requests on basic and beneficial ownership information relating to legal persons

D. *Priority Actions*

Ghana should:

- Develop a comprehensive national AML/CFT Policy based on risks identified in the NRA, and implement a risk-based approach to allocating resources. The national policy should be developed in consultation with all key stakeholders. Amongst other things, the policy should address the major structural vulnerabilities identified in the existing NRA such as the lack of statistics which will enable the authorities to determine the effectiveness of the AML/CFT system.
- Enhance the methodology and scope of future assessment of risks to ensure comprehensive identification and understanding of the full range of ML/TF risks within the country.
- Adequately prioritize investigation and prosecution of all types of ML offences and focus on parallel financial investigation when dealing with proceeds generating crimes. Ghana should pay particular attention to identifying, investigating and prosecuting standalone[2] and third party ML offences, put in place measures to enhance financial investigations, and ensure that these (financial investigations) are systematically undertaken when dealing with proceeds generating crimes.
- Ensure that TF investigation is well integrated into the country's counter-terrorism strategy and pursue financial investigations as a matter of course when conducting investigations on terrorism.
- Develop and implement a nationally coordinated confiscation policy and strategy and establish an asset management office or other mechanism for managing confiscated assets.
- Commence and also ensure effective AML/CFT supervision/monitoring across all categories of DNFBPs on the basis of ML/TF risk. Improve RBS, especially within the NBFIs, securities and insurance sectors. SEC and NIC should: (i) adopt a robust risk assessment methodology; (ii) ensure that the frequency and intensity of their AML/CFT supervision are guided by risk considerations; and (iii) deepen the scope of their AML/CFT inspections.
- Ensure that DNFBPs understand and apply AML/CFT requirements on a risk-sensitive basis. In this regard, Ghana should: (i) strengthen existing SRBs, especially Ghana Real Estate Developers Association (GREDA), and Ghana Car Dealers Association, (ii) collaborate with Casinos and Precious Metals and Precious Stones operators to create SRBs for their sectors; (iii) partner with SRBs to develop appropriate sector specific AML/CFT guidelines, (iv) increase the level of communication and information sharing between competent authorities and SRBs for a better

[2] **Stand-alone (or autonomous) money laundering** refers to the prosecution of ML offences independently, without also necessarily prosecuting the predicate offence. This could be particularly relevant inter alia (i) when there is insufficient evidence of the particular predicate offence that gives rise to the criminal proceeds, or (ii) situations where there is a lack of jurisdiction over the predicate offence. The proceeds may have been laundered by the defendant (self-laundering) or by a third party. (FATF 2013)

understanding of the ML/TF risks in the DNFBP sector, and (v) provide other necessary technical support to the SRBs to enable them assess ML/TF risks, supervise and monitor the adoption and implementation of AML/CFT measures in their sectors in order to facilitate compliance by DNFBPs.

- Provide adequate resources for AML/CFT supervision.
- Implement measures that will improve STRs reporting to the FIC across all sectors, especially by insurance operators, CMOs, NBFIs and DNFBPs. In particular, supervisors, with support of the FIC, should (i) ensure that AIs internal policies and controls enable their timely review of complex or unusual transactions, and potential STRs for reporting to the FIU, and (ii) provide specific education/training to all AIs on identification and reporting of TF related STRs to facilitate reporting of possible TF related STRs to the FIC.
- Implement measures to improve identification and verification infrastructure. In this regard, Ghana should: (i) consider establishing a centralized national identification database by consolidating existing databases such as Social Security and National Insurance, Passport/Immigration and G-vive and ensure that the data is up to date and accessible by AIs and other users; and (ii) improve the address system in the country to facilitate effective implementation of CDD. In addition, Ghana should: (i) commence implementation of the Companies (Amendment) Act, 2016 (Act 920), and put in place oversight mechanisms to ensure that basic and beneficial ownership information available at the RGD is adequate, accurate and current; and (ii) create necessary awareness on the Companies (Amendment) Act, 2016(Act 920) to enhance effective implementation.
- Conduct a comprehensive review of the NPO sector to better understand the types of NPOs that are vulnerable to TF abuse and continue outreach to NPOs to raise awareness of specific methods and risks of TF abuse.. In addition, Ghana should establish appropriate regulatory/ institutional frameworks and capacity for comprehensive regulation and monitoring of NPOs.
- Significantly increase the use of financial intelligence to identify ML and TF cases, in accordance with its risk profile and in particular, its TF risk.
- Provide necessary support for the FIC to: (i) have direct access (if appropriate) to information held by other public authorities, and (ii) procure more sophisticated analytical tools that has capacity to receive reports direct from AIs via its portal. These will further enhance the operational efficiency of the Centre, including analysis of STRs and other statutory reports.

E. Compliance and Effectiveness Ratings

Effectiveness Ratings

IO1	IO2	IO3	IO4	IO5	IO6
Moderate	**Substantial**	**Moderate**	**Low**	**Low**	**Moderate**

IO7	IO8	IO9	IO10	IO11
Moderate	**Low**	**Low**	**Low**	**Low**

Compliance ratings

R.1	R.2	R.3	R.4	R.5	R.6	R.7	R.8	R.9	R.10
LC	LC	C	LC	LC	LC	LC	NC	C	LC

R.11	R.12	R.13	R.14	R.15	R.16	R.17	R.18	R.19	R.20
C	C	C	C	C	PC	PC	LC	C	C

R.21	R.22	R.23	R.24	R.25	R.26	R.27	R.28	R.29	R.30
C	LC	LC	LC	PC	LC	LC	PC	C	C

R.31	R.32	R.33	R.34	R.35	R.36	R.37	R.38	R.39	R.40
C	LC	PC	LC	PC	C	LC	LC	PC	LC

MUTUAL EVALUATION REPORT

Preface

This report summarises the AML/CFT measures in place in Ghana as at the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Ghana's AML/CFT system, and recommends how the system could be strengthened.

This evaluation was based on the 2012 FATF Recommendations, and was prepared using the 2013 FATF Methodology. The evaluation was based on information provided by Ghana, and information obtained by the evaluation team during its on-site visit to Ghana from 19 September to 1 October 2016.

The evaluation was conducted by an assessment team consisting of:

- Mr. Paul Mendy, Central Bank of The Gambia (Financial Sector Expert)
- Mr. Aminu Buhari Isah, Central Bank of Nigeria (Financial Sector Expert)
- Mr. Sheku Kamara, Sierra Leone Police (Law Enforcement Expert)
- Mr. Francis Usani, Nigerian Financial Intelligence Unit (Legal and Financial Intelligence Unit Expert)
- Dr. 'Buno Nduka, Director of Programmes and Projects, GIABA Secretariat
- Ms Olayinka Akinyede, Legal Officer, GIABA Secretariat
- Mr. Giwa Sechap, Financial Sector Officer, GIABA Secretariat

The report was reviewed by Mr. Fonsia M. Donzo, Central Bank of Liberia and Mr. Phineas Moloto, Financial Intelligence Unit, South Africa.

Ghana previously underwent a GIABA Mutual Evaluation in 2009, conducted according to the 2004 FATF Methodology. The 2009 evaluation has been published and is available at http://www.giaba.org

The Evaluation concluded that Ghana was rated largely compliant on 4 Recommendations, partially compliant on 23 Recommendations, and non-compliant on 22 Recommendations. Ghana was placed on the Expedited Regular follow-up process (annual reporting) immediately after the adoption of the MER in November 2009. However, as a result of failure to address some of identified strategic deficiencies in its AML/CFT regime, the GIABA Plenary in November 2011 moved Ghana to Enhanced Follow Up process (bi-annual reporting). Through concerted efforts and high-level commitment, Ghana was able to address the deficiencies and in November 2012, the GIABA Plenary returned Ghana to the annual reporting program. In line with GIABA Mutual Evaluation Process & Procedures, Ghana exited the follow-up process in November 2015 to enable the country prepare for its second mutual evaluation.

CHAPTER 1. ML/TF RISKS AND CONTEXT

1 The Republic of Ghana covers a land area of 239,460 square kilometres and has borders with Togo (East), Cote D'Ivoire (West), Burkina Faso (North) and Atlantic Ocean (South). The capital is Accra. In 2015, the population of the country was estimated at 27.4 million by the World Bank, while the gross domestic product (GDP) was approximately US$ 37.864 billion in the same period. Ghana is one of the member States of the Economic Community of West African States (ECOWAS).

2 Ghana is a unitary state and consists of ten administrative regions. It operates an executive presidential system of government. The president is the Head of State, Head of Government and Commander-in-Chief of the Ghana Armed Forces. Ghana has a cabinet which consist of the President, Vice-President and Ministers of State. Ghana has a unicameral Legislature. The legislative authority lies with the Parliament which is headed by a Speaker and assisted by two Deputy Speakers. The Judicial power is vested in the judiciary, headed by the Chief Justice who is responsible for the administration and supervision of the judiciary.

3 The legal system of Ghana is founded on the Constitution, enactments made by or under the authority of Parliament, Orders, Rules and Regulations made by any person or authority under a power conferred under the Constitution, and the Common Law. The Constitution takes precedence over all other laws. Primary legislation is in the form of laws while secondary legislation is in the form of Orders, Rules and Regulations. Ghana's laws comprise of a combination of measures and legislations necessary to implement the FATF revised standards (2012). Ghana's legal system requires that international legally-binding instruments, including the United Nations Security Council resolutions have to be transposed into the Ghanaian legal order. The Courts in Ghana are designated as Superior Courts and Lower Courts. The Superior Courts comprise the Supreme Court, the Court of Appeal, the High Court and the Regional Tribunal. The anti-money laundering and combating the financing of terrorism (AML/CFT) regulatory powers in Ghana reside at the national level.

4 As part of ECOWAS, Ghana is a member of the Inter-Governmental Action Group Against Money Laundering in West Africa (GIABA), and is subject to adopt and implement the FATF standards and other relevant international instruments, including ECOWAS decisions, aimed at combating money laundering, terrorist financing and financing of proliferation of weapons of mass destruction. GIABA has a significant influence on Ghana's AML/CFT system through its mutual evaluation process and procedures, and other compliance programmes.

ML/TF Risks and Scoping of Higher-Risk Issues[3]

5 This section presents a summary of the assessment team's understanding of the money laundering (ML) and terrorist financing (TF) risks in Ghana set out in Chapter 2. It is based on

[3] This section presents a summary of the assessment team's understanding of the money laundering (ML) and terrorist financing (TF) risks in Ghana set out in Chapter 2. It is based on material provided by Ghana as well as open source materials, and discussions with competent authorities and the private sector during the on-site visit. This includes consideration of Ghana's National Risk Assessment (NRA) which was published in August, 2016.

material provided by Ghana as well as open source materials, and discussions with competent authorities and the private sector during the on-site visit. This includes consideration of Ghana's National Risk Assessment (NRA) which was published in August 2016.

6 Ghana is generally perceived as a moderately safe country[4] and ranks among the top one third of least corrupt countries on the international perception indexes on corruption.[5] Ghana is exposed to a range of ML and TF risks. The geographical location, the predominantly cash-based economy, the large informal sector, and porous land borders, are some of the factors that increase Ghana's exposure to these risks.

7 Ghana has a very high level use of cash as a means of payment due largely to its convenience, speed and certainty in settling financial obligations and the large size and continued growth of the cash-oriented and unregulated informal sector. The dominance of cash transactions, which are characterized by anonymity, combined with a large informal sector, including the black market and underground remittance expose or increase Ghana vulnerability to ML and TF.

8 The NRA identified fraud, stealing (theft), robbery, tax evasion, corruption, and drug trafficking as the most prevalent predicate crimes. The ML threat assessments of these crimes were rated as high. The NRA also noted that cybercrime such as advanced fee fraud, is the most commonly committed offences and as such, is regarded as a "big issue" in Ghana. Other predicate offences that pose medium ML threats include human trafficking, migrant smuggling, organized crime, arms trafficking, counterfeiting of currency, counterfeiting and piracy of products, environmental crime, and forgery (NRA Annex 1).

9 The recent reports on corruption scandal in the judiciary, which led to the dismissal of 22 Justices, the occurrences of Sim Box Fraud involving US$52 million (NRA p10), theft of public funds through padding of salaries involving US$8 billion (NRA p11), the massive misapplication of public funds by public institutions highlighted in the Auditor-General's Annual reports in recent years (NRA p11), and the rampant tax evasion with about 3513 entities reported to have evaded taxes between 2013 and 2015 (NRA p16) show the significant scale of some of these predicate offences as contributing factors to the prevailing ML risk exposure in Ghana. Ghana does not have an estimate of the overall value of criminal proceeds in the country.

10 The key sectors exposed to significant ML/TF risk in Ghana are casinos, real estate developers/agents, and non-profit organizations (rated as very high), dealers in precious metals/precious stones and car dealers (rated as high) - NRA p152. Bureaux de change was rated medium high (NRA p131), while the remittance service providers, electronic money issuers and agents (NRA p131) lawyers, accountants, trust service providers and notaries public (NRA p152) were rated as medium risk. Given that commercial banks in Ghana participate in the financing of international trade and have established corresponding banking relationship with financial institutions in foreign countries, they participate in the movement of funds and settlement of transactions globally. Therefore, they are exposed to risks inherent through international

[4] The Societal Safety & Security, Global Peace Index 2015, Institute for Economics and Peace, on its Societal, Safety & Security Domain ranks Ghana 58 out of 162 countries of the world (5th within Africa).
[5] Ghana is ranked 56 out of 167 in the Corruption Perceptions Index 2015, Transparency International.

financial linkages. Under the circumstance, the banking system is highly developed and is exposed to general ML/TF risks that affect other countries. Generally, the vulnerabilities of these sectors could be exploited by criminals seeking to hide their proceeds of crime in Ghana. Details of the ML/TF risks, including the assessment of effectiveness are set out in Chapter 2.

11 Terrorist financing risk was rated high despite the low incidence of terrorism and terrorist financing in Ghana (NRA p176), due to Ghana's proximity to Nigeria, Cote d'Ivoire and other terrorism-prone zones, such as Mali to the northwest, and Niger and Chad to the northeast (NRA p173). The thriving industry in illicit small arms and light weapons (NRA p182), the presence of a large number of Shiite Lebanese with probable links to the Hezbollah movement (NRA p82), porosity of borders in the region are some of the other factors that increase the susceptibility of Ghana to the risk of terrorism and terrorist financing. The recent reports on the recruitment of some young Ghanaians into the fold of ISIS, construction of an ISIS training centre at Akyem Asene Zongo, near Akyem Oda in the Eastern Region of Ghana, and a statement by Ghana's National Security Coordinator in August 2015, that some young people in tertiary institutions in Ghana were being lured into joining ISIS via social media are some of the factors that impact Ghana's assessment of its terrorism and terrorist financing risk (NRA p173).

Scoping of Issues of Increased Focus

12 During the on-site visit, the assessment team gave increased focused to the higher risk issues listed below. In deciding on which areas to prioritise, the assessment team reviewed Ghana's NRA and the supporting documents including information from reliable third party sources (e.g. reports of other international organisations). The assessment team identified, as a starting point for the mutual evaluation, important risks and issues of significant concern that merited deeper attention, given their impact on Ghana's AML/CFT system. These issues are listed below.

- **Economic crimes:** Ghana lists stealing (theft), corruption, tax evasion, drug trafficking, and fraud as crimes that pose high threats. The MER focuses on the prevalence of these crimes, and on their investigation and prosecution, including confiscation of proceeds from these offences and how effectively, authorities pursue ML convictions in relation to the offences.
- **DNFBPs:** The NRA noted that the risks posed by DNFBPs are generally high, due to the weak implementation of AML/CFT measures by DNFBPs and the lack of supervision and regulation of the sector. The MER pays specific attention to real estate agents, the extractive industry (specifically dealers in precious metals and precious stones), casinos operators, car dealers, and lawyers and focus on the procedures which lawyers have in place to establish clients' sources of funding, as well the professions' understanding of the risks posed by ML/TF. The MER also considers the extent to which the risk posed by DNFBPs are understood and mitigated by them, and the extent to which DNFBPs are supervised for compliance with applicable AML/CFT obligations.
- **Sanction regime –** Sanctions are rarely applied by regulators. The MER examines the sanction regime for financial institutions, particularly, if any, the disconnect between the AML Act, Regulations, and the Acts governing the sectors (Banking, Insurance and

Securities) and why supervisors are unable or reluctant to impose sanctions on the basis of the Regulations and the AML Act.

- **NPOs:** NPOs can be abused for terrorist financing and supervision, monitoring, licensing and awareness raising among NPOs are required by the FATF standards. The NRA identified the NPO sector as a high risk sector. Thus, the MER looks at the implementation of the measures to prevent NPOs from abuse for TF purposes and also considers the extent to which NPOs that may be at risk of TF are identified, assessed, understood and mitigated by Ghana.
- **Foreign Terrorist Fighters (FTFs):** FTFs have left Ghana to take part in training or conflicts in other countries. According to the NRA, persons linked to terrorist activities have in the past, entered into Ghana. The MER looks in more detail at how the authorities in Ghana manage the terrorist financing risks posed by FTFs and other persons linked to terrorist activities as well as the links between financial measures and Ghana's wider strategy for managing the terrorism risks posed by FTFs, including cooperation between the relevant authorities.
- **Financial intelligence and the FIC:** Besides the role of collecting, analysing and disseminating financial intelligence, the FIC plays a central role in the AML/CFT system. In this regard, the MER looks at the different roles of the FIC and the FIC's powers and responsibilities, particularly how financial intelligence is generated and used by Ghana's authorities.
- **Transparency of Legal Ownership:** The NRA identified corruption as a major predicate offence. One of the ways of laundering the proceeds of corruption is through the use of legal persons and arrangements. The MER considers whether Ghana understands the risk associated with legal persons and examines the system in place to access beneficial ownership information including timely access to the information.

Materiality

13 Ghana is a lower middle income jurisdiction with a cash-based economy and large informal sector. Like other West African States, there is a preponderance of cash transactions in Ghana. The share of the informal sector contribution to GDP in Ghana was 31.4% as at 2000. The informal sector is widely seen as the engine of growth and the route to economic transformation, employing about 86.1% of all employment in Ghana (NRA p46). Similarly, the thriving black market and underground remittance system (NRA p54) increase the risk of tax crimes and money laundering in Ghana. Though, remarkable progress is being made to promote greater use of e-payments and e-money including the establishment of an e-Payment Portal to facilitate online payment for government taxes, fees, tangible goods and services, and implementation of New Payments Products and Services (NPPS), such as mobile money, pre-payment cards and internet payments (NRA p159) in the financial sector, the structure and nature of Ghana's economy still present significant ML/TF risk.

14 The financial sector in Ghana is well-diversified and dominated by banks, with the insurance and securities sectors being relatively small by comparison. Ghanaian financial institutions, especially the banks, are well-connected with the international financial system, and

face the usual risks associated with such relationships. Similarly, the banking sector in Ghana has a high foreign dominance, with 17 out of the 30 commercial banks (over 50%) having foreign majority equity, most of them originating from Nigeria (6 out of the foreign banks are African banks, accounting for about a third of total banking assets in Ghana). These complex financial linkages and exposures can strain the monitoring ability of supervisory authorities, thus increasing the risk of Ghana to ML/TF. Similarly, Other Financial Institutions, such as Bureau de Change, whose operations are largely cash intensive and provide service to a large number of non-residents, present significant ML risk to Ghana. In terms of asset size of the financial system in Ghana, the banking sector accounts for 83.88% followed by capital market sector with12.12% and insurance operators with 3.48% as at 2014. The estimated asset size quoted in dollar value for the same year is as follows: Banking - $16,177,100,000, Insurance- $11,933,726, Securities - $ 2,261,301, 745.

15 Ghana has a myriad of DNFBPs[6]. The NRA identified casinos and real estate developers/agents as the most vulnerable DNFBPs with a rating of very high risk while Car Dealers and Dealers in Precious Metals and Precious Stones are rated as high risk (NRA p152). As at 2014, there were seventeen (17) casinos (all owned by foreign nationals, mostly Chinese and Lebanese) registered in Ghana (NRA p148). The real estate market is possibly the largest DNFBP and the ever-growing sector in Ghana (NRA p54). However, implementation of AML/CFT measures by DNFBPs and regulatory oversight over the sector remain very weak, increasing the risk of Ghana to ML.

16 There are 6860 NPOs registered in Ghana. These comprise local, international, secular, faith-based, membership and non-membership based NPOs (NRA p144). Though highly vulnerable (identified as Very High risk in the NRA – p152), the NPOs play a vital role in providing humanitarian services and contribute immensely to socioeconomic development in Ghana. Ghana has designated NPOs as accountable institutions[7], implying that they are subject to the full implementation of the AML/CFT requirements under the AML law. However, currently, there is no organised national response in the sector to combat possible terrorist financing abuse (NRA p145). To further reinforce the weak AML/CFT regime in the sector, the NRA cited a recent ruling of the high court in Ghana which questioned the lack of a specific law that criminalize the misuse of NGO funds or donations (NRA p145). Though efforts are being made to establish the Ghana NGO/CSO Standards Project to promote self-regulation among NGOs and CSOs (NRA p144), the size of NPOs sector in Ghana and the weak AML/CFT regime in the sector increase the risk of the country to ML/TF.

17 Ghana's open economy coupled with the ECOWAS principle of free movement of people, goods and services has led to an active money or value transfer service (MVTS) sector. The remittance service providers operate both local and international money transfer services with cash intensive transactions (NRA p53). There are three (3) properly registered remittance service providers in Ghana with a turnover of USD 96.05 million at the end of 2014 (NRA p130). Underground remittances exist and thrive in Ghana. These are patronized by foreigners,

[6] DNFBPs in Ghana include real estate agencies, operators of game of chance (casinos), dealers in precious metals and stones, accountants, lawyers, notaries, car dealers, and trust and company service providers.

[7] First Schedule (section 21) of the AML Act, 2010 (Act 749) as amended

including the Indians and Chinese, as well as Ghanaians. The NRA identified underground remittances as having very high risks. (NRA p135).

Structural Elements

18 The key structural elements for effective AML/CFT, including political stability, accountability, independent judiciary and rule of law are generally present in Ghana. There is a high level of political commitment to Ghana's AML/CFT regime. This was demonstrated in several instances, including the speedy passage of legislations to address strategic deficiencies in the country's legal regime after the 2009 mutual evaluation, the exit of the country from the FATF ICRG Review process and GIABA's enhanced follow-up process, and the conclusion, endorsement and publication of the NRA report in August 2016. Ghana has a capable and independent judicial system with designated courts (Economic and Financial Crimes Courts) that handle ML/TF cases. The Superior Courts comprise the Supreme Court, the Court of Appeal, the High Court and the Regional Tribunal.

Background and Other Contextual Issues

19 Ghana has a fairly well-developed AML/CFT regime, with correspondingly strong legal and institutional frameworks. The level of financial inclusion is low.

20 Corruption is one of the major challenges in Ghana. For instance, there was a corruption matter in the judiciary that led to the dismissal of 22 Justices. Similarly, a former Executive Director of the Ghana Youth Employment and Entrepreneurial Development Agency (GYEEDA), and a Consultant to a project under the Programme are being prosecuted for embezzling large sums of state funds through sham contracts (NRA p13).). There NRA also suggests that there are incidences of cases linked to corruption in some public institutions[8]. Thus, Ghana considers combating corruption as a national priority. Ghana pursues a range of policy and operational responses to combat corruption, including the establishment of three Financial and Economic Crimes Court (FECC) in 2008 to primarily handle high profile money laundering and corruption cases (NRA p34), empowerment of EOCO and other key law enforcement agencies to enhance their operational efficiencies, and the domestication of UNCAC. Generally, investigators and prosecutors have demonstrated commitment and capacity to investigate and prosecute several high-profile corruption and other ML related cases. In spite of these efforts, results of Ghana anti-corruption efforts, especially in terms of convictions and confiscation of proceeds of corruption and other related crimes, remained very low. Improved and sustained efforts are required to continue to mitigate the corruption risks in Ghana.

21 Freedom of the press: Freedom of the press is legally guaranteed in Ghana, but media commentators noted a declined from "Free Press to Partly Free Press" in 2016. This was due to stepped-up attempts to limit coverage of news events, incidences of confiscation of the equipment of members of the press and increase in violence directed at journalists by the police, the military and ordinary citizens. The Right to Information Bill is pending at the Parliament. The

[8]The Auditor-General's Annual report over the last few years, suggests massive misapplication of Public funds by public institutions NRA p11;

Bill aims to provide for the implementation of the constitutional right to information held by a public agency to foster a culture of transparency and accountability in public affairs consistent with UNCAC principles. It is not likely that the Bill would be passed by Parliament since the current Parliament would be dissolved in January, 2017.

(a) Overview of AML/CFT Strategy

22 Ghana adopted its first national AML/CFT Strategy in 2010. Since the expiration of the strategy in 2014, Ghana is yet to develop a new national strategy. However, the country has developed a National Risk Assessment Action Plan (NRAAP) following the NRA, which seeks to prioritize the following deficiencies for urgent attention: (i) ineffective domestic cooperation; (ii) lack of accessible records on proceeds of crime by predicate offences; (iii) high public perception of the lack of integrity of financial crime investigators, prosecutors, judges and asset forfeiture investigators; (iv) insufficient capacity of financial crime investigators, prosecutors, judges and asset forfeiture investigators; (v) insufficient production, receipt and analysis of STRs; (vi) insufficient implementation of the asset forfeiture law; (vii) lack of use of pecuniary sanctions to remedy identified AML/CFT compliance deficiencies; (viii) lack of effective AML/CFT supervision, compliance monitoring and sanctioning of insurance, securities, DNFBPs & NGO sectors; (ix) lack of clearly designated AML/CFT supervisory authority of NGOs/NPOs; and (x) lack of regular collection & sharing of statistics related to regulatory implementation of AML/CFT obligations. In general, the Plan is limited to the key deficiencies identified in the NRA.

23 The NRAAP highlights the funding agency, expected outcome, and implementation time frame for each activity, as well as, duly assigned responsibilities between stakeholder institutions. Its implementation is being coordinated by the IMC.

24 As at the time on onsite, Ghana was developing a National Counter-Terrorism Strategy as part of a broader National Security Strategy, which is expected to reinforce or complement the NRAAP. However, highlights of the strategy presented to the assessment team indicate that the strategy did not cover TF related issues.

25 Ghana has some measures in place for combating the proliferation of weapons of mass destruction (WMD) and its financing.

26 Broadly, Ghana's AML/CFT policy objectives include (i) detecting, deterring and preventing money laundering, associated predicate offences and terrorism financing; and (ii) protecting the integrity of its financial system from illegal activities and illicit fund flows. In order to adequately achieve these objectives, including sufficiently addressing the risks identified in the NRA, Ghana will require a comprehensive national AML/CFT Policy.

(b) The Institutional Framework

27 The two primary AML/CFT legislations in Ghana are the AML Act 2008 (Act 749) and the Anti-Terrorism Act, 2008 (Act 762).The amendments of these laws in 2014 addressed the legal deficiencies identified in the 2009 mutual evaluation and also incorporated additional requirements resulting from changes to the FATF Standards in 2012.

28 The offence of ML is adequately criminalized in the AML Act. Ghana has adopted a threshold approach pegged to serious offences. Serious offences are defined as all offences with a penalty of more than 12 months imprisonment and the legislation does not require a prior conviction for the predicate offence in order to initiate proceedings for ML. The AML regime of Ghana covers all categories of crimes listed as predicate offences in the FATF Glossary.

29 The TF offence is criminalized under the Anti-Terrorism Act. This Act was amended in 2014, and is largely compliant with international standards although it did not fully criminalize TF. The Anti Terrorism Act provides for criminal sanctions, ranging between seven and twenty-five years. This appears dissuasive and proportionate although the effectiveness in terms of imposition of sanctions or penalties by the court is yet to be tested.

30 Ghana has a fairly robust legal framework for the implementation of targeted financial sanctions (TFS) relating to terrorist financing. The procedures for the implementation of targeted financial sanctions are established by the Executive Instrument 2 (E.I.2) and Executive Instrument 114 (E.I.114). Similarly, Ghana implements targeted financial sanctions regarding proliferation financing on the basis of the E.I 2.

31 The legal framework for provisional freezing and confiscation measures in Ghana is comprehensive. It provides for a wide range of measures to enable confiscation, including confiscation of instrumentalities of crime, property of corresponding value and benefits derived from proceeds of crime.

32 Ghana has strong institutions that provide a sound basis for an effective implementation of the AML/CFT regime. The institutional framework involves a significant number of authorities [Ministries, Agencies and Departments (MDAs)] that coordinate and manage AML/CFT issues at various strategic and operational levels. The following are the main competent authorities responsible for formulating and implementing the government's AML/CFT and proliferation financing policies.

Institution	Key Functions
Ministry of Justice	Responsible for policy and legislation relating to criminal law and confiscation. It generally coordinates criminal prosecutions, including those related to ML/TF and plays some roles in international cooperation, including acting as the central authority for *MLA* and extradition requests.
Ministry of Finance	Provides general coordination and ensures adequate funding for effective implementation of AML/CFT measures.
Ministry of Foreign Affairs	Responsible for the communicating designations made by the United Nations Security Council related to terrorism and proliferation, including notification of changes to relevant competent authorities. It also serves as the point of contact between Ghana and the relevant UN Committees.

Institution	Key Functions
FIC	The FIC is the national centre responsible for receiving and analysing STRs and other information, and disseminating the resultant financial intelligence to relevant competent authorities. The FIC is also GIABA's focal point on AML/CFT matters in Ghana.
EOCO	Investigates and prosecutes economic and organized crimes. It also handles most of the ML cases and provides assistance domestically and internationally in relation to such matters.
National Security Council Secretariat & Ghana Police Force and the Bureau of National Investigation	Generally responsible for monitoring and securing interior security in Ghana, including counter-terrorism, CFT and counter proliferation. They also investigate and prosecute crimes relating to terrorism, WMD, threats against national security and government, and espionage.
Customs Division of the GRA	Responsible for management of cross-border movement of currency and BNIs, as well as normal customs functions
Financial sector regulators (BOG, SEC, NIC)	Broadly responsible for AML/CFT supervision of financial institutions, including banks, insurance companies, and capital market operators. They also supervise financial institutions for targeted financial sanctions.

33 Ghana has a wide range of arrangements in place for AML/CFT coordination and cooperation at both the policy and operational levels. The main coordination and cooperation mechanism in the development of AML/CFT policies and activities in Ghana is the Inter Ministerial Committee (IMC)[9] and its operational arm, Law Enforcement Coordinating Bureau[10] (LECOB). The IMC has responsibility of coordinating all matters relating to ML/TF and other trans-national organized crimes. In particular, it coordinates inter-agency cooperation and implementation of national AML/CFT programmes and has responsibility for periodically updating the NRA. There is a strong political support for the IMC and AML/CFT efforts in the country.

34 There are also other inter-agency mechanisms to enhance operational coordination, such as the Counter-Terrorism Committee, the Joint Security Task Force and the Regulators Forum. These frameworks are aimed at strengthening national coordination and cooperation in the implementation of AML/CFT measures in Ghana.

[9] The IMC was created in March 2013 under Executive Instrument (E.I) 2 and consist of seven members. These are the Minister responsible for Finance and Economic Planning, the Minister responsible for Foreign Affairs, Minister for Interior, the Attorney General and Minster of Justice, the National Security Coordinator, the Deputy Chief of Staff of the President and the Governor the Central Bank of Ghana. The IMC is chaired by the Minister of Finance and Economic Planning.

[10] LECOB is chaired by the National Security Coordinator.

(c) Overview of the Financial Sector and DNFBPs

35 The financial sector in Ghana is dominated by commercial banks with the insurance and securities sectors being relatively small by comparison. Other operators within the financial sector include Finance Houses, Microfinance Institutions, Bureau de Change, Leasing Operations, Money lending operations, Money Transfer services, Mortgage Finance operations, Credit Union operations.

36 The Ghanaian banking sector accounts for 83.88% of total financial sector assets as at 2014. The sector is well-connected with the international financial system, and has a high foreign dominance. As at the time of onsite, 17 out of the 30 commercial banks in operation have foreign majority equity, most of them originating from Nigeria. Six (6) of the foreign banks are African banks, accounting for about a third of the total banking assets in Ghana[11.] The insurance sector consisted of about 111 operators as at December 2014 and 3,090 agents as at September 2014 (NRA report). The sector penetration is still low with asset base of 3.48% of the total asset of financial system as at 2014. There are a total of two hundred and fourteen (214) licensed firms within the security industry (NRA Report) with asset base of 12.12% of the total asset of financial system as at 2014.

37 There were three hundred and ninety-six (396) licensed Bureaux de Change as at the end of December 2014, with twelve (12) being inactive, while three hundred and eighty-four (384) were active (NRA Report). Bureaux de Change are licensed and regulated under the Foreign Exchange Act, 2006 (Act 723) by the BOG. Information available at the BOG indicates that total assets of BDCs grew from USD 4,347,891.32 in 2013 to USD 3,447,686.68 in 2014. Bureaux de Change business is mostly over-the-counter and cash intensive. They transact business domestically but their clientele is mostly non-resident persons. The NRA considers the BDCs as medium risk.

38 The Remittance Service Providers operate both local and international money transfer services and the transactions are cash intensive. Electronic Money service is relatively new in Ghana, and is currently being provided by the four leading telecommunication service companies in Ghana (MTN Ghana Limited, Airtel Ghana Limited, Vodafone Ghana Limited and Millicom Ghana Limited - operators of Tigo). There are also the underground Remittance system that operates outside the traditional banking and financial system which facilitate the process of remitting funds. This underground remittance system relies heavily on trust and is very fast with no transaction limits with regard to how much can be remitted. The Remittance Service Providers are rated medium risk in the NRA.

39 In relation to Microfinance Institutions (MFIs), there are 575 institutions in Ghana with 760 branches as at September 2016. As at December 2015, the asset base of MFIs is 1.7% of total assets of the industry (BOG 2015 Annual Report). There are a tiered range of formal, semi-formal and informal institutions providing microfinance services to the urban and rural poor and underserved sectors of the economy. The formal sector institutions providing microfinance

[11] Financial Regulation in Ghana: Balancing Inclusive Growth with Financial Stability (November 2014) – paper by Charles Ackah and Johnson P. Asiamah- https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/9287.pdf

services consist of institutions such as Rural and Community Banks, Savings and Loan (S&L) companies and Credit Unions. Statistics provided by the authorities as at September 2016 indicates that there are a total number of 140 Rural and Community Banks with 647 branches and outlets, and 31 Savings & Loans companies with 453 branches. The NRA indicates that there are 555 Credit Unions in Ghana. The Credit Unions are mutually-owned cooperative associations of individual members. A number of NGOs, organized by private parties as trust entities or charitable institutions provide both microloans and nonfinancial services to their client-base. The majority of microcredit NGOs belongs to an umbrella organization - Ghana Micro Finance Network (GHAMF1N) - which provides staff training and organizational capacity-building assistance and disseminates best practice guidelines and standards for governance, operations and performance efficiency.

40 There are a number of *susu collectors* in the informal sector, who provide collection and safekeeping services for the savings of mostly women market-vendors and operators of microenterprises. Technically, *susu collectors* are not involved in intermediating the aggregate savings which they collect and manage into loans. A variation on the *susu* collection system is the *susu club*, wherein the members go to a designated place on a scheduled day of the week to make their savings deposits with the *susu collector* who runs the *susu club*. The set-up allows a *susu collector* to service the savings deposit safekeeping needs of a much larger number of clients.

41 Financial exclusion remains a significant issue for Ghana. The World Bank stated that only 40%[12] of the population in Ghana has a bank account, implying that about 60% of the population have no access to the formal financial sector, and thereby depend fully on cash transactions or illegal (or unlicensed) provision of MVTS and money exchange services. Ghana has established a Financial Inclusion and Consumer Education Office within the Payments System Department of the BOG to promote the delivery of banking services at affordable cost to the disadvantaged and low income groups and provide consumer education on financial products and services. This reflects Ghana's commitment to provide support to citizens as well as assistance in understanding and using services of financial institutions. Some of the tools for driving financial inclusion in the Ghanaian financial system include the simplified Know-Your-Customer requirements for savings products; mobile banking; and agent banking. In spite of some progress that has been made, many are still excluded from the formal financial system with implications for AML/CFT regime.

DNFBPs

42 DNFBPs are listed in the First Schedule to the AML Act and they include casinos, auctioneers, notaries, lawyers, non-governmental organisations, accountants, religious bodies, real estate developers, operators of games of chance, trust and company service providers, dealers in motor vehicles, and dealers in precious minerals and stones. The DNFBP sector contributes 10% to Ghana's Gross Domestic Product (GDP)[13]. Though the subsectors constituting DNFBPs are broadly known, there is no information on the absolute number of total

[12] http://datatopics.worldbank.org/financialinclusion/country/ghana

[13] Ghana Statistical Service; Statistics for Development and Progress. Annual Gross Domestic Product; September 2015 Edition.

operators in the sector. The NRA identified the DNFBP sector as high risk with casinos and real estate developers/agents rated very high risk while Car Dealers and Dealers in Precious Metals and Precious Stones are rated as high risk (NRA p152). A brief analysis of the DNFBPs identified as high or very high risk in the NRA is provided below:

- Casinos - Casinos and other games of chance constitute important components of the DNFBPs sector, and are generally highly risky, due to high cash intensity of transactions, the weak supervision and the poor disclosures. There were seventeen (17)[14] casinos registered with the Gaming Commission. All the registered casinos are owned by foreign nationals, mostly Chinese and Lebanese, and are patronized largely by foreigners who also operate other forms of businesses in Ghana (NRA p148). The NRA further noted that though the number of casinos is seen as relatively low with respect to the size of the Ghanaian economy, the recent increase in the number of sports and betting companies across the country has further heightened the ML/TF risks of the sector. The casino sector's cash-intensive business exposes it to a higher level of inherent risk.

- Real Estate agents – Several players operate within the real estate sector in Ghana, including lawyers, real estate developers, real estate agents, architects and quantity surveyors. This is possibly the largest DNFBP and the ever-growing sector in Ghana (NRA p54). The sector is susceptible to ML due to lack of regulations and ineffective supervision and monitoring of industry players, weak due diligence on clients, more critically not inquiring the source of funds before transactions are executed, the cash intensive nature of business, operators' ability to invest large cash and manipulate allied services and schemes, such as mortgages, and the establishment of nominees in situations where anonymity is required. A large section of the real estate sector is organised under the Ghana Real Estate Developers Association (GREDA), a voluntary organization, backed by an Act of Parliament but without powers to sanction erring members.

- Car dealers – This sector is broadly classified into two categories - car dealers which are authorized official and exclusive dealers in vehicles of several international brands, and those in the second hand car selling market. Most car dealers, especially those in the second hand or informal sector accept cash as the most common method of payment, and are thus a potent avenue through which criminals can launder money. The NRA stated that about 90% of transactions within the sector are through cash and as such, drug dealers and other criminals find it very convenient and safe to channel their ill-gotten funds through the sector. The sector is largely unregulated because there is no legislation that specifically governs their operations.

- Dealers in Precious Metals and Precious Stone - In general, these cover a wide range of persons engaged in these businesses, including those who produce precious metals or precious stones at mining operations, to intermediate buyers and brokers, precious stone cutters and polishers and precious metal refiners, jewellery manufacturers who use precious metals and precious stones, retailers who sell to the public, and buyers and sellers in the secondary and scrap markets. As at the time of onsite, assessors were

[14] As at December 2014 (NRA Report)

informed that over 300 mining licenses have been granted to operators. The NRA stated that a large number of reported cybercrime cases in Ghana is related to gold scams through various schemes. Similarly, criminals and other corrupt officials see this sector as a good investment for tainted funds due largely to the lack of enforcement or application of AML/CFT measures.

43 In General, the implementation of AML/CFT measures by DNFBPs remains very weak, thus, making it vulnerable to ML/TF risk.

(d) Overview of Preventive Measures

44 Ghana AML/CFT regime has undergone significant reform since the last assessment in 2008. The two main legal framework relating to AML/CFT preventive measures [*AML Act* 2008 (Act 749) and the Anti-Terrorism Act, 2008 (Act 762)] were amended in 2014 to address the legal weaknesses identified in the 2009 mutual evaluation and incorporate additional requirements resulting from changes to the FATF Standards in 2012. These two legislation are supplemented by sector specific AML/CFT Regulations issued by BOG, NIC and SEC in collaboration with the FIC, as well as, the AML Regulations 2011, Anti-Terrorism Regulations, 2012 (L.I. 2181), and *enforceable* means, including several 'advices' issued by the FIC.

45 In general, the legal and regulatory frameworks are quite comprehensive in their provisions relating to the preventive measures and set out the AML/CFT preventive measures that broadly cover the requirements of the FATF Standards, which FIs and the DNFBPs are to implement. These requirements include obligation to report suspicious transactions, keep records, conduct CDD, and ML/TF risk assessment. The regulatory framework sets out the details on how AIs can effectively apply the preventive measures. DNFBPs apply the same preventive measures as FIs (with some limited exceptions and adaptations).

46 The legal and regulatory frameworks have impacted positively on the level of awareness, understanding and implementation of the required AML/CFT preventive measures, especially in the financial sector. However, the regulations are yet to be reviewed to take account of the outcomes of the NRA and there is no substantive sector specific AML/CFT guideline for the DNFBPs.

47 The AML Law applies to all the entities specified under the FATF standards, and also extends to a few other activities not covered within the Standards such as Car Dealers (motor vehicles dealers). The assessors are not aware of any sectors or activities which Ghana has exempted from the FATF requirements.

(e) Overview of legal persons and arrangements

48 Under Ghana's laws, legal persons refer to organizations created and registered under any of the business laws of the country. These include private and public limited liability companies, unlimited companies, companies limited by guarantee, external (foreign) companies, partnerships and sole proprietorships. The central authority for the registration of businesses in Ghana is the Registrar-General's Department (R-GD) under the Ministry of Justice and

Attorney-General's Office. The Companies Act, 1963 (Act 179) and its amendments provide the legal framework for the registration of legal persons.

49 Trusts are recognized in Ghana under both common law and statutory law[15]. The Trustees (Incorporation) Act 1962 (Act 106) requires trustees of specified voluntary associations to become incorporated to enable them hold property in trust on behalf of members thus allow for some type of registration. However, Ghana has no central registration authority for the registration of trusts and there is no requirement for registration of private trusts. Trust and company services in Ghana are often provided by lawyers who have obligations to identify beneficial owners under the AML law.

50 The AML law obliges financial institutions and DNFBPs to collect and maintain basic and beneficial ownership information. The R-DG also maintains basic information on companies and their directors. The Companies (Amendment) Act, 2016 now requires companies to maintain records of beneficial owners and provide the names of beneficial owners to the Registrar-General's Department. Implementation of the Companies (Amendment) Act is at a nascent stage.

51 The Registrar-General's Department has substantially improved the process of company formation. Business registration is now being done electronically and information on legal entities can be accessed online. Ghana is not an international centre for the creation and administration of legal persons or arrangements and only a minority of companies has foreign ownership.

52 The NPO sector in Ghana is large and diverse and operates in fields such as health, education, training, agriculture and food security, energy, water, sanitation, rural and urban development, environment, population and social welfare. As at the time of onsite, there were 6860 NPOs registered in Ghana including 1758 international NPOs. NPOs in Ghana are required to register as a company limited by guarantee and with the Department of Social Welfare. The dual registration and licensing regime of NPOs is not well integrated and thus, pose some challenges in terms of monitoring the sector. Ghana has designated NPOs as accountable institutions and they are thus, subject to AML/CFT obligations. However, as indicated in the NRA, there is currently, no organised national response in the NPOs sector to combat possible terrorist financing abuse. Whilst some measures are in place to ensure the transparency of NPOs in Ghana, it was considered by the evaluation team that these are not sufficient to fully mitigate the risk connected with the sector particularly as the NRA identified the NPO sector as a high risk sector.

(f) Overview of supervisory arrangement

53 Licensing, regulation and supervision of financial institutions is undertaken mainly by the BOG, SEC and NIC. All institutions in the financial sector are required to obtain license from the respective designated supervisory authority. Requirements which have to be complied with are set out in the sectoral legislation and include, amongst others, measures preventing criminals to control financial institutions.

[15] Refer to paragraphs 707-709 of Ghana's first MER

54 BOG, SEC and NIC are responsible for both prudential and AML/CFT supervision of their respective sectors. They have sufficient powers to undertake inspections (off-site and on-site) and control to ensure compliance with the AML/CFT legislation by the institutions they supervised. A broad range of sanctions applicable in case of non-compliance are covered in the AML/CFT law. These are complemented by those in sectoral legislation and regulatory frameworks. Sanctions for AML/CFT breaches can be applied either on the basis of sectoral legislation, regulations and/or the AML/CFT Law.

55 At the time of the on-site visit, only the BOG is implementing or applying a risk-based approach to supervision. SEC and NIC were not yet in the position to do so. A lack of resources was noted across the supervisory authorities, and particularly in SEC and NIC, leading in some cases to the inability to undertake adequate onsite inspections and to ensure sufficient expertise of staff in AML/CFT matters.

56 The BOG is the regulator and supervisor of the majority of sectors of the financial market in Ghana. The Banking Act 2004 and the Non-Bank Financial Institutions Act, 2008 (Act 774) empower the BOG to regulate and supervise the banks and non-bank financial institutions, respectively. Similarly, the Insurance Act, 2006 (Act 724) establishes the NIC and designates it as the authority responsible for ensuring effective administration, supervision, regulation, monitoring and control of the business of insurance in Ghana. The Securities Industry Act, 1993 (as amended) establishes the SEC. SEC is responsible for ensuring the transparency and efficiency of the capital market or securities industry in Ghana. The three supervisory bodies are listed among competent authorities under section 22 of the AML Act, 2008 (Act 749) thus entrusting them with the responsibility for supervision of FIs under their purview for AML/CFT purposes.

57 Ghana has not designated any regulatory body to regulate the entire DNFBPs sector for AML/CFT, however it has established some specialized supervisory bodies to undertake regulatory compliance monitoring, including the Gaming Commission, and Minerals Commission. The Gaming Commission has responsibility for licencing operators of games of chance (casinos). In order to ensure that criminals or their associates are prevented from operating a casino, the Commission grants a licence only if a person has not been declared bankrupt or convicted by a court of tribunal of an offence of fraud or dishonesty. The Commission has powers to revoke licences when the Casino is in breach of the Act. Though the Commission has powers to undertake supervision/monitoring of casinos, no AML/CFT supervision has been carried out, and it is yet to issue any sector specific guidelines. The Minerals Commission is responsible for "the regulation and management of the utilization of the mineral resources of Ghana and the coordination and implementation of policies relating to mining. The Commission undertakes proper due diligence, including background checks, to prevent criminals from infiltrating the sector. The Commission has not conducted any formal risk assessment to identify the risks associated with the mining sector.

58 AML Act 874 designated GREDA, General Legal Council, and Institute of Chartered Accountants as "competent authorities". Impliedly, these are supposed to supervise their regulated members (DNFBPs) for AML/CFT. Though these SRBs appear to conduct some fit and proper test as part of prudential/membership registration requirements to prevent criminals

from operating in their sectors, in general, they do not understand their AML/CFT responsibility and lack AML/CFT supervisory capacity. As noted earlier, GREDA (an SRB for the real estate sector) is backed by an Act of Parliament but does not have powers to sanction erring members. Similarly, The Institute of Chartered Accountants, Ghana (ICAG) established by The Chartered Accountants Act 1963, has responsibility to supervise and regulate the engagement, training, licensing and the sole examiner for the accounting profession in Ghana, does not supervise their members for AML/CFT, and so also with the General Legal Council.

59 In general, there is no robust strategy that has been developed to address the ML/TF risks arising from DNFBP, neither is there comprehensive AML/CFT supervisory arrangement for the sector. Though a number of the DNFBPs are registered as companies under the Companies Act, there are capacity and resource constraints at the Registrar General's Officer to carry out proper background checks, including on the directors, senior management of the DNFBPs. This coupled with the lack of a dedicated supervisory authority, weak regulation/monitoring, and proliferation of unregistered DNFBPs, created a gap for possible infiltration of criminals within the sector. The NRA identified the DNFBP sector as high risk.

(g) International Cooperation

60 International cooperation is a key aspect of Ghana's AML/CFT regime. The country has a strong legal framework for international cooperation which includes a range of bilateral and multilateral agreements for MLA and extraditions. The central authority for MLA and extradition is the Ministry of Justice. Extradition in Ghana is treaty based this therefore limits the number of countries that can successfully make extradition requests to Ghana. This notwithstanding, the Ghanaian authorities have used provisions of the immigration law to hand over fugitives to foreign counterparts that have not established extradition treaties with Ghana.

61 Ghana assists other countries with all types of requests for cooperation such as asset identification, freezing, seizure, and confiscation. Similarly, international cooperation is sought on a regular basis and competent authorities approach informal networks for information to enhance their work and increase effectiveness. The FIC has a formal role in relation to cooperation with foreign FIUs and other competent authorities also have their own arrangements with counterparts.

62 Overall, Ghana provides MLA and exchange information in a constructive and timely manner and proactively seeks international cooperation when required. Notwithstanding, greater engagement with foreign authorities will further strengthen international cooperation and exchange of information.

CHAPTER 2 - NATIONAL AML/CFT POLICIES AND COORDINATION

Key Findings and Recommended Actions

Key Findings

- Ghana has assessed its ML/TF risks through a NRA and a number of key competent authorities have a good understanding of the risk the country faces. The process for the conduct of the NRA was inclusive, involving all critical stakeholders in the public and private sectors thus, ensuring a broad understanding of the ML/TF risks and improvement in inter-agency cooperation and collaboration on ML/TF issues.

- The NRA identified drug trafficking, robbery/theft/stealing, tax evasion, bribery and corruption as high risk or major proceeds-generating crime and to some degree law enforcement efforts are commensurate with the high risk offenses identified in the NRA.

- Casinos, real estate developers/agents, dealers in precious metals/precious stones, car dealers and non-profit organizations were identified as key sectors exposed to significant ML or TF risk.

- The TF threat in Ghana is generally moderate. Nevertheless, the country recently experienced cases of nationals joining the Islamic State (ISIS) as foreign terrorist fighters. The country's proximity to terrorism-prone countries, such as Nigeria, Cote d'Ivoire, Mali, Niger and Chad potentially increase the vulnerability of Ghana to the risk of terrorism and terrorist financing.

- Most competent authorities are aware of the TF risks that Ghana faces however, licensing and regulatory authorities for DNFBPs do not fully understand the exposure of DNFBPs to TF risk.

- Ghana has developed a NRAAP following the NRA. The NRAAP seeks to prioritize identified deficiencies for urgent attention and highlights the funding agency, expected outcome, and implementation time frame for each activity, as well as, duly assigned responsibilities among stakeholder institutions. However, Ghana is yet to develop a national AML/CFT Policy based on the risk identified in the NRA.

- Ghana has a strong AML/CFT domestic coordination mechanism led by the AML/CFT Inter-Ministerial Committee (IMC). The IMC comprises all relevant stakeholder-institutions and drives both AML/CFT policy development and operational matters in Ghana, including initiating the revision of some AML/CFT laws, leading the process for the completion and adoption of the NRA, and coordinating the organization of the mutual evaluation exercise, amongst other things.

Recommended Actions

Ghana should:

- Develop a comprehensive national AML/CFT Policy based on risk identified in the NRA. The national policy should be developed in consultation with all key stakeholders. Amongst other things, the Policy should address the major structural vulnerabilities identified in the NRA report such as the lack of statistics to enable the authorities to determine the effectiveness of the AML/CFT system.

- Improve the methodology and scope of future assessment of risk to better assess, understand and mitigate ML/TF risks associated with DNFBPs, legal persons and arrangements, NPOs, cash intensive activities, and be extended to other sectors that could be vulnerable to ML/TF risks such as hoteliers, the petroleum sector and Fun Clubs which were not assessed in the current NRA.

- Ensure that competent authorities, especially Law Enforcement Agencies (LEA) review their operational strategies against the outcome of the NRA in order to realign their activities to the full range of the risks, including emerging risk areas..

- Strengthened National coordination and cooperation on AML/CFT issues by sensitizing all relevant agencies and stakeholders on ML/TF risk, the role of each agency in the AML/CFT system and how to maximize the efficient use of limited resources. In particular, operational coordination and cooperation mechanisms, especially LECOB should meet on a regular basis to share information and intelligence and prioritize ML/TF investigations and prosecutions.

- Take measures to improve the understanding of ML/TF risks in the insurance, securities and DNFBPs sectors in order to improve the overall level of understanding of risk in the country. Such measures may include greater outreach to these sectors, issuance of sector specific regulation and/or guidance for the DNFBPs, review of all AML/CFT sector specific regulations to adequately reflect the outcome of the NRA to better guide the institutions, and provision of regular, updated and consistent best practices/guidance to the private sector on risk and conducting enterprise level risk assessments.

- Further strengthen operational cooperation and feedback mechanisms amongst LEAs to enhance information sharing in the investigation and prosecution of ML/TF cases, as well as, confiscation of proceeds of crime. In particular, the Bureau of National Investigation (BNI) need to be actively involved in AML/CFT coordination issues.

- Improve both horizontal and diagonal cooperation between and among competent authorities. In particular, supervisors should enhance operational cooperation, especially in the sharing of supervisory information amongst themselves. In this regard, the Regulators Forum should be made more operationally functional. Similarly, supervisors should improve information sharing with LEAs, and other relevant competent authorities in relation to market entry and supervisory matters. In general, this will foster ML/FT risk mitigation, including regulatory interventions.

63 In general, authorities in Ghana demonstrate a good understanding of the risks the country faces. The NRA is of high quality and covers both ML and TF risk assessments. The process for the conduct of the NRA was inclusive, involving all key stakeholders. The NRA identified high risk predicates and major proceeds-generating crime and identified key sectors exposed to significant ML or TF risk. However, Ghana needs to take steps to better understand the risks in emerging areas, such as hoteliers, fun clubs, petroleum sector, faith-based organizations and the cocoa industry.

64 Ghana is yet to develop a national AML/CFT Policy based on the risks identified, though the country has developed a NRAAP which prioritizes identified deficiencies for urgent attention.

65 The Inter-Ministerial Committee (IMC) is responsible for the overall policy setting and coordination of the AML/CFT regime in Ghana. Other inter-agency mechanisms established to enhance operational coordination amongst competent authorities include LECOB (operational arm of IMC), the Counter-Terrorism Committee, the Joint Security Task Force and the Regulators Forum. However, Regulators Forum and LECOB need to meet more frequently to facilitate information sharing.

Immediate Outcome 1 (Risk, Policy and Coordination)

66 The relevant Immediate Outcomes considered and assessed in this chapter are IO.1. The recommendations relevant for the assessment of effectiveness under this section are R.1, R.2 & R.33.

Country's assessment of Risk

67 In August 2016, Ghana adopted its first NRA[16] report on ML/TF risks. The NRA process was coordinated by the IMC and was all inclusive, involving critical stakeholders across the public and private sector. The NRA assessed both the ML and TF threats and vulnerabilities in Ghana using the World Bank risk assessment tool. Sectors covered in the NRA include banking, insurance, securities market and DNFBPs. The assessment also covered institutional strengths and vulnerabilities which is considered a good practice in the NRA process. While the NRA identified and assessed most of the main risks, assessors noted that some sectors that could be vulnerable to ML/TF risks, such as the petroleum sector, faith-based organizations, illegal mining, timber trade and the cocoa industry were not covered in the NRA. Overall, the conclusions and findings from the NRA are generally reasonable, reflecting most of Ghana's main risks and supported by the specific information assessed.

68 Prior to the NRA, specific ML/TF risk assessment was carried out by BOG on a sector wide basis, following consolidation of the results of individual or institutional risk assessments using the BOG risks matrix. The remaining regulators (SEC and SIC) were yet to carry out sector wide assessments.

[16] The NRA was supported by GIABA and the World Bank

Country's understanding of its ML/TF risks

69 In general, Ghana demonstrated a good understanding of the ML/TF risk it faces. However, there is a need to enhance its understanding further in certain areas. Prior to the NRA, Ghana had enacted laws and established institutions to mitigate some of the risks identified in the NRA. For instance, EOCO was established to deal with corruption and other transnational organized crimes. The MER of 2009 had provided some basis for understanding of the risks which led to the development of a national AML/CFT strategy that elapsed in 2014. Despite some challenges that were faced in the conduct of the NRA, such as limited access to data and lack of knowledge on ML and TF issues within some sectors, Ghana successfully completed the process and adopted the report in August 2016. The process for the conduct of the NRA was inclusive, with inputs from all relevant stakeholders (including inputs from intelligence services) in the public and private sectors. This inclusive process has helped to further broaden the understanding of the ML/TF risks and the government's AML/CFT initiatives amongst many stakeholders. For instance, the authorities demonstrated very good understanding of aspects of the risks associated with the predicate crime environment, domestic geography, aspects of cross-border flows and the channels most vulnerable to laundering. The country adopted a research based approach, using people who are very knowledgeable on the subject and deploying tools provided by the World Bank to capture data from relevant sectors of society. Though, the public version of the NRA report was widely circulated and a number of stakeholder-institutions are aware of the findings and conclusions of the NRA, assessors noted during the onsite that not all agencies and reporting entities seem to fully appreciate all the ML/TF risks identified in the NRA. In particular, the assessment team noted that the level of awareness and understanding of ML/TF risks amongst institutions such as NBFIs, securities and insurance operators is generally low compared to the banks, majority of which had already conducted institutional risk assessments and therefore, have a thorough understanding of their ML/TF risks. In addition, the assessors are of the opinion that Ghana's understanding of the overall risks in the country could be further enhanced if the risks associated with the abuse of legal persons/arrangements and NGOs including faith-based organizations that the NRA appears not to adequately cover, and certain sectors, they believed are vulnerable to ML/TF risk, such as the hoteliers, petroleum sector, illegal mining, timber trade and the cocoa industry which were not covered in the NRA are properly assessed. Overall, Ghana's understanding of the vulnerability in the non-banking sectors is less evolved. Thus, Ghana may consider taking into account these sectors to facilitate an integrated and holistic approach in future review of the NRA to further enhance its understanding of the overall risk in the country

70 The NRA identifies drug trafficking, fraud, robbery/theft/stealing, tax evasion, bribery and corruption as high risk or major proceeds-generating crime while casinos, real estate developers/agents, non-profit organizations, dealers in precious metals/precious stones and car dealers were identified as key sectors exposed to significant ML or TF risk. The assessment team considers that these are reasonable conclusions.

71 Ghana considers TF as high risk in the NRA though, in practice, incidence of terrorism and TF is low in the country. The TF risk rating in the NRA is partly due to Ghana's proximity to countries vulnerable to terrorism/conflicts in the region, such as Nigeria, Cote d'Ivoire, Mali,

Niger and Chad. Other factors identified in the NRA in relation to the high-risk rating for TF include, a thriving industry in illicit small arms and light weapons, the presence of a large number of Shiite Lebanese with probable links to the Hezbollah movement. The NRA noted the country's increasing vulnerability of being used as a source of recruits for terrorist groups active in other countries, including ISIS. An example was the case of some young Ghanaians that joined the fold of ISIS. Similarly, in August 2015, Ghana's Security Coordinator said that young people in tertiary schools in Ghana were being lured into joining ISIS via social media (NRA Report). In addition, Ghana has porous national borders, rendering the country susceptible to the smuggling of cash and weapons and the relatively easy movement of people in and out of the country.

72 The NRA assessed both ML and TF risks, however, discussion of the latter was limited. From assessors' interactions with the authorities, it emerged that Ghana has a good understanding of the risks posed by potential terrorists (individuals and groups) and that the limited coverage in the NRA was due to the sensitive nature of terrorism. In all, the authorities did not see any evidence that TF funds were flowing into Ghana to finance any domestic extremism or to be re-directed to other countries through Ghana.

National policies to address identified ML/TF risks

73 The interval between the adoption of the NRA report in August 2016, and the onsite visit for the 2nd round of Mutual Evaluation in September 2016 did not leave much room for Ghana to develop a national AML/CFT Policy that reflect the risks identified in the NRA, as well as, adequately streamline them into AML/CFT activities. Ghana is yet to develop a national AML/CFT Policy based on the outcomes of the NRA. Although an NRAAP has been developed, it is not robust and implementation had largely not commenced as at the time of onsite. The Action Plan only addresses key areas of deficiencies in the NRA which require priority attention. The assessment team expects that Ghana will develop a comprehensive national AML/CFT Policy based on the risks identified in the NRA, as well as take steps to address the risk associated with some of the sectors such as the oil sector, the cocoa industry and the fun clubs, which were not covered in the NRA. The assessment team noted that despite the absence of a national AML/CFT Policy. Ghana has a good 'top down' approach to support and drive the implementation of national AML/CFT policies and activities to address the identified ML/TF risks. This seems to reflect the strong political will in combating ML/TF in the country.

74 Ghana pursues most of the main risks identified in the NRA as national priorities even before the conduct of the NRA. For instance, a national policy to address corruption, other economic and organized crimes have led to the establishment of EOCO, so also the establishment of the Narcotic Control Board to address drug trafficking. Activities of these agencies demonstrate that national policies and activities were already addressing the main risk identified in the NRA. However, there remains an underlying concern that the authorities are focusing more on addressing predicate crime than ML (see relevant IO). The ML risk could be better addressed, including by having investigative agencies place more emphasis on pursuing criminal ML charges for corruption, large frauds and recovering the related proceeds using criminal processes.

75 Risks in the financial sector are generally better managed through regulation and the adoption of a risk-based approach (RBA) to supervision. However, there is no AML/CFT examination (supervision) and/or monitoring of DNFBPs in Ghana. The risk-based approach to supervision is robust in the banking sector but yet to be widely implemented throughout the financial and non-financial sectors in Ghana. The BOG is the main supervisor of the financial system, with responsibility for banks, NBFIs, and other financial institutions. The BOG has commenced risk based approach to supervision across the institutions under its purview. In collaboration with the FIC, the BOG has developed AML/CFT risk matrix and self-assessment questionnaire for the banking institutions which seem comprehensive. These tools are designed to assist the BOG to identify and assess the ML/TF risks associated with individual institutions (micro-level risk assessment) with respect to customers, products, services, delivery channels and countries or geographical areas to enable it to strengthen the application of RBA to supervision. An appropriate adaptation of the risk matrix framework has been made by the BOG for some of the NBFIs, particularly the Savings and Credit institutions, due to the peculiarity of products and services offered by these institutions. In general, there is a well-developed RBA in the banking sector with the BOG now aligning resources and efforts to other sectors of high risks. For instance, the BOG is currently focusing supervision on the NBFIs and Other Financial Institutions, especially the Community or Microfinance institutions. However, SEC and NIC do not seem to have robust understanding of the risks in the securities and insurance sectors and are yet to deploy risk based approach in the supervision of institutions under their purview. Both SEC and NIC are being supported by the IMF to develop more comprehensive enterprise-wide risk assessment frameworks for institutions under their supervision. Supervision of the DNFBPs sector for AML/CFT is lacking. This is a gap which Ghana needs to urgently address to effectively manage the risks in the DNFBPs sector which the NRA identified as high.

76 Apart from the development of the NRAAP, effective implementation of the measures in line with outcome of the NRA is still pending. Nonetheless, the Authorities are taking steps in that direction, and the assessors note that most stakeholders are planning to review their operational frameworks to reflect some of the risks or outcome of the NRA.

77 The risk of terrorism is being well managed. The Counter-Terrorism Committee coordinates and manages Ghana's terrorism risk. Overall, terrorism risk receives appropriate attention, both at national level and at the level of civil society. The Authorities informed of a case where certain people were apprehended by civilians in a remote village and handed over to the authorities, due to their strange appearances. The assessment team notes that TF appears not to be given equal attention, especially within the framework of the operations of the Counter Terrorism Committee. For instance, TF did not reflect as a critical component of the National Counter Terrorism Strategy from presentation made by the Committee to assessors. Also, while some arrests were made in relation to terrorism or extremism and investigations are being carried out in these cases, the country is yet to identify any financial and support structures, methods and techniques employed by individuals involved in terrorism/extremism. However, the Committee explained that there is coordination between the Committee and the FIC (a member of the Committee) on TF matters, including information sharing.

78 Ghana could do more to address the risks associated with NPOs as the sector is identified in the NRA as one of the sectors exposed to significant risk (TF) in Ghana. There appears to be a

weak legal framework for this sector while regulation to ensure transparency in the utilization of funds by NPOs remains very weak. The Department of Social Welfare is undertaking some work in this regard, however, more needs to be done to effectively manage the risks associated with NPOs (see relevant IO).

Using the risk assessments to support exemptions, enhanced, and simplified measures

79 The Ghana NRA is yet to impact the legal and regulatory provisions on exemption, enhanced and simplified measures that apply to financial institutions and DNFBPs due to the short time frame between the adoption of the NRA report and the onsite visit. However, the high and low risk situations identified in the NRA would provide the basis for the applications of enhanced or simplified measures by reporting entities. The assessors note that the Ghana NRA report did not identify specific areas of exemptions or state categorically that exemptions are allowed in the application of the standards.

80 Prior to the NRA, Guidelines issued by Competent Authorities, including BOG, SEC and NIC require Accountable Institutions (AI) to apply simplified CDD measures in low risk situations and enhance measures in high risk situations**.** Examples of high risks situations provided in the guidelines include non-resident customers, private banking, politically exposed persons, cross border banking and business relationships while low risk situations include transactions with public institutions, public companies subject to regulatory disclosure requirements, and financial institutions subject to AML/CFT. These examples were informed by documented ML/TF risk assessments both at the sectoral (meso) and institutional (micro) level with regard to the banking industry. Given that existing regulatory framework does not require reporting entities to apply enhanced or simplified measures based on the findings of the NRA, Ghana may need to review them to accommodate this requirement. Ghana's attention is also drawn to the need to include among enforceable means that exemptions are allowed within the standard, albeit subject to a comprehensive risk assessment.

Alignment of the operational objectives and activities of the competent authorities and self-regulatory bodies with the national AML/CFT policies and the identified risks

81 The assessment team noted that daily operational activities of relevant law enforcement authorities are already focused in the main risk areas identified in the NRA, including drug trafficking, robbery/theft/stealing, tax evasion, bribery and corruption. For instance, EOCO focuses on corruption and fraud cases, GRA on tax evasion/ tax crimes, Narcotics Board on drug trafficking etc. This seems to reflect national AML/CFT objectives and government priorities in combating economic and financial crimes. Law enforcement authorities and the FIC also share/exchange information, and undertake joint investigations to effectively combat ML/TF. For instance, the FIC has been processing intelligence and disseminating information to the LEAs on suspected ML related cases. The authorities provided example of a case where the FIC and the Customs collaborated to crack down on a company operating in the Free Trade Zone that wanted to evade tax. This action resulted in the company paying a huge amount in taxes to the government. However, law enforcement agencies would need to review their operational

strategies against the outcome of the NRA to realign their activities to the full range of the risks, including new risk areas like fun clubs, identified in the NRA.

82 Activities of supervisory authorities (BOG, SEC and NIC) are generally consistent with existing national AML/CFT objectives as set out in the AML/CFT laws and regulations. Prudential supervision and AML/CFT supervision are managed separately by dedicated Units in all the supervisory bodies. For instance, within the BOG there is a dedicated AML/CFT Unit that is responsible for AML/CFT supervision. The Unit has developed a ML/TF risk assessment matrix and is working with operators within its sector to identify and manage the risk in their institutions. SEC and NIC have also developed some risk indicators that assist them to deal with the risk situation in their sectors. In general, adjustments may be required in terms of the risks assessment matrix of the supervisors to fully incorporate some of the new risk factors that might have been identified by the NRA, as these are yet to be captured in their supervisory frameworks. The IMF's assistance to SEC and NIC in the development of risks matrix is expected to be completed by March 2017, which will facilitate the categorization of institutions into risks brackets, i.e. low, medium and high risks, and effectively refocus supervision on risk approach basis. It emerged during the on-site that the DNFBPs are not subject to AML/CFT supervision/monitoring.

83 Self-Regulatory Bodies (SRBs) designated in the AML Act 874 as "competent authorities", namely Ghana Real Estate Developers Association, Institute of Chartered Accountants of Ghana, and the General Legal Council, as well as other SRBs are generally aware but not undertaking their obligations to monitor or supervise their regulated entities for AML/CFT purposes. The onsite meetings with some of the SRBs indicate that some of them participated and contributed to the NRA to a limited extent while a few were not involved. None of the SRBs has issued guidelines or consider AML/CFT as a critical component of its oversight activities on its members. So far, no sectoral risk assessment has been undertaken by any of the SRBs and the possibility of realigning their activities with the risk identified in the NRA and national AML/CFT objectives in the short to medium terms appears bleak.

National coordination and cooperation

84 The institutional framework for the development of national policies and coordination on AML/CFT issues at both policy and operational levels appear adequate. As earlier noted, the IMC has primary responsibility for the overall coordination of AML/CFT matters, while LECOB (IMC operational arm), Counter-Terrorism Committee, Joint Security Task Force, Regulators Forum and other inter-agency mechanisms complement the IMC in the area of coordination at the operational level. These institutional frameworks capture relevant agencies and provided the platforms through which policy makers and competent authorities in Ghana cooperate, coordinate domestically and develop and implement AML/CFT policies. To further strengthen cooperation and coordination, MoUs have been signed between various competent authorities, including the NIC, FIC, BOG and SEC.

85 The IMC meets periodically to discuss national policy issues. Examples of actions taken by the IMC includes initiation of the revision of some AML/CFT laws, coordination of the process for the conduct of the NRA and the adoption of NRA report, as well as, the organization

of the mutual evaluation exercise amongst other things. The IMC is yet to develop a national AML/CFT policy that comprehensively addresses AML/CFT issues in Ghana, including the risk identified in the NRA.

86 Co-operation and coordination mechanisms to combat the financing of proliferation of weapons of mass destruction also run parallel with ML/TF, under the auspices of the IMC. LECOB is also responsible for coordinating matters relating to targeted financial sanctions, including PF.

87 Coordination in relation to terrorism and TF is done through the Counter-Terrorism Committee which meets every Monday morning to discuss terrorism/TF related issues, including possible cases to be investigated by the competent agencies. The Committee is responsible for analyzing the risks of terrorism and TF in collaboration with the FIC, in addition to undertaking public sensitization on terrorism related matters. This Committee draws membership from all relevant agencies and has strong operational collaboration with them. The Committee is currently developing a National Counter Terrorism Strategy, however, highlights of presentation made to the assessment team by the Committee show that the strategy did not cover TF issues. The Joint Security Task Force is responsible for defining the government's general policy for intelligence and security. It meets every Tuesday to discuss broad national security and intelligence issues, including outcomes of the Counter-Terrorism Committee meetings and money laundering related matters.

88 Operational cooperation and coordination exist amongst competent authorities but requires some improvements. Operational cooperation exists between and amongst many law enforcement agencies. For instance, the authorities provided instances where investigators from EOCO and the Police have either worked together or shared information on some ML related cases. However, the NRA states that LECOB does not meet as often as it should on AML/CFT issues as required by its mandate[17] and some institutional rivalries exist. The assessment team also noted during the onsite that the Bureau of National Investigation (BNI) is not actively involved in AML/CFT matters and did not also meet with the assessors to provide information in specific areas relating to their operations. Also, cooperation and coordination in relation to the proliferation of weapons of mass destruction appears limited. On supervisory matters, operational collaboration and coordination exist between and amongst BOG, SEC and NIC under the platform of Regulators Forum. The Forum was established through an MOU signed in 2013. Exchange of supervisory information amongst regulators is strong. The meeting of the Forum holds quarterly where issues affecting the financial sector, including AML/CFT matters are discussed. However, the assessors noted that the Forum has not been meeting regularly in recent times. In general, the coordination between the regulators and FIC is very strong. They have jointly issued sector specific AML/CFT guidelines and have collaborated in providing training to financial institutions.

[17] The BNI met with the assessment team during the face-to-face meeting and provided inputs and clarifications in their area of operations

Private sector's awareness of ML/TF risks

89 The Ghanaian authorities have shared the public version of the NRA with major reporting entities but could improve dissemination to the lower tier reporting entities. The public version of the NRA was shared with major Financial Institutions (FIs) and DNFPBs, which as a result, are generally aware of the main risks and how the identified risks relate to their institutions. A select number of reporting entities participated in and contributed to the NRA process by completing questionnaires. Before the formal adoption of the NRA, the findings were discussed in a workshop attended by stakeholders, including private sector operators. Other training and separate meetings have also been held by the FIC to discuss critical issues, including the NRA findings with reporting entities such as capital market operators, insurance companies, banks and non-bank financial institutions.

90 The representatives of banks met by the assessment team have high understanding of risks in their sector, are aware of the findings and conclusions of the NRA and indicated that the conclusions of the NRA broadly reflect their own perceptions of the risk situation in their sector, and the country in general. Understanding of risks by most securities operators, insurance companies and NBFIs/Other Financial Institutions is low compared to the banking sector. While the degree of their awareness of the outcome of the NRA varies, it is generally, fairly good. The understanding of ML/TF risks within the DNFBP sector is uneven and generally low compare with the financial sector, particularly the banks. The DNFBPs met by the assessors, including accountants, Ghana Real Estate Developers Association, and the Ghana Bar Association have varying understanding of the risks inherent in their sector and demonstrated some awareness on the conclusions of the NRA. With the exception of Casinos, there appears to have been less engagement by the authorities with the DNFBPs, and, unlike the financial sector, they are still not subject to any AML/CFT supervision nor has any sector specific AML/CFT guidelines been issued to enhance their appreciation of risk assessment and risk-based approach, as was clearly the case with the financial sector.

91 In general, based on discussions with reporting entities, the NRA dissemination was useful and provided some guidance that would enable them to fine-tune their internal risk assessment and mitigation measures.

92 Ghana has achieved a moderate level of effectiveness for Immediate Outcome

CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Key Findings and Recommended Actions

Key Findings

Use of financial intelligence (Immediate Outcome 6)

- Ghana has a well functional financial intelligence unit (the FIC) which analyses and disseminates good quality financial intelligence (operational and strategic intelligence) to competent authorities, especially the LEAs. The intelligence is generated from STRs received and additional information received from financial institutions, administrative and law enforcement agencies, etc. The FIC has analytical and data mining tools but has initiated actions to acquire a more sophisticated analytical tool to enhance its operational efficiency. The weak compliance by DNFBPs and some non-bank financial institutions (NBFIs) with their reporting obligation limits the number of STRs available to the FIC for its operations. Given the high risk or vulnerability of DNFBPs to ML/TF risk, the low reporting of STRs by this sector could impact adversely on the analysis of the FIC, and indeed, intelligence in support of the operational needs of competent authorities.
- Financial intelligence and other relevant information are available and used to some extent by law enforcement agencies for financial investigation, including asset tracing in relation to money laundering. In general, feedback on intelligence disseminated by the FIC is often not timely.
- FIC and other competent authorities cooperate effectively and exchange information and financial intelligence (upon requests and spontaneously) through dedicated officers with tested level of integrity. The FIC also shares information with its foreign counterparts in a timely and secure manner via the Egmont Secure Web for all Egmont members and registered mail for non-Egmont members. Though there has never been a case of information compromise or breach in the dissemination of domestic information, assessors expressed some concerns on the adequacy of the security and confidentiality of the hand delivery approach.

ML investigation and prosecution (Immediate Outcome 7)

- Ghana has criminalized money laundering in line with the Palermo and Vienna Conventions.
- The Ghanaian authorities have prosecuted self-laundering offences. However, other types of money laundering offences including standalone offences are seldom prosecuted and the weak regulatory framework for DNFBPs limits law enforcement officers' ability to investigate and prosecute third-party facilitators such as professional money launderers.
- EOCO, the lead agency for investigating money laundering offences often, shares

expertise and collaborates with other LEAs, including the Ghana Police Service.

- Ghana has established dedicated Financial and Economic Crime Courts that handle matters relating to economic and financial crimes, including money laundering, thus, allowing these cases to be dispensed with in a timely manner.
- To some extent, investigation and prosecution of money laundering reflect the risk profile in Ghana. The establishment of the Cybercrime Unit within the Ghana Police Service is an illustration of how the money-laundering risks related to internet fraud is being addressed.
- Ghana identifies and investigates ML cases to a considerable extent. Law enforcement agencies are able to identify money laundering in clear cut cases. Nonetheless, law enforcement agencies, prosecutors and judges seek the best possible outcome in a potential money laundering case and will often consider a conviction on the predicate offence which sometimes carries a stiffer sentence, confiscation, or other measures such as restitution and fines.
- Ghana has recorded some level of success in adjudication of ML cases. Nevertheless, the number of ML convictions is modest. The sanctions imposed in those cases are fairly proportionate and dissuasive.

Confiscation (Immediate Outcome 8)

- Ghana has a comprehensive legal framework for provisional freezing and confiscation measures.
- LEAs understand the importance of taking the profit out of crime and the authorities tend to pursue confiscation from the investigation stage. Ghana utilises other legal tools to deprive the criminals of illicit proceeds including seizure, fines, tax surcharges and restitution. LEAs have standard operating procedures (SOP) which provide guidance on confiscation and are able to seize assets that are proceeds of crime or instrumentalities of crime on mere suspicion. The lack of capacity to adequately conduct financial investigations limits the extent to which authorities are able to confiscate criminal assets.
- Ghana's legal framework prescribes management and disposal of assets by the Attorney General. However, in practice, assets are managed by the competent authority that conducts the investigation which may not always have the capacity to manage the asset.
- The Customs also confiscate funds where there is a breach of the obligation to declare cross-border transportations of currency and bearer negotiable instruments although the obligation to declare cross-border movement of currency/BNI is not being implemented consistently at all entry and exit points.
- Ghana does not proactively pursue confiscation as a policy objective and the confiscation statistics do not reflect the assessment of ML/TF risks.

Recommended Actions

Immediate Outcome 6

- Ghana should significantly increase the use of financial intelligence to identify ML and TF cases, in accordance with its risk profile and in particular, its TF risk.
- The authorities should provide financial resources to the FIC, to enable it to procure more sophisticated analytical tools in order to: (i) receive reports electronically from accountable institutions, (ii) enhance its operational efficiencies, and (iii) improve support to financial investigations by LEAs.
- Ghana should consider granting FIC direct access to information held by other public authorities for the purpose of facilitating the analysis of STRs or operational analysis. The current indirect access could slow down the operations of the Centre.
- The FIC and regulatory authorities should provide TF typologies, guidance and training to Accountable Institutions (AIs) to facilitate identification and reporting of TF related STRs.

Immediate Outcome 7

- Ghana should take steps to enhance the capacity of law enforcement agencies particularly the police to ensure that investigators develop adequate skills and experience in identifying ML cases.
- Ghana should adequately prioritize the investigation and prosecution of all types of ML offences and focus on parallel financial investigation when dealing with proceeds generating crimes. In particular, Ghana should consider involving highly trained financial investigators such as forensic accountants and auditors who will be solely responsible for tracing assets during the investigation of a proceeds generating crime.
- Ghana should develop and maintain statistical data on investigation of ML including the different types of money laundering offences investigated.
- Ghana should pay particular attention to identifying, investigating and prosecuting standalone and third party ML offences.
- Ghana should develop Unified SOPs for LEAs, to guide investigators when handling ML cases and related predicate offences.
- LEAs should review or broaden the scope of existing MOUs to include matters relating to AML/CFT to enhance cooperation in the investigation and prosecution of ML offences.
- Ghana should provide more training to LEAs, judges and prosecutors on handling complex cases of ML.

Immediate Outcome 8

Ghana should:

- Develop and adopt a policy on pursing confiscation of illicit proceeds and ensure

that actors in the criminal justice system pursue the objective of taking the profit out of crime.

- Provide appropriate training to competent authorities to facilitate effective tracing, seizure and confiscation of proceeds of crime.
- Maintain comprehensive statistical information on confiscation and other related measures to deprive criminals of illicit proceeds.
- Revise regulation for declaration of cross-border movement of currency and strengthen implementation of declaration obligations at all exit and entry points.
- Establish an asset management office or other mechanism for managing confiscated assets of all types and ensure that asset recovery is pursued as a policy objective.

93 The relevant Immediate Outcomes considered and assessed in this chapter are IO.6-8. The recommendations relevant for the assessment of effectiveness under this section are R.3, R.4 & R.29-32.

Immediate Outcome 6 (Financial intelligence)

94 Ghana has a well-functioning FIU which develops and disseminates high quality financial intelligence based on a wide range of sources to support LEAs operations. The use of financial intelligence and other relevant information for ML and associated predicate offence investigations differs significantly between competent authorities. In general, some improvements are needed in the use of financial intelligence by LEAs for ML and TF investigation, as well as, feedback from users of FIC intelligence.

Access to and use of financial intelligence and other relevant information

95 The main sources of financial intelligence/information are the FIC and accountable institutions, especially the banks. Law enforcement agencies (LEAs) have access to a broad range of financial intelligence and other information and have made use of them to support investigations, especially in relation to predicate offences. The LEAs have access (direct and/or indirect) to a wide variety of databases (financial and other information), including tax information, information from reporting entities and private commercial databases, which they have largely used in the investigation of ML and the predicate offences. These databases appear to be used routinely during criminal investigation, including parallel financial investigations. LEAs regularly submit requests for financial intelligence to the FIC (see Table 3.1) when information is needed in an investigation of a predicate offence, even where a specific suspicion of ML does not arise. In addition to information provided to LEAs upon request, the FIC disseminates spontaneously (see Table 3.5), financial intelligence and the results of its analysis to relevant competent authorities when there are grounds to suspect ML or predicate offences. Some LEAs are able to obtain financial information from financial institutions without a court order. Other LEAs can obtain financial information held by the private sector through a court order. In this regard, the LEA must first identify the financial institution or DNFBP that holds the

information, such as account or assets owned or controlled, financial transactions or operation, and then apply for the court order requiring the entity to produce the relevant information or records.

96 LEAs confirmed that FIC's intelligence products are comprehensive and provide a basis for initiating a new investigation or support ongoing investigations while response to requests is timely and satisfactory. This claim is reflected in the number of requests for information by LEAs on the FIC and responses provided by the FIC as highlighted in Table 3.1, as well as, the number of ML investigations prompted by FIC's intelligence as indicated in Table 3.6. The number of requests being made on the FIC by LEAs suggests an appetite for and appreciation of FIC's intelligence products. A few cases were cited to the assessors demonstrating the ability of the LEAs, especially EOCO, to access and use financial intelligence or information from the FIC to initiate or further investigations in relation to ML, predicate offence and related asset tracing. Ghana also provided a list of convictions it secured between 2014 and March 2016 arising from FIC's intelligence (see relevant IO). The FIC receives feedback on the intelligence given to LEAs. Samples of the feedback shared with assessors, amongst other things, highlight progress in the investigation process, including request for additional information. In general, most of the feedback is used by the Centre to conduct strategic analysis to determine hot spots and prevalence of certain crimes.

Table 3.1 Requests made to the FIC by LEAs

Year	2011	2012	2013	2014	2015	2016
No of Requests made to the FIC by LEAs	9	50	44	48	93	117
No of Responses provided by the FIC	9	50	44	48	93	117

97 LEAs have access to financial intelligence and are able to use same for investigation. The FIC indicated that all financial intelligence disseminated to LEAs were investigated. Discussions with some of the LEAs, particularly EOCO and the Police confirmed that they utilized the financial intelligence received from the FIC for investigations.

98 LEAs access and use intelligence from various other sources to initiate or support TF investigation. Though there is no STR directly related to TF, the Bureau of National Investigation has initiated TF investigation in collaboration with the National Security Council Secretariat, EOCO and the Police in three terrorism cases based on intelligence from other sources. These LEAs also request for financial intelligence from the FIC to further their investigation. The FIC is a member of the National Counter Terrorism Committee which initiates policies on TF and shares terrorism and TF related intelligence with relevant agencies.

99 The FIC does not have direct access to records and other information held by public authorities but has power to obtain the information upon request and has done so effectively. ~~However,~~ The FIC has indirect access to a wide range of administrative, financial and other information held by public authorities, such as information on cross-border declarations and

seizures, criminal records, tax records; real estate and supervisory information. Where information is required from another government agency such as EOCO or Ghana Police Service, this will normally be done by letter, as the Centre does not have direct access to records and other information held by public authorities and vice versa. The Centre informed the assessors that the turnaround time for the provision of information requested by the FIC is usually within three days, only in a few occasions have information requested by the FIC been delayed (FIC referred to the AWUDU ANYAScase). In addition, the Centre has direct access to open sources and commercially available databases (such as World-Check). The assessment team noted that FIC makes effective use of various sources of information for the purposes of its analysis of STRs. In general, information accessed from public authorities like cross border declarations, tax information, supervisory information are used by the FIC to enrich analysis of STRs, leading to the production of quality financial intelligence or development of strategic products. For instance, the FIC provided an example of a case where information it accessed and utilized from the Customs led to a crack down on a company operating in the Free Trade Zone that wanted to evade tax. The FIC informed the assessment team that the Centre is being considered for inclusion in the next phase of e-government project which will enable it to have direct access to databases of public authorities. No time frame was given in this regard. It is the view of the assessors that, the manual nature of the current procedure can slow down the analysis process to some extent, although the FIC indicated that agencies normally respond to requests quite quickly.

100 The FIC has powers to directly obtain additional information from accountable institutions, when conducting analysis of STRs and has applied these powers effectively. The Centre regularly uses these powers when undertaking its analytical work on receipt of an STR, and can request information from any accountable institution regardless of whether such institution submitted the original STR. Accountable institutions are legally required to put in place systems, including appointment of an Anti-Money Laundering Reporting Officer (AMLRO) to fully and rapidly respond to enquiries and requests for information sought by the Centre. The Centre indicated that financial institutions generally respond to requests and enquiries promptly.

Table 3.2 Number of Request for additional information made on AIs by FIC

Sector	Year					
	2011	2012	2013	2014	2015	2016*
Banking	113	314	313	275	342	174
Insurance	0	0	1	0	1	0
Securities	0	0	0	0	1	0
Other Financial Institutions	1	15	23	22	16	8
DNBPs[18]	0	0	1	0	0	0

*January –June 2016

[18] Information was provided by a lawyer. See Table 5.2

STRs received and requested by competent authorities

101 The FIC acts as a central agency for receiving STRs and a broad range of other reports and information in relation to ML/TF. The FIC receives STRs (quality varies across sectors), CTRs, Electronic Currency Transaction Reports, Currency Declaration Reports, and other reports and information from financial institutions, DNFBPs and relevant authorities[19]. No TF related STR has been filed to the FIC. This may be partly explained by the low incidence of terrorism in Ghana, difficulties in identifying TF related STRs by accountable institutions, and the fact that TF activities mostly involve cash. In general, the FIC stated that the reports it receives are of high quality and are used to support its operational and strategic analysis functions particularly in determining trends and patterns. With respect to STRs, the FIC indicated that the quality of reporting has improved over the years, notably as a result of its efforts independently and collaboratively with other sector regulators, as well as, commitment of some of the accountable institutions. For instance: (i) the FIC has, in collaboration with BOG, SEC and NIC issued sector-specific AML/CFT Regulations which provide clear guidelines to accountable institutions on identification and reporting of STRs (although the regulations need review to incorporate the outcomes of the Ghana NRA), (ii) majority of the private sector representatives met during the onsite, especially financial institutions, have good understanding of their STR reporting obligation (although the degree of understanding varies among the sectors), and (iii) the banks which provide the bulk of STRs (see breakdown of STRs filed by local and international banks in Table 5.2) usually undertake a structured special review process (in line with guideline from the BOG and FIC) before deciding whether to submit an STR to FIC to ensure reports filed are of good quality. Also, the large number of statutory reports, especially CTRs that the FIC receives constitutes an important source of information which has allowed the Centre to detect unusual transactions, establish links between suspected persons and/or detect bank accounts and other assets held by these persons. It is important to state that the FIC does not have the mechanism to receive reports (STRs, CTRs, and other reports) automatically into its portal. Thus, reporting institutions send data to the Centre through electronic devices or via secure email. The FIC stated that, in few occasions some STRs were rejected because they do not specify the reasons for suspicion. The affected institutions were required to provide the necessary information and resubmit the STRs to the Centre. Types and number of reports received by the FIC are presented in Table 3.3 below.

Table 3.3 Types and Number of Reports Received by FIC

Type of Report	Year					
	2011	2012	2013	2014	2015	2016
STRs	137	375	356	310	369	183
CTRs	0	433,750	1,256,404	2,110,166	2,679,443	914,908
Electronic Currency Transaction Reports	-	-	5875	369,638	483,643	164,816
Reports on PEPs	-	-	1178	1493	1009	946
Currency Declaration Reports	0	113	275	301	360	196

[19] See Table 5.3 for breakdown of types of reports filed to the FIC by AIs

Type of Report	Year					
	2011	2012	2013	2014	2015	2016
Others	23	47	19	11	9	4

102 STRs filed to FIC are mostly by FIs. The bulk of the STRs (at the FIC) are filed by banks[20], a limited number is filed by NBFIs, insurance and securities operators while only one STR has so far been filed by DNFBPs[21] despite the high ML risk that the sector faces. The insignificant number of STRs filed by DNFBPs is largely explained by the lack of designated supervisor for the sector, the absence of robust sector specific regulatory framework, lack of supervision and limited outreach and training to the sector. On the whole, the one STR from the DNFBP sector limits the scope of financial information received by the FIC and the depth of analysis it can do, with adverse implications on national AML/CFT efforts. Given the risks associated with this sector, the poor reporting of STRs by DNFBPs is of great concern. Thus, it is important that the FIC collaborates with the Gaming Commission, Minerals Commission and relevant SRBs to undertake further outreach to the DNFBPs regarding their reporting and other obligations to ensure an appropriate flow of financial intelligence.

Operational needs supported by FIU Analysis and Dissemination

103 The FIC's analytical and data-mining tools are adequate; however, more sophisticated tools are required to enhance analytical capabilities of the Centre. In performing its analytical function, the FIC relies on IT system /analytical tools, including Excel and IBM 1'2 Notebook for mapping. These tools facilitate processing of intelligence developed by the FIC. The assessors were informed that the Centre is in the process of acquiring modern software or more sophisticated analytical tools to enhance its analytical capabilities and operational efficiency.

104 Intelligence products generated by the FIC are of high quality and meet the operational needs and expectations of competent authorities. All the LEAs met by the assessment team acknowledged the value and usefulness of FIC's intelligence reports. Five (5) of the financial intelligence report disseminated by the FIC to LEAs have resulted in ML convictions (see Table 3.6 below). The Centre has a multi-disciplinary team of highly trained, skilled and experienced analysts who are able to develop good quality financial intelligence on the basis of information the Centre has, and supplemental information it requests from accountable institutions, other relevant authorities (EOCO, Police, Customs and other agencies), as well as, information obtained from foreign counterparts, open sources and commercial databases. Though there is a Standard Operating Procedure that provides general guidance to the analysts, in practice, there are no strict criteria which analysts must follow when performing analysis. The first step is always to determine whether there is a link between the case and persons already known to the FIC. The analysis is generally based on the explanation of the suspicion in the STR and the experience of the analyst. Preliminary intelligence packages developed by analysts are subject to further discussion with the Chief Executive of the Centre before finalization. Based on its analysis and assessment, if the Centre has reasonable grounds to suspect that transactions are

[20] See breakdown of STRs filed by local and international banks in Table 5.2

[21] The STR was filed by a lawyer

suspicious, it disseminates the report to the appropriate authority. See statistics of STRs analyzed and intelligence disseminated domestically by the FIC in Tables 3.4 and 3.5 below.

Table 3.4 STRs Received and Analysed by FIC

STRs		YEAR							
		2010	**2011**	**2012**	**2013**	**2014**	**2015**	**2016***	**Total**
Total STRs Received	ML	71	137	375	356	310	369	183	1,801
	TF	0	0	0	0	0	0	0	0
No. of STRs Analysed		71	137	375	356	310	369	183	1,801

*January-June 2016

Table 3.5 Intelligence Disseminated by FIC

STRs		YEAR							
		2010	**2011**	**2012**	**2013**	**2014**	**2015**	**2016***	**Total**
Intelligence Disseminated (Domestic)	Spontaneous	25	57	254	225	86	78	36	761
	Upon Request	-	-	-	-	-	-	-	
Agency/Institution		**Breakdown of Domestic Disseminations**							
Economic and Organised Crime Office		20	55	237	149	2	1	5	469
Bank of Ghana		2	3	6	8	9	8	3	39
National Security Council Secretariat		5	11	167	240	66	33	12	534
Ghana Revenue Authority		0	0	0	42	22	22	12	98
Criminal Investigation Department		1	1	1	8	10	31	8	60
Narcotic Control Board		0	0	0	1	3	6	1	11
Bureau of National Investigation		7	3	4	6	37	26	7	90

* January – June

105 The FIC pro-actively and reactively[22] disseminates intelligence products to relevant authorities. Dissemination is largely dependent on the reasons for suspicion, based on the STR and/or other information received. Financial intelligence disseminated by the FIC is used in the pre-investigative phase of ML/TF, investigation of associated predicate offences and parallel financial investigations. This process was confirmed by the assessment team in discussions with

[22] Reactive dissemination takes place when LEAs request FIC for specific information on an ongoing investigation(s) while proactive dissemination occurs when the FIC disseminates intelligence spontaneously (i.e. on FIC's own initiative)

the authorities on-site. The FIC has also shared intelligence with Customs which resulted in a crackdown and recovery of taxes from a company operating in the Free Trade Zone that wanted to evade tax. FIC stated that their major challenge has been the failure of LEAs to initiate prosecution on most of the intelligence disseminated to them. Statistics provided showed that FIC disseminates mostly to the National Security Council Secretariat, EOCO and the Ghana Revenue Authority (see Table 3.5 above). The main predicate offenses highlighted in the financial intelligence disseminated to LEAs relate to cybercrime, fraud, corruption and bribery, tax evasion, and drugs-related offenses. These predicate offenses are in line with the main domestic sources of proceeds of crime identified in the NRA. The FIC's disseminations have assisted LEAs in their ongoing investigations in a number of instances, such as freezing and confirmation of suspicious transactions and liaising with other stakeholders to ascertain the validity of vital documents. However, the FIC and some LEAs stated that the major obstacle to successful investigations of disseminated intelligence relates to the difficulty in 'follow the money' overseas and identifying the true perpetrator in such cases as some FIUs outside the region hardly provide feedback on requests made on them.

Table 3.6 Results of Disseminations by FIC

	Results of Disseminations by FIC						
	2010	**2011**	**2012**	**2013**	**2014**	**2015**	**2016***
Investigations Prompted by FIC Intelligence							
Total Number of ML Investigations prompted by FIC's intelligence	25	57	254	225	86	78	36
Number of Investigations targeting TF	-	-	-	-	-	-	-
Total Number of Investigations relating to Predicate offences prompted by FIC's intelligence	-	-	-	-	-	-	-
Outcomes of Investigations Prompted by FIC Intelligence							
Total Number of prosecutions facilitated by FIC Intelligence	-	1	-	3	6	6	-
Total Number of ML convictions facilitated by FIC Intelligence	0	0	0	0	0	3	2
Total Value of confiscations facilitated by FIC Intelligence	-	-	-	-	-	-	-

*January - June

106 The FIC's intelligence disseminated to LEAs can only be used as a source of information to develop evidence and trace criminal proceeds. A number of LEAs are well-equipped to do this effectively with some of them having specialized units with expertise in conducting financial investigations, and have access to a broad range of financial information, as noted earlier.

107 Strategic products of the FIC are robust and have helped to improve understanding of ML/TF trends, patterns and techniques in Ghana. The Centre conducts strategic analysis from

resources in its internal database and other sources, focusing on four parameters[23] (customers, products, delivery channels, and geographical location). Its strategic products address emerging and contemporary ML/TF issues, which have assisted greatly in improving understanding of ML/TF trends, helped to put the indicators and suspicions reported by the accountable institutions into context, and also enables FIC to play a preventive awareness-raising role, and to advise government, policy makers, other relevant authorities and accountable institutions to take appropriate measures to mitigate ML/TT risks. The FIC informed assessors that its strategic products led to the: (i) establishment of a Cybercrime Unit in the Police to deal with the proliferation of cybercrimes such as Romance Fraud, Gold scams, Email Hacking, and Impersonation, and (ii) the upgrade of the Payment Systems Unit at the BOG to a full-fledged Department. Strategic products produced by the FIC include the age bracket of subjects, the kind of company(ies) established to perpetuate the crime, the nature of business, the jurisdictions where those tainted monies are coming from among others. The outcome of strategic analyses is included in the annual reports of the FIC in terms of ML/TF trends and techniques.

108 The FIC is operationally independent and is not subject to undue influence. The FIC affirmed that its operational independence is guaranteed and the tenure of the Chief Executive Officer is secure as long as he does not violate any law. This is substantiated by the fact that since inception of the Centre, the tenure of the CEO has never been truncated. Assessors were concerned that the President is solely responsible for the appointment and removal of the FIC Chief Executive Officer and this could impact on the operational autonomy of the FIC. The authorities allayed this concern by stating that the appointment of the CEO by President is a constitutional requirement (Article 195 of the 1992 Constitution) and that there has never been any instance of executive interference in the operations and management of the Centre. The evaluation team notes that the CEO of the FIC is the final authority on all operational matters, including those relating to intelligence dissemination and requests for further information. The CEO has sufficient authority and autonomy regarding the deployment and management of the Centre's human, financial and material resources.

Cooperation and exchange of information/financial intelligence

109 The FIC and other competent authorities cooperate and exchange information regularly and effectively. The flow of financial intelligence and information between the FIC and LEAs/other competent authorities (see Tables 3.1 and 3.5 above) confirms this fact. The FIC has signed MOUs with some competent authorities to facilitate cooperation, especially in information exchange. Though the working relationship and level of operational cooperation between the FIC and law enforcement agencies is sound, the Centre would like more regular feedback by law enforcement agencies on the results of its disseminations to the LEAs.

110 Mechanisms to support cooperation and exchange of information exist and are functional but could be enhanced through regular meetings. LEAs meet regularly in various forums to coordinate cooperation and information sharing. The most effective platform for cooperation and exchange of financial intelligence is LECOB (the operational arm of the AML/CFT Inter

[23] FIC Annual Report 2015

Ministerial Committee) which includes the FIC as member. The NRA noted that the meetings of LECOB are not regular. This could limit operational coordination and co-operation on a day-to-day basis. A regular meeting of LECOB will enhance operational cooperation and information exchange between and amongst LEAs, including the FIC.

111 The FIC has measures to ensure security and confidentiality of information at its disposal, however, enhancement is required with respect to dissemination procedures. The offices of the FIC are adequately secured to prevent unauthorized access. FIC employees are bound by the confidentiality provisions of relevant laws and Oath of Secrecy which, if breached, can lead to disciplinary proceedings. All documents, reports and information received by the FIC are securely stored in the FIC office in secured cabinets. The FIC has its own database which is password protected. Reports (e.g. STRs, CTRs, ECTRs) received by the FIC are entered in the database by FIC staff, while an IT security policy exists. The measures taken for securing and protecting the confidentiality of the information at the disposal of the Centre are considered adequate by the assessment team. The FIC assured that adequate measures have been put in place, including the designation of AMLRO within reporting institutions and Liaison Officers within LEA/competent authority, to guarantee security and confidentiality of reports being filed with the FIC and intelligence disseminated to LEAs, however, the assessors are concerned that the hand-delivery of financial intelligence reports to LEAs could result in unauthorized access and may pose security risk while the manual submission of some STRs may undermine the confidentiality of the reports and affect the confidence of reporting entities on the FIC.

112 There are mechanisms and processes in place to monitor the confidential use and security of information exchanged between the FIC and other competent authorities. The Official Secrets Acts 1962 (Act 101) provides the framework for confidentiality and security of information at the disposal of public officials. So far, no violation of confidentiality has occurred.

113 There is a sound collaborative relationship between private sector industry associations and the FIC which impacts positively on information exchange. Industry associations such as the Compliance Officers Association of Banks have a good working relationship with the FIC and this has greatly enhanced access to financial information, and exchange of such information with other competent authorities.

114 Information exchange between the FIC and its foreign counterparts is effective despite a few challenges. International information exchange with counterpart FIUs is made through the Egmont Secure Website (ESW) for all Egmont members and registered mail for non-Egmont members. For information exchanged via the ESW, the FIC responds within three (3) days for information in its database. Statistics of information exchange between the FIC and other FIUs are presented in Table 3.7 below. Feedback from the FIC during the onsite confirmed the quality and timeliness of international cooperation from most of the FIUs. Similarly, feedback from counterpart FIUs show that they are satisfied with the timeliness and quality of responses from the FIC. In addition, LEAs are able to access foreign financial intelligence by making requests through the FIC. However, a few of the foreign FIUs, especially within the European Union, do not provide feedback on requests made to them while some of the non-Egmont members are not forthcoming whenever the Centre wants to sign MOUs with them.

Table 3.7 Information exchange between FIC & Foreign FIUs

Year	Number of Information Exchanged Between FIC & other FIUs			
	Requests Made by FIC		Request Received by GFIC	
	Request Made	Response to request made	Requests Received	Response to Requests Received
2010	0	0	1	1
2011	0	0	0	0
2012	13	7	22	22
2013	56	41	5	5
2014	114	84	10	10
2015	156	113	27	27
2016 (Jan-June)	129	99	47	47

Spontaneous Information Exchange							
	2010	2011	2012	2013	2014	2015	2016*
Spontaneous Information sent by FIC to other FIUs	0	1	17	25	105	80	193
Spontaneous Information received by FIC from other FIUs	0	0	8	5	15	30	121

*January-June

Resources - FIC and law enforcement

115 Overall, the FIC has considerable resources to perform its core functions. The FIC human resource was increased to take into consideration the higher workload, including the coordination of the implementation of AML/CFT regime in the country. The number of FIC staff as at the end of 2015, was forty-one (41) compared to twenty-eight (28) in 2014. Thirteen (13) new staff were recruited in July 2015 and were given adequate pre-engagement training in various fields, though two (2) resigned in 2015[24]. The FIC staff are generally well trained and most of the staff work as analysts. However, it is not clear if apart from EOCO, other LEAs have sufficient human resources for AML/CFT purposes, and if they are also adequately trained. In terms of budget, the FIC and LEAs have yearly budgetary allocation from government. However, no information was provided on the adequacy of their budgetary provisions except the FIC.

116 Overall Ghana has achieved a moderate level of effectiveness with IO 6.

[24] FIC Annual Report, 2015

Immediate Outcome 7 (ML investigation and prosecution)

117 The AML Act, 2008 (Act 749) and its amendments set down adequate framework for investigation and prosecution of money laundering offence in Ghana. A number of competent authorities conduct investigation on money-laundering offences. These comprise the Ghana Police Service (which by virtue of Article 200 of the 1992 Constitution of Ghana, can investigate all crimes), the Economic and Organized Crime Office (EOCO), the Bureau of National Investigations, accredited to investigate very high profile matters of national interest and the Narcotic Control Board (NACOB), charged with the responsibility of investigating drugs offences. Other Agencies such as the GRA refer money laundering cases to any of these agencies depending on the nature of the offence. The EOCO is however, specifically designated by the EOCO Act 2010, to handle economic and organised crime cases including money laundering and terrorist financing.

ML identification and investigation

118 All law enforcement agencies in Ghana are able to pursue money laundering offences if identified in the course of investigating related predicate offences.

119 The EOCO is resourced to investigate ML and has a total of four hundred and thirteen (413) personnel, of which thirty (30) are attached to the Financial Crimes Unit. Investigators in EOCO have received training including training in financial investigation and cybercrimes investigations. The Fraud Unit of the Police investigates predicate offences and financial crimes. Although there is expertise within the Unit, the Police will normally rely on the expertise of EOCO when handling a complex case. EOCO also shares its expertise and collaborates with other LEAs. There is the possibility of setting up a task force of sectorial investigators in more complex cases although Ghana has not handled any complex money laundering case.

120 The authorities stated that the investigation of ML is integrated in the investigation of the predicate offence. Authorities have identified and investigated cases of self-laundering, standalone ML offences, foreign predicates and third party laundering. However, most of the ML convictions were obtained in cases where a predicate offence was tried together with the ML offence. Furthermore, identification and investigation of third party laundering and foreign predicates are limited.

121 A number of ML cases originate from police investigation of predicate offences. The FIC has generated multiple intelligence reports since its establishment in 2010. Authorities indicated that the 761 intelligence report disseminated to LEAs by the FIC (see Table 3.5 under IO6) were used in the investigation of ML and predicate offences. In a few instances, money laundering investigations have also been opened on the basis of media reports. The Ghana Revenue Authority (GRA) also refers cases to the EOCO for investigation. Between 2012 and August 2016, the GRA referred 64 potential money laundering cases to the EOCO. The Customs normally refer suspected cases of ML to the police for investigation even though the Currency Declaration Reports from Customs have not been used to identify ML activity. The LEAs

including the Ghana Police Service and the EOCO do not have comprehensive statistics on money laundering cases investigated. Box 2 below illustrates how ML was identified in one case.

Box 1: ML Case

Mr. X, a Ghanaian resident, opened a bank account on 9th April, 2008. Several remittances were made to the account from various remitters contrary to its mandate. A sum of nine thousand nine hundred and ninety-three Euros (€ 9,993.00) sent by the victim of fraud in December, 2012 was intercepted by the bank with a view to verifying the true nature of the transaction. Mr. X's negative response and threats to kill the bank officials if the inflow was not credited into his account heightened the bank official's suspicion. Authorities in the country of the victim (remitter) were contacted and the victim disclosed that she met Mr. X who falsely claimed that he was a civil engineer from America working on a road project in Ghana. It was established that the Mr. X lured the victim into lending him a certain amount to pre-finance the purported road project.

Mr. X was found guilty of ML and fined Four Thousand Penalty Units or in default, four years IHL on each count. A restitution order of the suspended remittance still held by the bank was made in favour of the victim.

122 Although, a number of investigative tools are available to investigate money laundering offences, the NRA noted that there is a lack of capacity among investigators. The competent authorities that met with the assessors during the on-site visit however, stated that investigators were trained soon after the gap was identified. A total of one hundred and fifty-five (155) Police personnel, seventy (70) military personnel and eighty (80) Anti-Money Laundering Reporting Officers (AMLROs) were trained. Generally, LEAs have some appreciation of the need to identify and investigate cases of ML, including stand-alone offences and self-laundering, when handling a proceeds generating offence. Even so, it appears that LEAs in Ghana are more focused on pursuing predicate offences than on identifying ML when dealing with proceeds generating offences. This focus on predicate offences is exemplified in the Sim Box Fraud case[25] and salary padding cases[26] reported in the NRA which resulted in the loss of public funds estimated at eight billion fifty-two million United States Dollars (USD$8, 052,000,000.00). The charges brought on the two cases did not include money laundering. This suggests that LEAs find it more difficult to pursue ML in more complex cases. Nevertheless, the practice of identifying and initiating ML investigation from predicates, the relatively easy access to relevant financial intelligence and other information required for ML investigations and co-operative investigations between EOCO and other LEAs are main strengths of Ghana's legal system.

Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies

123 The Ghanaian authorities are making efforts to prioritise and allocate resources for combating ML activities. According to the NRA, the prevalent predicate offences are stealing, bribery & corruption, tax evasion, drug trafficking and fraud. Amongst these, the greatest

[25] Illegal terminal used in terminating and routing international calls, as though they were local calls

[26] The insertion of non-existent public sector employees onto the government payroll

proceeds generating crime were bribery and corruption, fraud and tax evasion. The NRA noted that cybercrime was a main concern. Ghana set up the EOCO as a specialized unit to deal with economic and organised crime including money laundering. Also, the Ghana Police Service recently established a Cybercrime Unit within the police to deal with the incidence of cybercrime in Ghana. One of the successful investigation and prosecution of a cybercrime case by the Police is provided below.

Box 2: ML Case

Three persons were charged on the offences of conspiracy to defraud, defrauding by false pretences and money laundering. One of the accused persons contacted the victim, a self-employed person who was resident abroad, on a dating website and defrauded the victim of the total sum of AUS$ 448,027 under the pretext that he had shipped some containers of goods and requested for financial assistance to enable him clear the purported containers. The three accused were found guilty on all the three counts and jointly sentenced to imprisonment of four years in with hard labour and restitution in the sums of GHc20,000 and USD$10,000.00 that remained in their respective accounts were ordered to be returned to the victim within twenty-one days (21) days.

Table 3.8 - Statistics on ML convictions

	2014	2015	2016*
ML/TF Convictions not arising from STRs	2	3	1
ML/TF Convictions arising from STRs		3	2
Total	2	6	3

2016* January - October

124 Table 3.8 above indicates the number of ML convictions. The prosecution authorities indicated that there are 11 convictions on ML. The Ghanaian authorities pointed out that 21 ML cases were pending before the courts at the time of the on-site visit. The authorities also stated that a significant number of ML cases related to cybercrime could not be concluded because the victims declined to testify. There is also prosecutorial discretion in the selection and prioritization of cases, including the decision to potentially carry ML cases forward. However, the prosecutors that the assessors met with during the on-site demonstrated, appreciable expertise on ML matters. Ghana indicated that prosecutors considered, amongst other things, the weight of evidence, alternative charges or courses of action available and the likelihood of conviction when deciding which charge to proffer in a potential ML case. The discretion of the judges to convict on any of the offences charged or even on a lesser offence also impacts on the number of ML convictions. Many of the competent authorities stated that their broad objective was to seek the best possible outcome in a potential money laundering case and competent authorities tend to prefer a conviction on the predicate offence which sometimes carries a stiffer sentence. Other measures such as confiscation, restitution or fines are also pursued. For example, the tax authority indicated that imposing administrative penalties in which defaulters pay up to three times the amount of the taxes due is a preferred option. The NRA suggested that there was a high

incidence of corporate tax evasion but no money laundering charge has been brought against a legal person. Also, in corruption matters competent authorities seem more focused on termination of employment and recovering the proceeds of crime than pursuing a money laundering conviction.

125 Ghana established the Financial and Economic Crime Court, a specialized division of the High Court to handle cases on Economic and Financial Crimes. The court is well-resourced. Specialized Judges preside over cases and the court typically handles ML cases. Although, investigations and prosecutions of ML are consistent with some of the risks identified, the number of ML cases handled so far is not consistent with the apparent capacity of the Court.

126 While the money laundering convictions obtained pertained mostly to fraud and thus, to some degree reflects Ghana's risk profile, Ghana has not adequately prioritized ML in the investigation of predicate crimes. The ML risks profile in Ghana is illuminated by the NRA report which states that "A key conclusion drawn from the African Peer Review Mechanism Report of 2005 was that corruption remains prevalent in all spheres of Ghanaian society". Similarly, the Auditor-General's Annual report submitted to the Public Accounts Committee of Parliament over the last few years, suggests massive misapplication of Public funds by public institutions". The fact that no ML conviction has been recorded in these cases despite these indicators is a major concern.

Types of ML cases pursued

127 Ghana has prosecuted and obtained convictions in eleven money laundering cases particularly self-laundering cases. The range of ML prosecutions and convictions does not include complex cases or involve foreign predicates or third party laundering (including professional launderers). The LEAs' focus does not appear to be on third party money launderers. Besides, the weak implementation of the regulatory framework for DNFBPs limits law enforcement officers' ability to investigate and prosecute money laundering activities that occur within the sector particularly third party laundering by gatekeepers.

128 In all the ML cases reported, the court convicted the accused persons on both the money laundering and the predicate offence. The Assessors noted that there are difficulties in establishing a case through circumstantial evidence. In one case[27], the accused who had impersonated another person and defrauded the complainant of (USD$20,000.00), was acquitted and discharged and the proceeds of crime remained in his possession because the complainant, who was a non-resident, was not willing to travel to Ghana to testify and did not accept to give her testimony through the video link. This was a potential standalone ML case which could have been successfully tried by the courts in accordance with Ghana's AML law. However, the judge in that case opined that a predicate offence must be established. Also, there appears to be a low number of prosecutions and convictions when compared with the number of ML investigations initiated. Another example of a ML case successfully prosecuted is indicated in the box below.

[27] The Republic vrs. Kwame Chodolo (FTRM/167/13)

Box 3: ML Case

The accused person, made contact with the victim on a dating website and defrauded the victim of One Hundred and Twenty Thousand USD dollars (USD$120,000.00). The victim, a 42-year old widow living in the USA stated that the accused person pretended to be a 54-year old American Timber Merchant resident in Germany and Ghana. He informed her that he wanted to register a company for her in Ghana and have a partnership deed with her. She sent US$49,000 to him through an account he opened at a local bank. Another amount of US$49,000 was sent into the same account. The accused also had a local currency account at the same bank. He made other demands for money and used various names and gave different excuses for using such names to send and receive the remittances. He withdrew USD$ 20,000.00 and bought a Ford Escape Four Wheel Drive Vehicle.

The two accounts were frozen in the course of the investigation. At the end of the trial, the accused was found guilty and sentenced to 12 months IHL on the predicate offence and twelve (12) months imprisonment plus 2000 Penalty Units[28] on the second count of ML and thirty-six (36) months imprisonment IHL in default. The vehicle was also confiscated.

129 A useful feature in Ghana AML/CFT system which can be instrumental in the investigation of ML is the power of the EOCO to obtain relevant information from entities including financial institutions without going through usual court proceedings which tends to delay and hinder the investigation process in most jurisdictions. The Executive Director of EOCO or his representative can request for such information directly from the financial institution. The police and other agencies are able to leverage on this provision of the EOCO Act due to the co-operation between them. In addition, the Financial and Economic Crimes Court usually issues provisional freezing orders with a view to facilitating investigations. The recovery of proceeds of crime is a priority for the Financial and Economic Crimes Court but the court can only rely on the strength of the evidence provided by the LEAs. The court's policy on speedy trials prescribes delivery of the court's judgement within six weeks after the closing of both the prosecution and defence.

130 Following sensitization and training of relevant policy makers and criminal justice personnel in 2013, Ghana intensified efforts to prosecute ML and has successfully prosecuted a modest number of cases. Nonetheless, Ghana has not yet built adequate capacity within the various LEAs and other competent authorities to enable them investigate and prosecute different types of ML cases.

Effectiveness, proportionality and dissuasiveness of sanctions

131 Ghana provided data and information on the sanctions imposed for ML. So far, there has not been any ML prosecution against a legal person so the effectiveness of ML sanctions against legal persons cannot be tested. The sentence imposed for ML range from one year to five years in most cases. However, the authorities stated that in one case, consecutive sentences on ML, the

[28] 2000 Penalty Units is equivalent to $6000

predicate and other related offences resulted in a twenty-year sentence. It is difficult to assess whether the sanctions applied in ML cases are effective, proportionate, and dissuasive, because of the small number of convictions obtained so far.

132 Judges in Ghana are guided by a sentencing guideline and a minimum and maximum penalty is usually prescribed for an offence. The law prescribes a fine of not more than five thousand penalty units or a term of imprisonment of not less than twelve months and not more than ten years or both for ML offences. It appears that the courts have mainly applied the lower end of the range of sanctions, although, the cases tried were not complex and the amount of money involved were in general, not huge sums. To this extent, the statistics represent a somewhat effective sanction regime that is proportional and dissuasive. However, given the types of predicate crimes that have been committed and the fact that Ghana indicated in the NRA that cybercrime is a major concern, Ghana's judicial authorities should consider imposing more stringent sanctions including both stiffer fines and longer terms of imprisonment in these cases to prevent recidivism and mitigate the risk of escalation of these crimes.

Alternative criminal justice measures

133 As earlier noted, authorities consider the best possible outcome at an early stage and may bring an action on the predicate instead of the ML offence. Authorities are also able to pursue asset recovery instead of an ML conviction. For example, in instances where there is a suspicion of ML and the suspect absconds, the law allows confiscation of the criminal property. It could not be established whether these alternative criminal justice measures apply only when a ML conviction cannot be obtained.

134 Ghana has achieved a moderate level of effectiveness for IO.7

Immediate Outcome 8 (Confiscation)

135 Ghanaian law clearly contemplates taking the profit out of crime. The policy to pursue confiscation was encapsulated into the Economic and Organised Crime Act, 2010 (Act 804) (EOCO Act). The Economic and Organised Crime Office was set up to investigate ML/TF and other transnational organised crimes. The EOCO Act makes provision for seizures, freezing, confiscation and pecuniary penalty orders in these cases. There are also adequate criminal and administrative enforcement tools to deprive perpetrators of tax crimes of illicit assets. The Ghanaian authorities informed the assessment team that confiscation is considered at the inception of investigation in every case and law enforcement officers generally have their eyes on the assets. The authorities also noted that the strict requirement for top government officers to declare their assets before taking the oath of office is an indication that recovery of illicit assets by politically exposed persons is a priority. Notwithstanding, the tools and measures in place are yet to be fully utilised by the authorities.

Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective

136 Ghana's legal framework covers confiscation of illicit proceeds, instrumentalities used in the commission of a serious offence and property of equivalent value. The legislation does not extend to instrumentalities intended to be used in ML or predicate offences. The Narcotics (Control, Enforcement and Sanctions) Act, (Act 236) prescribes confiscation of proceeds and instrumentalities used in the commission of narcotic offences.

137 The office of the Director of Public Prosecution (DDP) is responsible for initiating proceedings on confiscation. The EOCO and other LEAs collaborate with the DPP's office on confiscation matters. The GRA is responsible for tax matters and typically imposes administrative penalties (recovery of the tax plus surcharge) for tax evasion. Confiscation of the proceeds of tax crime is handled administratively and criminal proceedings are scarcely initiated.

138 The assessors were informed that the EOCO has specialized financial investigators who typically conduct financial analysis to follow the money and are able to seize assets that are proceeds of crime or instrumentality of crime on mere suspicion. The police and other LEAs generally seek assistance from EOCO when dealing with proceeds generating crimes. Nevertheless, the NRA indicates that there is a dearth of specialized financial crime investigators in Ghana. Prosecutors and LEAs appear to have a general awareness of the need to follow the money and deprive the criminal of the proceeds of crime and Law Enforcement Agencies have standard operating procedures (SOP) which provide guidance on confiscation. This notwithstanding, the "follow the money principle" did not seem ingrained and there was no evidence to demonstrate that recovering the proceeds of crime is an institutionalized policy objective within the criminal justice system. Particularly, there were no policy documents or statements that demonstrated that confiscation was a key priority. There was also no evidence that confiscation was actively pursued and monitored by the LEAs. The level of confiscation in Ghana is very low thus, assessors were of the opinion that LEAs, prosecutors and judges did not focus enough on confiscation either as a goal in itself or as an integral part of the mechanisms available to deprive criminals of their illicit proceeds.

Table 3.9 – Statistics of Confiscations by EOCO

Year	Frequency	Dollars	Pounds	Euros	GH Cedis	Others	Non-monetary Assets
2011	10	3,512,722	-	-	-	-	3 cars
2012	26	328,200	0	31,000	358715	11,980	
2013	51	460,606	40,000	161,931	103,780	0	3 cars
2014	11	197, 374	-	0	32,232	0	
2015	1	3,800	0	0	0	2,450 Chf	1 car; 2 laptops
2016	0	0	0	0	0	0	0

Table 3.10 Statistical Report on Confiscations Handled by Economic and Organised Crime Office

Year	2011	2012	2013	2014	2015	2016	Total
Number of confiscations	4	6	52	12	1	-	75

139 The EOCO Act allows competent authorities to confiscate properties of equivalent value. However, the provision has never been successfully applied in any case. In the few cases where attempts were made to confiscate properties of equivalent value, third party claims halted the proceedings. This shortcoming may be due to inadequate financial investigation and it may be necessary for Ghana to enhance financial investigations to facilitate successful confiscation in these types of cases.

140 The NRA indicated that tax evasion was rampant and is one of the most likely forms of predicate offences in the country. The figures provided by the authorities[29] showed that from 2013 to 2015 an amount of GH₵666,153, 532. 83 (US$ 175,303.561.00 equivalent) was evaded in tax by 3513 medium taxpayers nationwide (this figure excludes small and large taxpayers). Statistics also approximate the yearly amount of tax evaded by large taxpayers as being three (3) times higher than the medium taxpayers. Thus, the amount of tax evaded by large taxpayers in 2013, 2014 and 2015 was estimated at GH₵5,995,381,795.47 (US$ 1,577,732,051.43 equivalent). The NRA further reported that tax disclosures by companies in Ghana are generally low and noted incidences of trade mis-invoicing (mostly under invoicing at the ports) and VAT fraud.

Table 3.11 Tax Evasion – GRA

YEAR	NUMBER OF CASES	AMOUNT EVADED (₵)
2013	995	184, 401, 273.24 (US$54,235,668.60 Equivalent)
2014	1136	222, 372, 612. 22 (US$58,519,108.47 Equivalent)
2015	1382	259, 379, 647. 83 (US$68,257,802.06 Equivalent)

141 The GRA generally has powers to prosecute and is able to seize property through an order of attachment made by court. The NRA however, noted that the GRA's administration of sanctions is low and there are very few cases of prosecutions to recover tax revenue. Despite the substantial sums of money involved in tax crimes, the GRA reported only 21 cases to EOCO between 2013 and 2014. The GRA informed the assessment team that recovery of unpaid taxes through administrative processes was the preferred option as the surcharge is three times the amount of tax due. The GRA did not provide statistics on the amount of recovered taxes and the surcharges.

[29] As reported in the NRA

142 Ghana has noted some developments in its effort to tackle tax evasion. The GRA has set up a special investigations unit with the sole mandate of conducting investigations for criminal prosecutions in the law courts. The GRA has also teamed up with the Registrar General's Department to issue new Tax Identification Numbers (TIN) to individuals and Companies at the point of registration of their companies to ensure effective monitoring. The country expanded its network of partners for information exchange on tax matters by ratifying the Convention on Mutual Administrative Assistance in tax matters in 2015.

143 In the case of drug related offences, the authorities have the powers to confiscate illicit proceeds and instrumentalities used in the commission of the offence including the property where the drugs are kept or any means of transportation used to convey the drugs. The Ghanaian courts made such an order for confiscation of a shipping vessel in the case of M.V. Attiah.

Confiscations of proceeds from foreign and domestic predicates, and proceeds located abroad

144 The legal framework permits confiscation of proceeds of crime from both domestic and foreign predicates, including proceeds located outside Ghana. The Mutual Legal Assistance Act, 2010 (Act 807) provides for sharing of confiscated assets. The authorities actively respond to foreign requests for confiscation or freezing of proceeds whether or not the funds relate to a predicate committed in Ghana. Ghana provided an example of a case where funds available in accounts in Ghana were repatriated and a percentage retained by mutual consent. The subject was convicted in the UK and EOCO was requested to trace and restrain assets in satisfaction of the confiscation order by the British court.

145 Illicit proceeds from domestic predicates are treated in a number of ways. The mechanisms utilised include provisional freezing measures (the courts frequently utilise provisional freezing measures to prevent dissipation of assets), confiscation, pecuniary penalty orders, administrative tax surcharges and restitution. In some cases, rather than freezing the funds, financial institutions have returned funds to the foreign jurisdictions where the funds originate when the financial institutions were not satisfied that the transfer was for a legitimate purpose or when there was a suspicion of fraud. Ghana is yet to implement a comprehensive non-conviction based confiscation regime[30]. Under Section 35 (1-7) of the Courts Act, 1993 (Act 459) there is room for plea bargaining although the provision is restricted to offences that result in economic loss, harm or damage to the state or a state agency. In such cases, the accused could inform the prosecutor if he or she admits the offence and is willing to offer compensation or make restitution and reparation for the loss, harm or damage caused. Thus, in some cases, plea bargaining has been utilised in matters relating to public sector corruption. Ghana did not provide the total sums of money or other assets recovered in these types of cases.

146 The authorities do not have comprehensive data on the number of confiscation of proceeds from foreign predicates and proceeds located abroad as well as the number of cases

[30] Ghana has attempted a non-conviction based confiscation in court without success, though it has in some instances confiscated property without conviction where for instance sums of money are identified in an account and the purported owners of the account have absconded. Ghana noted that the EOCO Act has never been used to confiscate property without a conviction even though sections 46(1) & 50 of the EOCO Act provides such powers to the courts. It appears that the courts have not interpreted this provision in that light. The non-conviction based confiscation contemplated under the EOCO Act only relates to confiscation within the context of a criminal proceeding.

where administrative surcharges have been applied in tax matters and the sums recovered in these cases. It is clear from the number of cases provided by Ghana that confiscation is not being pursued to a large degree. Only the EOCO provided statistics on confiscation. The other LEAs including the police did not provide any statistics on confiscation.

147 Section 65-68 of the EOCO Act sets out the process to manage confiscated property. The Attorney General and Minister of Justice has the ultimate power to manage and dispose of confiscated assets. The courts may authorize the Attorney General to consider and accommodate third party claims and also direct the utilization of the proceeds of confiscated property including granting those institutions that handled the case 30% of the proceeds confiscated. Confiscated sums of money are placed in the consolidated fund. However, in practice, the agency that initiated the case and conducted the investigation manages the asset on behalf of the AG once confiscated. As a result, there is no centralised system to manage assets. The only LEA that has a unit that manages confiscated property is the EOCO. All other LEAs have only been provided guidelines to manage confiscated property. Consequently, there are challenges in managing certain types of assets particularly fixed assets. The assessment team was informed that officials of relevant competent authorities undertook a study tour to South Africa to enhance their capacity in the area of the management of confiscated properties and the process to set up a centralised asset management unit is underway.

Confiscation of falsely declared or undeclared cross-border transaction of currency/BNI

148 The movement of currency across the borders in the West African region poses a high risk of money-laundering due to the porosity of the borders. Ghana has implemented a declaration system with measures to confiscate falsely declared or undisclosed cross-border flow of cash.

149 According to the guidelines provided by the Customs Division of the Ghana Revenue Authority (Customs)[31], persons travelling into or out of Ghana are permitted to carry up to US$10,000 or its equivalent in traveller's cheque or any other monetary instrument and are required to declare the amount to Customs and also complete the BOG Foreign Exchange Declaration Form. Amounts in excess of US$10,000 must be transferred through a bank or authorized agent of the BOG. Where the amount being conveyed exceeds the US$10,000 limit, Customs will seize the entire amount whether declared or not. The obligation as stated above will require almost every passenger to complete a form and proceed to transfer amounts over the threshold through the financial system (an authorized agent of the BOG). This is clearly an onerous burden on the relevant competent authorities and could account for the inconsistent implementation of the declaration system at the various points of entry and exit. The guidelines will need to be revised to make it more workable.

150 Customs transmit the cash declarations to the FIC. Where there is a contravention of the obligation to disclose, Customs are allowed to seize undisclosed funds. In such cases, the Customs will conduct the initial investigation and refer the matter to EOCO. The funds can only be confiscated after a hearing and a court order to confiscate.

[31] http://www.gra.gov.gh/docs/info/customs_guide.pdf

151 As noted in the 1st MER, the requirements of the AML Act and the Foreign Exchange Act are not applied in a consistent manner particularly at the various points of entry and exit and the collection of currency declaration information at all points of entry are still being implemented on an adhoc basis. Thus, Customs' controls on cash flows may not be adequate. Nevertheless, two cases involving undeclared cross-border movement of currency were successfully prosecuted and monies were forfeited to the state. In the Cascante case, the amount of money found in the possession of the defendant at the exit point was over six hundred and fifty-four thousand dollars (US$ 654,000) GHS 2,485,200 equivalent. The total amount was forfeited to the state.

Consistency of confiscation results with ML/TF risks and national AML/CFT policies and priorities.

152 The NRA listed the six most prevalent predicate offences as drug trafficking, theft, bribery, corruption, tax evasion, and fraud. Although, Ghana did not provide an estimate of the size of the illegal economy, the NRA provided an estimate of the sums[32] thought to be laundered from tax crimes. Based on this figure it is clear that the total amount confiscated is not consistent with the estimates of laundered proceeds. The NRA indicated that the amount of illicit proceeds generated by tax crime and corruption are substantial but the amounts confiscated are quite low. Thus, the confiscation results are not consistent with the ML risk. The current national action plan drawn up by Ghana lays out broad measures to facilitate confiscation. Nevertheless, the confiscation statistics do not fully reflect the ML/TF risks. Although, competent authorities reckon that confiscation is a priority, the low level of confiscation does not support this suggestion and the policy objective of the EOCO Act is yet to be achieved.

153 Ghana has achieved a low level of effectiveness for IO.8

[32] Between 2013 and 2015, a sum of GH₵666,153, 532. 83 (US$ 175,303.561.00 Equivalent) was evaded in taxes.

CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Key Findings and Recommended Actions

Key Findings

TF Investigation and prosecution – TF Offence (Immediate Outcome 9)

- The National Risk Assessment (NRA) highlighted the TF risks emanating from Ghana's proximity to countries where terrorist attacks have taken place and those related to the emergence of Foreign Terrorist Fighters. Ghana concluded that the risk of TF is high.
- Ghana has a dedicated team of legal officers that are adequately trained to prosecute TF cases, however, the country has not prosecuted any TF case.
- The extent to which Ghana pursues TF offences and identifies and investigates TF offences is unclear. There are no statistics on TF investigation.
- Ghana has developed a national counter terrorism strategy. Although the counter terrorism strategy is not directly linked to TF, the national intelligence picture is shared regularly with relevant agencies including the FIC.

TF related Targeted financial sanctions and NPOs (Immediate Outcome 10)

- Ghana has a comprehensive mechanism to implement targeted financial sanctions without delay and financial institutions screen customers and transactions against UN targeted financial sanctions lists and other sanctions lists. Banks generally implement targeted financial sanctions adequately.
- The Bank of Ghana monitors the implementation of these measures. However, supervisory bodies are yet to set down adequate sanctions for non-compliance and there is a lack of implementation of targeted financial sanctions by the non-bank financial institutions and DNFBPs.
- Ghana has not conducted a comprehensive review of its NPO sector in order to identify those NPOs that are at risk of being abused for TF purposes. The licensing authority has conducted outreach to some NPOs on TF issues.
- Ghana has a dual registration and licensing regime for NPOs which is not well integrated and inadequate monitoring and supervision of NPOs make the sector

vulnerable to misuse for TF and other criminal purposes.

Proliferation financing (Immediate Outcome 11)

- Ghana has established a legal framework for implementing targeted financial sanctions regarding proliferation financing. Financial institutions routinely screen customers and transactions against UN and other sanctions lists, and supervisors review the application of these measures. However, there is a limited understanding of the risk of proliferation among supervisors and reporting entities and there is not much to demonstrate that export control authorities have total understanding of proliferation risks and proliferation financing.

Recommended Actions

Immediate Outcome 9

Ghana should ensure that:

- LEAs have adequate awareness and skills to detect or identify TF and TF related activity.
- TF investigation is well integrated into the country's counter-terrorism policy and the country should pursue financial investigations as a matter of course when conducting investigations on terrorism.
- There is specific sensitization of financial institutions and DNFBPs by the FIC to ensure that accountable institutions adequately understand TF typologies and indicators for TF.
- Competent authorities maintain statistics on TF investigation

Immediate Outcome 10

Ghana should:

- Establish a framework for comprehensive monitoring or supervision of DNFBPs to ensure compliance with targeted financial sanctions requirements.
- Establish regular fora or mechanisms to facilitate communication between supervisors and the private sector to ensure that the private sector, particularly the non-bank financial institutions and DNFBPs understand TF risks and their obligations as regards TF.
- Establish appropriate legal and institutional frameworks for comprehensive regulation and monitoring of NPOs.
- Conduct a review of the NPO sector and apply focused and proportionate measures to NPOs identified as being vulnerable to TF abuse, including providing guidance to the sector and conducting outreach and sensitization programmes.
- Complement E.1. 2 with more detailed guidelines which will increase awareness and understanding of targeted financial sanctions by FIs and DNFBPs, facilitate

implementation of targeted financial sanctions and provided more practical indicators for transactions which may be subject to UN sanctions.

- Ensure effective use of target financial sanctions in practice in cases where the criteria for designation have been established.

Immediate Outcome 11

Ghana should:

- Conduct comprehensive sensitization programmes for financial institutions DNFBPs and relevant competent authorities on the UN sanctions regime related to the proliferation of weapon of mass destruction. This should include general information on the PF risks, indicators of PF activity and guidance on the implementation of TFS.

154 The relevant Immediate Outcomes considered and assessed in this chapter are IO9-11. The Recommendations relevant for the assessment of effectiveness under this section are R.5-8.

Immediate Outcome 9 (TF investigation and prosecution)

155 The National Risk Assessment (NRA) highlighted the TF risk emanating from Ghana's proximity to countries where terrorist attacks have taken place as well as those related to the emergence of Foreign Terrorist Fighters, noting that a few young Ghanaians in tertiary schools in Ghana were being lured into joining ISIS via social media. The NRA concluded that Ghana faces high terrorist financing risks.

156 The Bureau of National Investigation and the National Security Council Secretariat are the key agencies responsible for counter-terrorism and terrorist financing. The EOCO and the Ghana Police Service are also involved in terrorist financing investigations. The Ghanaian authorities organised sensitization workshops for competent authorities following the conclusion of the NRA. These workshops enhanced competent authorities' understanding of the TF risks in Ghana. Competent authorities generally have a fairly good understanding of the TF vulnerabilities, threats and risk the country face.

Prosecution/conviction of types of TF activity (consistent with the country's risk-profile)

157 Ghana has not prosecuted any TF cases. The emergence of the risk associated with FTFs caused a fundamental change to the landscape of terrorism and its financing in Ghana and a few cases related to FTFs have reached the courts. Ghana issued the Executive Instrument 114 which provides for designation of FTFs. Designated persons can be prosecuted under Anti-Terrorism Act, 2008 (Act 762). FTFs can also be prosecuted directly by virtue of section 11 (1) & (2) of Act 762. One of the cases pertaining to FTFs where some of the suspects are being prosecuted for terrorism related offences, including terrorist financing is indicated below.

Box: 4 - The Republic v X and 6 Others

The first, second, third, fourth and fifth accused persons are all Ghanaians while the last two (the sixth and seventh accused persons) are nationals of another country in Europe. The 1st accused person used a number of Islamic organisations in Ghana to recruit three Ghanaian Muslim youth to join the Islamic State (IS). While investigations continued into the case, it was revealed that the 2nd to 7th accused Muslim youths were already on their way out of Ghana to Libya in pursuit of their desire to join IS. They were traced to the Kulungugu border post and arrested. Investigations further revealed that 1st and 2nd accused persons were linked to one F who had already joined IS in Libya. They had been communicating with F who was also communicating with the 3rd accused person. Also, the 2nd accused person managed to convince a family member that they were travelling to Niger to study Arabic and French. The 6th and 7th accused persons had been recruited from Europe and were enroute to Libya through Ghana. They were met at the Ghana airport by the 2nd accused person and one G, a radicalized Islamic European citizen of Ghanaian descent resident in Ghana. The 2nd accused person bought tickets for the 3rd, 4th and 5th accused persons and they all joined one bus enroute to Libya when they were arrested at the border post. [33]

158 The above case which was being investigated at the time of the on-site visit is consistent with Ghana's risk-profile as indicated in the NRA.

TF identification and investigation

159 The Ghanaian authorities informed the assessment team that TF cases are handled by the Bureau of National Investigation in collaboration with other agencies, including the Ghana Security Service, EOCO and the Police. The authorities stated that identification of TF cases occurs through intelligence, including financial intelligence and intelligence linked to terrorism.

160 It is unclear whether Ghana focuses on identifying and investigating TF in terrorism cases. The extent to which the Bureau of National Investigation pursues TF investigation could not be ascertained as the agency was not readily available during the on-site visit. Ghanaian authorities however, noted that the Counter Terrorism Committee together with other security organizations including the Customs, the Police, and Bureau of National Investigation meet at the Joint Inter-Agency Committee (JIC) forum on a weekly basis. The meeting is a platform for exchange of information on terrorism and its financing and discussions at the meeting could result in opening a TF or terrorism investigation. In addition to its functions as an investigative agency, the Bureau of National Investigation and the Counter Terrorism Committee also have civil intelligence functions and can be a source of intelligence to initiate and develop investigations.

161 Essentially, TF investigations are initiated by the Bureau of National Investigation on the basis of intelligence generated from different sources including the FIC. The FIC disseminates intelligence on TF or terrorism to the Bureau of National Investigation for investigation. There is

[33]Investigations led to the domestic designation of nine persons including two foreigners in November 2016, after the onsite visit.

collaboration between the Bureau of National Investigation and the FIC, particularly as the FIC is able to request for information on foreign accounts. The authorities noted that financial investigations were conducted in the case highlighted in Box 4 above. The Bureau of National Investigation collaborates with the other LEAs on terrorism matters. The Bureau generally conducts covert operations.. At the time of the on the-site visit, no intelligence on TF or terrorism had been generated by the FIC from a suspicious transaction report. This raises the question as to whether competent authorities and financial institutions are able to adequately identify a potential TF activity. The reason for the lack of STRs on TF could not be determined unequivocally. A lack of capacity to identify financial transactions relating to TF will impede proper investigations of TF. Similarly, the extent of financial investigation that takes place within the broader terrorism investigation could not be established during the onsite. Although, terrorist attacks have not occurred in Ghana, the emergence of FTFs and the use of social media by terrorists have increased the risks of terrorism and terrorist financing in Ghana. Even though the NRA states that the TF risk is high, terrorism investigations do not consistently include financial investigations to pursue TF charges. Ghana did not provide any statistics on TF investigations. At the time of the one-site the authorities were investigating a case involving a foreign terrorist fighter. The case is highlighted in Box 5 below.

Box 5: Foreign Terrorist Fighter

The suspect was a student and a national of Ghana. He was identified as an ardent follower of the ideals of the Islamic State (IS) and was planning to leave Ghana for Libya to join his close associates, who were already in Libya, fighting with IS. He had planned to leave Ghana in May 2016 when he was arrested. Investigation on the case was ongoing during the onsite visit.

TF investigation integrated with and supportive of national strategies

162 Ghana has a National Counter Terrorism Strategy which was adopted in April 2016. The Strategy is superintended by the Office of National Security Advisor and it sets out measures to combat terrorism. The main components of the Strategy are organised around four pillars: (1) prevent (2) pursue (3) protect (4) prepare. The Strategy is intelligence driven and impels cohesion and coordination among relevant national authorities and cooperation at the international level. Although the Counter Terrorism Strategy is not expressly linked to TF, the national intelligence picture is shared with relevant agencies including LEAs and the FIC on a regular basis.

163 Ghana's counter-terrorism efforts resulted in the arrest of three alleged foreign associates of Al-Qaeda in December 2009, in a joint US and Ghana enforcement effort.

164 At the operational level, specific measures have been established to facilitate cooperation with ECOWAS member States particularly, neighbouring countries to use operational and strategic information for the purpose of combating terrorism and its financing. Specific measures include timely sharing of intelligence, teamwork and development of appropriate equipment,

personnel and other resources to proactively stop advertisers. Nevertheless, the extent of the integration of TF investigation with the country's counter terrorism strategy is somewhat limited.

Effectiveness, proportionality and dissuasiveness of sanctions

165 The legal framework which proscribes TF provides for criminal sanctions, ranging between seven and twenty-five years. This appears dissuasive and proportionate although the effectiveness in terms of imposition of sanctions or penalties by the court is yet to be tested as the identified terrorism and TF related cases are yet to be concluded.

Alternative measures used where TF conviction is not possible (e.g. disruption)

166 Ghana is able to apply alternative measures to disrupt TF activity where it is impossible to obtain a conviction. These measures are enshrined in Ghana's laws. The Anti-Terrorism Act 2008 provides that where criminal sanctions and deprivation of liberty by criminal proceeding cannot be achieved, an order for forfeiture of property may be made through an ex-parte application made by the Attorney General and Minister for Justice in respect of terrorist property. If the court, based on the balance of probability, is satisfied that the property is terrorist property, it can make a forfeiture order and dispose of the property. Terrorist property includes property which has been collected for the purpose of providing support to a terrorist group or funding a terrorist act. This provision is yet to be applied.

167 Also, the Minister of Interior can expel a foreign citizen where he has reasonable grounds to believe that the person will or has been involved in the commission of a terrorist act. The Minister may order that person to be deported as a prohibited immigrant, in accordance with the Immigration Act 2000 (Act 573). At the time of the on-site visit, the assessment team was informed that this provision had recently been applied in one of the current cases under trial, where two European nationals were deported.

168 Ghana has achieved a low level of effectiveness for IO.9

Immediate Outcome 10 (TF preventive measures and financial sanctions)

Implementation of targeted financial sanctions for TF without delay

169 Ghana has a fairly comprehensive legal framework for the implementation of targeted financial sanctions (TFS) relating to terrorist financing. The procedures for the implementation of targeted financial sanctions are established by the Executive Instrument 2 (E.I.2) and Executive Instrument 114 (E.I.114). Ghana implements Targeted Financial Sanctions pursuant to UNSCRs 1267/1988 and 1989 and subsequent resolutions without delay. The lists of designees under UNSCR 1267 are promptly sent to reporting entities by the FIC. The distribution channel to the various implementing institutions is via e-mail. On receipt of the UN list from the Ministry of Foreign Affairs or other international counterparts, the Chief Executive

of the FIC, immediately forwards the list to the Attorney-General and Minister for Justice, the supervisory authorities and the financial institutions. The Attorney General is mandated to grant a pre-emptive asset freeze on funds or other assets of the designees. The freezing order, including the list of designees is disseminated to competent authorities. Supervisory authorities transmit the list to reporting entities. The authorities noted that they have taken actions on de-freezing and delisting of designates in line with the requirement of UNSCR 1267. The Ghanaian authorities also informed the assessment team that most of the reporting entities typically check the UN lists even though new designations are forwarded to them by the FIC. This was confirmed by representatives of both the major banks and some smaller financial institutions that met with the assessment team during the onsite. However, DNFBPs are largely unaware of the sanctions list.

170 Ghana also has adequate framework to implement UNSCR 1373. Ghana has received and processed two foreign requests by two African countries pursuant to UNSCR 1373. Ghana is however, yet to designate[34] any target under UNSCR 1373 or propose a target for designation pursuant to UNSCR 1267 and successor resolutions.

171 The Executive Instrument (E.I.2) sets down broad provisions to guide the implementation of freezing and de-freezing measures and there are no other detailed guidelines or more specific guidance to facilitate implementation. .

172 The implementation of TFS by financial institutions, particularly the banks as well as the supervision of the BOG is generally adequate. However, a more focused monitoring system will be more effective. At present, supervisory authorities rely on on-site examination and routine reporting or returns made by financial institutions. Specific monitoring on implementation of TFS may be achieved through a specialised team comprising examiners from all supervisory bodies that will work with all financial institutions to ensure compliance with TFS.

173 The E.I.2 does not prescribe sanctions. The supervisory bodies are yet to set down adequate sanctions for breaches of AML/CFT obligations. However, since violations of TFS have not been detected or reported no penalty has been imposed.

174 Non-bank financial institutions and DNFBPs have limited understanding of implementation of TFS. The DNFBPs, particularly casinos, lawyers, and dealers in minerals are not adequately monitored for this purpose. Thus, there is a lack of implementation of targeted financial sanctions by the non-bank financial institutions and DNFBPs.

Targeted approach, outreach and oversight of at-risk non-profit organisations

175 Ghana has a large and diverse NPO sector. The Department of Social Welfare has registered 6860 NPOs including 1758 international NPOs. NPOs in Ghana are secular as well as faith-based. They operate in fields such as health, education, training, agriculture and food security, energy, water, sanitation, rural and urban development, environment, population and social welfare. The Companies Act 1963 (Act 179) mandates NPOs to be incorporated as

[34] Ghana designated nine persons in November 2016

companies limited by guarantee. NPOs are also required to register with the Department of Social Welfare. The Department of Social Welfare has an oversight function for the sector. Registration is renewed every year subject to production of relevant documents. Registration with either the Department of Social Welfare or the Register General's office is at the discretion of the operators. As, there is no link between the two registration departments, it is possible that some NPOs could be operating without registering with one or both of these agencies. Also, monitoring by the Department of Social Welfare becomes difficult if an NPO has not registered with the department and this potentially increases the vulnerability of the sector to TF abuse. The AML Act, 2008 (749) designates Non-Governmental Organizations including NPOs as Accountable Institutions and thus requires NPOs to conduct CDD, maintain records and report suspicious transactions, amongst other obligations. There is nothing to suggest that NPOs are aware of these obligations.

176 The Department of Social Welfare conducts inspections on NPOs to ensure that they conduct their affairs in the manner stated in their objectives. However, the Department of Social Welfare does not possess the requisite human, institutional or financial capacity to support its AML/CFT oversight functions. Added to this, is the absence of guidance for the sector. The Department of Social Welfare explained that NPOs that engaged in social welfare were more likely to be exposed to TF risks and abused for TF purposes and in order to raise awareness regarding TF risks, the Department conducted outreach to the NPOs in two zones in the North of Ghana. However, Ghana has not conducted a review of the NPO sector and neither the competent authorities nor the NPOs have comprehensive understanding of the TF risks faced by NPOs the sector.

177 The NRA states that NPOs and NGOs have presented a fertile ground for ML/TF risks because of the lack of AML/CFT measures, supervision and awareness. It further states that the sector is one of the few areas where legislation has not been enacted to effectively regulate their activities. The assessment team acknowledged the interim measures that are currently in place to oversee NPOs operations, including submission of operational and financial returns, self-regulatory initiatives and outreach. However, given the absence of requisite supervisory and institutional framework, these measures have only a limited impact.

Deprivation of TF assets and instrumentalities

178 The FIC and other authorities indicate that Ghana seriously consider targeted financial sanctions as a tool to deprive terrorists, terrorist organizations and terrorist financiers of assets and instrumentalities related to TF activities. Ghana has not used this tool. No designee has been found to have assets in Ghana. Ghana is currently investigating some cases relating to FTFs. However, no domestic designation[35] has been made and assets have not been frozen in these cases. Ghana should make adequate use of TFS and focus on identifying terrorist financial flows.

[35] Ghana designated nine persons in November 2016, after the on-site visit

Consistency of measures with overall TF risk profile

179 Although, Ghana has a sound and effective legal framework for the implementation of TFS, the country has not designated or proposed any designations to the UN Security Council. The Ghanaian authorities have begun conducting outreach to high risk NPOs. However, since Ghana has not conducted a review of the NPO sector it will be difficult for the country to implement a targeted approach to monitor NPOs and ensure that NPOs that are particularly at risk of being abused for the purpose of terrorism are identified and sensitised.

180 The authorities do not proactively pursue TF investigation and prosecution. Ghana has not demonstrated that the measures in place are consistent with its overall risk profile. Broader supervision and more outreach to the NPOs sector on the risks of terrorism and its financing should be considered by Ghana. Although, Ghana has a fair understanding of the terrorist financing risks, including the risk of foreign terrorist fighters, the country has not used targeted financial sanctions to respond to the terrorist threats, including for controlling the incidence of FTF. Moreover, the authorities are not actively focused on identifying terrorist financial flows.

181 Overall, Ghana has achieved a low level of effectiveness with IO 10.

Immediate Outcome 11 (PF financial sanctions)

182 Ghana has the capacity to apply the legal framework for implementation of PF related financial sanctions. The country does not manufacture or produce military or dual-use goods. Ghana has diplomatic ties with Iran but little trading or business relationship. There is no DPRK Embassy in Ghana.

Implementation of targeted financial sanctions related to proliferation financing without delay

183 An effective regime of financial sanctions regarding proliferation depends on the immediate implementation of the relevant UNSCRs, monitoring compliance with the measures imposed, coordinated action by the authorities concerned to prevent the measures being circumvented and preventive action. Ghana has a sufficient legal basis for implementation of proliferation - related TFS. Ghana implements targeted financial sanctions without delay in accordance with UNSCR 1737 and successor resolutions with regard to the Islamic republic of Iran and UNSCR 1718 and successor resolutions concerning the Democratic People's Republic of Korea pursuant to Executive Instrument 2 (E.I.2). The implementation of PF falls under the purview of six competent authorities namely; the Ministry of Foreign Affairs, the Ministry of Environmental Science and Technology, the Financial Intelligence Centre, the Ghana Atomic Energy Commission, the GRA-Customs Division and the Ghana Ports Authority.

Identification of assets and funds held by designated persons/entities and prohibitions

184 Ghana has a legal framework in place to freeze the funds/other assets of designated persons and entities, and prevent such persons and entities from executing financial transactions

related to proliferation, however, no funds and assets have been identified or frozen. Financial institutions especially the larger financial institutions screen against the UN lists of designated persons/entities prior to transactions; smaller financial institution conduct screening to a lesser extent. The E.I.2 prescribes pre-emptive freezing measures which will apply if any funds and assets are identified. Thus, financial institutions are obliged to immediately freeze any funds identified. However, none of the financial institutions have identified financial transactions that are related to proliferation. Ghana has not frozen any funds under the Iran and DPRK sanctions regime and there is little to demonstrate that authorities have sufficient knowledge on sanctions evasion including the risk of using false end-users. Furthermore, it does not appear that there is sufficient nexus between the export control regime and the AML/CFT regime or enough collaboration between the relevant agencies with respect to PF matters.

FIs and DNFPBs' understanding of and compliance with obligations

185 Financial institutions, particularly the larger international banking institutions maintain sanctions screening system and appear to understand and comply with targeted financial sanctions relating to financing of proliferation to the extent that these institutions screen against the lists of sanctioned entities. The authorities also indicated that any changes to UN designations, received by the FIC are immediately forwarded to the financial institutions. Larger FIs generally understand their obligations to implement TFS, and are largely supervised for compliance with these requirements. However, smaller financial institutions do not appear to have sufficient awareness of their obligations to implement PF-related sanctions. The DNFBPs' understanding of proliferation risks and the TFS related to proliferation is quite limited. Moreover, most of the DNFNPs are self-regulatory and there are no AML/CFT monitoring mechanisms in place. Thus, there is no formal mechanism in place for ensuring compliance by DNFBPs with PF-related obligations. The FIC and Central Bank of Ghana conduct regular training for financial institutions to increase awareness on targeted financial sanctions and proliferation financing. However, it appears there is still little understanding of PF indicators by reporting entities.

Competent authorities ensuring and monitoring compliance

186 The monitoring system for UNSCR n 1267 is also applied for monitoring TFS related to proliferation financing. As already stated under I.O 10, the Bank of Ghana monitors the financial institutions through on-site and off-site examination. It is not clear whether the on-site inspection visit by the Central Bank extends to checking the financial institutions' IT systems for potential TFS-related transactions. The inspection does not address wider PF-issues (e.g., inspections of trade finance activities or methods of sanctions evasion). No guidance document on proliferation financing has been issued by competent authorities and the assessors could not ascertain the extent to which the training provided by competent authorities focused on PF. The other two supervisors appear to have limited awareness of sanctions obligations. According to the Ghana authorities, there has been no reported breaches of PF-related TFS requirements.

187 Overall, Ghana has achieved a low level of effectiveness with IO 11.

CHAPTER 5. PREVENTIVE MEASURES

Key Findings and Recommended Actions

Key Findings

- Generally, the level of awareness of ML/FT risk and strength of preventive measures applied by AIs in Ghana is most significant in the banking sector**.** All AIs in Ghana are required by law to identify, assess and understand their money laundering and terrorism financing risks. Commercial banks, especially the foreign banks, have risk assessment frameworks, demonstrate good understanding of their ML/TF risks and responsibilities to mitigate the risks and have adopted risk based approach in the implementation of AML/CFT measures. The level of ML/FT risk awareness and application of preventive measures in the NBFIs, securities and insurance sectors is generally low. Most operators in these sectors do not have robust risk assessment frameworks. In general, the level of knowledge and understanding of ML/FT risks and application of mitigating measures vary greatly amongst the AIs.
- On the whole, FIs (especially banks) understand their obligations to identify and verify their customers (including application of enhanced and simplified CDD) and comply with record keeping and reporting requirements. However, in practice, the CDD procedures in the insurance and securities sectors, as well as, in the NBFIs are not well developed, while transaction monitoring and suspicious transactions reporting are weak. In all, other than the banking sector, the identification of beneficial owners still presents a challenge to other FIs.
- The NRA identified DNFBPs as high-risk sector. There is low level of awareness across the DNFBPs about their vulnerability to ML/TF. In addition, majority of DNFBPs do not adequately understand their AML/CFT obligations thus, implementation of preventive measures remains weak. This is a major concern which adversely affects the overall effectiveness of the implementation of preventive measures and, indeed, the entire AML/CFT regime in Ghana.
- FIs have a better understanding and implementation of their AML/CFT obligations following issuance and application of guidance by supervisors
- FIs have appointed AMLROs and have internal controls and training programmes. The situation varies amongst NBFIs and depends largely on the size of the institutions. The regulatory authorities and most especially the FIC have been giving FIs continuous support, including guidance and training on AML/CFT issues to raise awareness and facilitate compliance.
- Banks offer financial inclusion products under the New Payments Products and Services (NPPS), such as mobile money, pre-payment cards and internet payments that facilitate financial inclusion and its usage rate is growing rapidly. However, ML/FT risks associated with these products are not well understood by some of the banks.

Recommended Actions

Ghana should:

- Ensure the level of understanding of ML/TF risk and strength of AML/CFT controls in the securities, insurance and NBFIs are improved to reflect those in the banking sector.

- Ensure that DNFBPs[36] understand and apply AML/CFT requirements in a risk-sensitive basis. In this regard, Ghana should: (i) strengthen existing SRBs, especially Ghana Real Estate Developers Association (GREDA), and Ghana Car Dealers Association, (ii) partner with the SRBs to develop appropriate sector specific AML/CFT guidelines, (iii) increase the level of communication and information sharing between competent authorities and SRBs for a better understanding of the ML/TF risks in the DNFBP sector, (iv) provide other necessary technical support to the SRBs to enable them assess ML/TF risks, and (v) supervise and monitor the adoption and implementation of AML/CFT measures in order to facilitate compliance by DNFBPs.

- Develop sector specific model ML/TF risk assessment guidelines to facilitate institutional risk assessment by AIs, especially DNFBPs. The guideline should include expectation of AIs practices in relation to the high risk areas identified in the NRA and should be developed in consultation with relevant sector SRBs/ industry associations.

- Improve awareness/sensitization especially in the securities, insurance, NBFIs and DNFBPs sectors in order to broaden operators understanding of risks, application of RBA in the implementation of AML/CFT measures and in general, their AML/CFT obligations. This could be done in collaboration with SRBs/industry association.

- Implement measures that will improve STRs reporting to the FIC across all sectors, especially by insurance operators, CMOs, NBFIs and DNFBPs. In particular, supervisors, with support of the FIC, should: (i) ensure that AIs internal policies and controls enable their timely review of complex or unusual transactions, and potential STRs for reporting to the FIU, and (ii) provide specific education/training to all AIs on identification and reporting of TF related STRs to facilitate reporting of possible TF related STRs to the FIC.

- Implement measures to improve identification and verification infrastructure. In this regard, Ghana should: (i) consider establishing a centralized national identification database by consolidating existing databases such as G-vive, Social Securities and National Insurance, Passport/Immigration, etc. and ensuring the regular update of data and accessibility by AIs and other users; and (ii) improve the address/identification system in the country to facilitate effective implementation of CDD measures, including identification of beneficial ownership.

- Accelerate the promotion of financial inclusion by amongst other things: (i) designing SDD measures for specific financial inclusion products for low risk individuals still excluded from the formal financial system, (ii) enhancing

[36] Particularly DNFBPs identified as high risk in the NRA - Car dealers (H), Dealers in Precious Metals and Precious Stones (H), Real estate agents (VH), and casinos (VH)

initiatives in the field of mobile money services, and/or strengthen the activities and the regime applicable to microfinance institutions, (iii) ensuring that KYC obligations are tailored to the real risks of the various financial inclusion products/services, (iv) ensuring that FIs decisions to apply SDD are based on underlying assessment or analysis of risks, (v) issuing appropriate guidelines, and taking other measures to support AIs properly understand the risks of financial inclusion products and effectively apply SDD.

188 The relevant Immediate Outcome considered and assessed in this chapter is I0.4. The recommendations relevant for the assessment of effectiveness under this section are R.9–23.

Immediate Outcome 4 (Preventive Measures)

189 Ghana has a comprehensive legal framework that sets out the preventive measures which accountable institutions (financial institutions and DNFBPs) are required to implement. The AML Act applies to all the entities specified under the FATF standards, in addition to Dealers in Motor Vehicles (Car Dealers), Religious Bodies, and NGOs designated by Ghana as accountable institutions. The AML/CFT laws are complemented by the AML Regulations 2011, Anti-Terrorism Regulations, 2012, and other sector specific AML/CFT Guidelines.

190 The banking sector plays a predominant role in Ghana financial system, is well-connected with the international financial system, and accounts for a greater part (83.88%) of the total assets of the financial sector. In terms of structure, the banking sector has high presences of foreign banks and comprise of many other institutions such as BDCs, MFIs, Rural and Community Banks, Finance Houses etc. The securities sector follows in relative importance with asset base of 12.2% and has a large number of operators, including broker dealers, fund managers, mutual fund, unit trust, etc. The insurance sector is the smallest of the sectors, with asset base of 3.48%, and made up of life and non-life insurance companies, agents, insurance brokers, reinsurance brokers, reinsurance companies etc. Though the exact size of the DNFBP sector is unknown, the sector is generally large and consists of entities of varying size and diversity. Information obtained from the authorities as well as from the NRA report on the structure, size and number of accountable institutions in Ghana is presented in the table below.

Table 5.1 Structure & Size/Number of AIs in Ghana As At September 2016

Sector/Category		Number	Branch Network	Assets Base[37] US$ Million
Banks	National Banks - 13	30	669	16,177
	Foreign Banks/ Subsidiaries of foreign banks - 17		534	
Securities[38]	Fund Managers 105			

[37] The asset base for the banking, securities and insurance sectors is at 2014
[38] Statistics are as at December 2014 and obtained from the NRA Report

Sector/Category		Number	Branch Network	Assets Base[37] US$ Million
	Broker Dealers 22	214		2,261
	Custodians 18			
	Primary Dealers 15			
	Registrars 4			
	Trustees 4			
	Unit Trusts 18			
	Mutual Funds 24			
	Issuing House 1			
	Central Securities Depository 1			
	Stock Exchange 1			
Insurance[39]	Life Insurance 25	111		711
	Non-Life 20			
	Insurance 60			
	Reinsurance Brokers 1			
	Loss Adjuster 1			
	Reinsurers 4			
	Agents	3,090		
Other Financial Institutions				**GHc Million**
Microfinance Banks (MFBs)		575	760	1050.00
Rural & Community Banks (RCBs)		140	647	2780.00
Finance Houses		23	127	3577.99
Credit Unions (NRA Report)		555		
Mortgage Finance Companies		1	1	416.79
Savings and Loans Companies		31	453	5066.25
Bureau de Change		415	40	N/A
Susu Companies / Susu Collectors		2	12	106.90
NPOs				
Non-Profit Organizations (NPOs)		6860[40]	-	-
DNFBPs				
Casinos		17		

191 In general, the understanding and implementation of preventive measures is more robust in the banking sector compared with the securities and insurance sectors, and very weak in the DNFBP sector. The weaknesses in the application of AML/CFT preventive measures in the DNFBPs, NBFIs, securities and insurance sectors have a negative cascading impact on the overall effectiveness of preventive measures in Ghana. There appears to be no sector or activity which Ghana has exempted from applying the full requirements of AML/CFT measures in the NRA report.

[39] Statistics are as at December 2014 and obtained from the NRA Report. The number of agents was as at September 2014

[40] NRA Report 2016

Understanding of ML/TF risks and AML/CFT obligations and the Application of Mitigating Measures

192 All AIs in Ghana are required by law to identify, assess and understand their money laundering and terrorist financing risks. This requirement is set out in Sections 40 of the Anti-Money Laundering (Amendment) Act, 2014 (Act 874). Majority of AIs met by the assessors, especially FIs, are aware of their AML/CFT obligations. This is largely due to the sensitization/awareness and capacity building programmes undertaken by the financial sector regulators and the FIC. In addition, AML/CFT regulations, including sector specific Guidelines issued by competent authorities have assisted greatly to enhance the understanding of AIs with their obligations. The assessment team notes that, other than the banks, most of the AIs are yet to conduct institutional risk assessment to properly understand the ML/TF risk they face and implement mitigation measures commensurate with the risk in their systems. Even though some of them are aware of the risk assessment obligation, in practice, a number of them, especially DNFBPs and lower end FIs do not have the necessary risk assessment framework, and yet to meet this obligation.

193 Awareness and understanding of ML/TF risks (threats and vulnerabilities) are more robust in the banking sector compared to other AIs. Generally, the banks have conducted risk assessments and developed adequate mitigation measures before the NRA. However, the level of understanding of ML/TF risks and depth of application of mitigation measures or RBA vary across banks but generally higher in banks with foreign ownership compare to local banks. For instance, all the big banks, especially those with foreign-ownership structure, have conducted institutional risk assessment and showed sound understanding of ML/TF risks relating to their customers, products, delivery channels and geographies and are implementing AML/CFT measures that are commensurate with the risk identified. The assessment team notes that the risk appetite of banks differs but generally, the banks interviewed stated that they do not adopt de-risking practices as they assess their customers on case-by-case basis, and it is only in situations where they cannot manage the assessed risk that they don't establish the business relationship.

194 The BOG informed the assessors that the big banks need less guidance from supervisors and are implementing mitigating measures derived from detailed consideration of all relevant risk factors. The smaller banks have lower level of understanding of their risks compare with the big banks. Though most of the smaller banks have also developed risk assessment frameworks and conducted risk assessments, the quality of the risk assessment and associated mitigation measures are less robust. The BOG had organized some workshops where issues of risk assessment were discussed. This has helped to enhance the capacity of some of the banks to undertake their risk assessment. The BOG has also developed a risk assessment methodology/framework which has been shared with institutions under its purview and can be adopted by any of them upon request. The BOG is currently focusing its technical support and guidance on the NBFIs, such as the savings and loans companies where understanding of risk and capacity to undertake risk assessment are much lower. Most of the NBFIs have not developed risk assessment frameworks and even those that did, the frameworks were developed based on general risk indicators and not on any internal research or assessment. Review of the risk assessment framework of some of the banks undertaken by the assessors generally indicates that they are robust, though they can benefit from further review, especially to take into consideration the findings or outcomes of the NRA adopted in August 2016. The assessors note that some of the banks have commenced the process of updating their frameworks to reflect the findings of the NRA.

195 Generally, awareness/understanding of ML/TF risk in the securities sector is very low. CMOs interviewed showed appreciable knowledge of their AML/CFT obligations but demonstrated low level of awareness and understanding of the ML/TF risks associated with their activities. Most of them have not conducted institutional risk assessment and thus, do not understand the risk they face. Consequently, implementation of AML/CFT measures within the sector is largely not risk based or commensurate with the associated risks. The assessors' findings are reinforced by the outcomes of some inspections carried out by SEC. Assessors were informed that FIC and SEC are currently working with some of the CMOs in developing their risk assessment frameworks in order to facilitate the conduct of risk assessment and application of appropriate mitigation measures by the CMOs. Some CMOs believe that their industry is generally not vulnerable to ML/FT risks because it constitutes only 6.9% of the financial sector. However, the assessors think this position is due to the general poor understanding of ML/TF risks within the securities sector owing largely to weak supervision and inadequate sensitization by SEC. Though SEC has created an AML/CFT Unit (in 2016) to address this challenge, human and financial resource constraints have hampered the ability of the Unit to effectively deliver on its mandate. For instance, the Unit has only two officers supervising over 150 operators. This is grossly inadequate.

196 There is limited awareness and understanding of ML/TF risks in the insurance sector. Most of the insurance companies that met the assessors showed limited knowledge about their AML/CFT obligations and do not understand the ML/TF risks associated with their businesses. In addition, most of them do not have risk assessment frameworks while none has conducted risk assessments. The very few that have developed frameworks are the foreign owned companies which practically adopted their group-wide framework. The risk assessment frameworks reviewed by the assessment team were not adequately adapted for the Ghanaian environment. As in the case of the capital market, most operators in the insurance sector believe that their industry is not generally vulnerable to ML/TF risks because the volume of premium is low and the sector is generally negligible in size, constituting only 2% of the entire financial sector. Overall, since no risk assessment has been conducted, the risks are not properly understood and the application of AML/CFT measures is not commensurate with the risks in the sector.

197 All commercial banks conduct an assessment of the potential ML/TF risks before the introduction or launch of new products, adoption of new technologies, etc. However, only few insurance companies and CMOs seem to do this. Some of the banks interviewed said they do not get information from the authorities regarding typologies on possible exploitation of emerging products that would be helpful in their risk assessment. The assessment team's discussions with the authorities revealed instances where the FIC shared information on typologies with the BOG as part of collaboration to enhance BOG's AML/CFT compliance monitoring /supervision.

198 ***MVTS*** providers such as the EMIs are aware of the specific risks they face. Electronic Money service is relatively new in Ghana, and is currently being provided by the four leading telecommunication service companies in Ghana (MTN Ghana Limited, Airtel Ghana Limited, Vodafone Ghana Limited and Millicom Ghana Limited - operators of Tigo). Mobile remittance service is rapidly growing in Ghana. Most of the EMIs (offering mobile money services) interviewed by the assessment team indicated that they have conducted risk assessment of the ML/FT risks inherent in their activities and are implementing AML/CFT

measures that are commensurate with the risk identified. For instance, they informed the assessors that their companies adopt a risk-based approach to CDD and monitoring based on number and type of customers (e.g. PEPs). There are also countries that some of the MVTS do not allow their clients to transact business with e.g. North Korea and Iran.

199 Telecom operators (telcos) are required by law to register all Sim-cards with the National Communication Authority (NCA). The NCA issued a deadline of March 3, 2016 for Sim registration by telecom operators (telcos) but at the time of the on-site, most of the telcos have not yet complied with this requirement. A major weakness noted by the assessors is that, there is no limit to the number of Sim-cards an individual can acquire and use, which results in abuses and fraud given that some of them have not been registered. For example, data provided by MTN, the largest telecommunications network in Ghana in its AML/CFT report for 2014 revealed that cases of fraud and cases of use of multiple accounts (Sims) were up by 20% and 60% respectively. Furthermore, the MVTS providers use third parties in the form of agents who register clients on their behalf. Recognizing the risks posed by agents, the MVTS providers conduct annual training for their agents on on-boarding procedures and also carryout pre and post registration checks on them. The MVTS interviewed also expressed concerns that the perceived high risk of MVTS by banks is leading the banks to be more cautious in providing them services. However, no cases were observed where the banks refuse services tthis sector as a whole, rather than on a case-by-case basis.

200 ***DNFBPs*** generally lack understanding of the risks they face. The DNFBP interviewed by the assessors have some knowledge about their AML/CFT obligation and are aware of the outcomes of the NRA which classified the sector as high risk but demonstrated lack of understanding of the risk associated with their businesses and the sector in general. This is largely due to: (i) lack of sector specific guidelines, (ii) inadequate sensitization, and (iii) lack of AML/CFT supervision and/or monitoring. In addition, no DNFBP has conducted risk assessment, thus proper understanding of risk in the sector is lacking while application of AML/CFT measures is weak and not risk based. Though the Gaming Commission and Minerals Commission have some prudential oversight functions over casinos and mining entities, respectively, they lack capacity to effectively deliver on their AML/CFT mandate. Similarly, some of the DNFBPs, such as real estate agents, accounting, legal and notary firms, operate under well-organized SRBs, however, the regulatory functions and activities of these bodies place little or no emphasis on AML/CFT. For instance, no sector specific AML/CFT guidance has been issued by any of the authorities or SRBs in this sector while trainings and sensitization are limited. Furthermore, some institutions in the sector do not even believe potential ML/TF risks exist in their activities.

201 ***Lawyers*** generally showed limited knowledge of their ML/FT risks. It was also observed that though the International Bar Association (IBA) of which the Ghana Bar Association (GBA) is a member, has produced AML/CFT guidelines for its members, the GBA is yet to appreciate and adapt or develop similar guidance for its members. Lawyers in Ghana are involved in buying and selling of real estate, managing client accounts, establishment of companies, act as trustees, nominees, directors, and managing the operations of companies. These activities carry high risk. However, lawyers involved in the provision of these services lack good understanding of the risks inherent in these services. Most of the lawyers interviewed by the assessment team demonstrated low level of understanding of ML/TF risks associated with the services they provide and their profession as a whole. They feel that their AML/CFT obligations pose an unnecessary burden. Almost all of the Lawyers

do not fully understand the essence of their gatekeeper role within the AML/CFT regime and the responsibility and integrity that it requires.

202 The ***accounting professionals***[41], especially the international accounting and auditing firms have sound understanding of risks compare to local firms. AML/CFT obligations are generally well understood by the international accounting/auditing firms. They also demonstrated good understanding of ML/TF risks compare to local firms. For instance, they informed the assessors that they have obligation to report any suspicious activities detected while performing their duties to the management of the entity they are auditing, though no specific instance was given. They also have some forms of monitoring and record keeping mechanisms based on their group-wide AML/CFT policies. On the whole, there is need for improved understanding of risk by both international and local accounting and auditing firms, especially those involved in the audit of AML/CFT system of AIs.

203 Most ***real estate agents*** and developers seem not to have a good understanding of risks. Despite apparent ML risks, awareness of AML/CFT obligation and understanding of risk associated with the sector is generally low while implementation of mitigation measures remains very weak. Though the FIC is collaborating with GREDA to raise awareness and provide training on AML/CFT issues amongst its members, concerns remains that a number of operators in the sector are not members of GREDA and may not be covered by GREDA support and oversight, thus creating a weak link.

204 ***Casinos*** have low level of awareness of their risks and obligations. Though the NRA classified casinos as high risk, almost all the operators interviewed by the assessment team showed low level of awareness of ML/FT risk inherent in their business. Some showed lack of interest in AML/CFT obligations.

205 Awareness of ML/FT risks amongst ***dealers in precious metals and precious stones*** is low. The sector is broadly classified into two categories (large and small scale mining companies). The Minerals Commission (MC) informed the assessors that the large-scale mining companies have good controls in place compare with the small-scale mining companies. The Commission stated that it monitors the small companies more often. The assessment team was not able to ascertain the level of awareness of mining companies as the team could not interview any representatives of the mining companies. However, detailed review of some of the MC inspection reports on these companies generally suggested a lack of understanding of AML/CFT issues by both the MC and the companies. The FIC is currently working with the MC to increase the level of AML/CFT awareness in this sector.

206 Ghana has established a Financial Inclusion and Consumer Education Office within the Payments System Department of the BOG to promote the delivery of banking services at affordable cost to the disadvantaged and low income groups and provide consumer education on financial products and services. The Ghanaian banking sector serves as the main platform for promoting financial inclusion due to its role as a medium of financial intermediation and the fact that most transactions in the other sub-sectors such as insurance, securities and pension are ultimately undertaken through the banking system. The major tools for driving financial inclusion in the Ghanaian financial system include the simplified Know-Your-Customer requirements for savings products; mobile banking; and agent banking. In spite of these efforts, many are still excluded from the formal financial system. For instance, the

[41] As at December 2014, there were 420 registered professional accountants, 80 accounting firms and 40 auditing firms in Ghana.

World Bank stated that only 40% of the population in Ghana has a bank account. This has implications for AML/CFT implementation. In addition, the assessors noted that FIs adopt financial inclusion tools with little guidance and support from regulators especially in the area of risk management relating to these products. Thus, in our opinion, this limits the ability of the FIs to clearly understand and mitigate the risk associated with the financial inclusion products. Further guidance and awareness creation is required from regulators.

Application of enhanced or specific CDD and record-keeping requirement

207 FIs demonstrated a good understanding of the CDD measures set out in relevant laws and various sector regulations, however, the degree of implementation or application varies across sectors with significant improvement required, especially in the non-bank financial sector. Generally, FIs have CDD measures enshrined in their AML/CFT Policies and those interviewed were able to describe clear procedures for undertaking CDD. On the whole, application of CDD measures is more comprehensive and effective in the banking institutions compare with the insurance and securities sectors. In addition, big banks have a more sophisticated risk-based approach to CDD compare with smaller banks, while implementation is limited and variable in this area particularly for securities and insurance companies. Application of CDD measures across NBFIs is generally weak, with some of them still grappling with or poorly implementing these measures. For instance, assessors noted during a shopping exercise to some BDCs during the on-site that no identification information was requested during transaction, in spite of the fact that BDCs are required to identify and verify their customers. This could impact negatively on records to be maintained by BDCs, their reporting obligation and abilities to meet request for information from competent authorities, in addition to the fact that it opens them to exploitation by criminals to launder illicit funds. Assessors also observed that FIs generally face some challenges in implementing CDD measures. For example, there are identity verification challenges as some of the publicly owned identity verification databases, such as the Electoral Commission (G-vive) and Immigration databases are not available on-line and those that are available on-line are not updated regularly. Some of the FIs interviewed stated that the databases of Registrar General Department and the drivers' license are not available on-line and as such verification of customers' identity takes a lot of time, and in some instances, up to two weeks. Similarly, the G-vive which is available on-line, is not updated regularly as data on people registered between 2014 and 2016 is yet to be uploaded.

208 Not all FIs that have adopted simplified due diligence (SDD) measures have undertaken research or analysis to support the adoption of SDD. Some FIs have developed specific products with lower risks on which SDD are applied on the users while some of the FIs interviewed by the assessment team do not consider any risk indicators or carry out any internal analysis as the basis for adopting SDD measures.

209 Most FIs interviewed are aware that information on the beneficial ownership (BO) needs to be obtained and do collect them. However, some of them face challenges as clients are generally reluctant to provide accurate beneficial information, especially when some of the directors are foreigners. Some of the lawyers and notaries interviewed by the assessment team seem unaware of any obligation to conduct CDD or obtain beneficial ownership information from their corporate clients and when registering companies on behalf of their clients. This is mainly due to the fact that the companies Act 1963 does not provide for

information on beneficial ownership to be obtained during company registration[42]. Furthermore, Lawyers seem not to be aware of their CDD obligation even in instances where they provide services that are prone to ML or other criminal activities which require comprehensive due diligence on the client.

210 Banks in Ghana comply with the 5-year legal requirement on record keeping. They keep records in both hard and soft copies for at least the legal minimum period of five years, in some cases even longer, and in an easily retrievable manner in case of requests from competent authorities. Also, detailed review of supervisory inspection reports revealed that authorities have access to bank information. Generally, the effective manner in which records are maintained by banks have helped to facilitate responses provided to the FIC on requests for additional information.

211 Most of the DNFBPs were observed to have chronic deficiencies with respect to CDD and record keeping. The DNFBPs, especially the Casinos interviewed said that they have some CDD and record keeping mechanisms but implementation is highly inadequate. For instance, casinos obtain names, addresses and telephone numbers of casino gamers without requesting for any means of identification. In addition, records are poorly kept while the mandatory 7-day transactions returns to the Gaming Commission (GC) are not usually filed.

212 Most of the institutions in the securities sector have poor record keeping culture. CMOs generally are aware of the obligation to keep their records for five years. Record are maintained by CMOs either manually, electronically or both. However, AML/CFT inspection reports reviewed by the assessment team indicate that record keeping is generally a challenge among securities companies. This may negatively impact on some of the CMOs' abilities to meet request for information from competent authorities timely and effectively.

213 Apart from the foreign owned insurance companies (mostly Life), most local insurance companies have weak CDD measures. The assessment team noted during the onsite that most of the locally-owned insurance companies do not adequately verify identities of their clients, even those that do so, use manual methods which take a lot of time (up to two weeks). Records are maintained by insurance companies in various forms (manual, electronic or both) for the required period of at least 5 years. However, the weak CDD could impact on the quantity and quality of records maintained, especially by the local insurance companies, and by extension, their ability to effectively meet competent authorities' request for information.

214 Generally, most AIs, except DNFBPs, implement preventive measures relating to PEPs but improvement is required to ensure effective compliance. Most FIs have put in place measures, including robust customer on-boarding process, ongoing monitoring of relationships and transaction, to identify and manage PEPs. Currently, some of the FIs have developed their internal PEPs list and also file reports on PEPs to the FIC (see IO 6). To complement their internal PEPs list, some of the FIs also subscribed to relevant commercial databases. Some of the institutions interviewed by assessors indicated preference for a central or national PEP database where they could query whenever they are on-boarding new customers, reviewing profiles of existing customers etc. However, this is lacking at the moment. Supervisors are of the opinion that each institution should develop its internal

[42] This gap has been addressed in the Companies (Amendment) Act 2016. However, implementation is yet to commence as at the time of onsite

database, which the assessment team strongly believe is the right approach. Though guidance has been issued by sector regulators and the FIC to clarify who PEPs are and enhance measures to be applied by AIs, overall, identification of PEPs' associates and closed relatives are major challenges across all FIs, especially in the absence of a mechanism that could enhance the linkages of some of the relationship. Furthermore, some banks said they have challenges in developing a PEP database that significantly covers all categories of PEPs.

215 All the foreign owned[43] banks interviewed implement the requirements relating to correspondent banking.

216 There are gaps relating to existing legal and regulatory framework for wire transfers, as the current measures do not require the details of beneficiaries to be included in wire transfers. Although some payment systems require all originator FIs to enter beneficiary information in every wire transfer, SWIFT does not screen or check wire transfers for the validity of beneficiary information. This gives room for abuses and provision of fraudulent information. Furthermore, due to these gaps in the legal framework, banks in Ghana request for information on beneficial owner only when they decide to file an STR on the wire transfer. As discussed below, this action has the potential of resulting into the banks unwittingly tipping off the affected clients.

Reporting Obligations and Tipping Off

217 Most of the banks have automated AML tools for monitoring and generating STRs and other large and unusual currency transactions. The effectiveness of these measures and quantity of STRs, CTRs and other reports filed to the FIC vary across banks (see Table 5.3 below). The big banks have monitoring measures that are more effective and comprehensive than those of the smaller banks. As a result of increased awareness, the number of STRs reported by banks to the FIC rose from 137 in 2011 to 369 in 2015 (see Table 5.2). The commercial banks are responsible for over 95% of all STRs filed by AIs in Ghana. Majority of the STRs within the commercial banking sector are filed by international banks (see Table 5.2). Most of the banks interviewed stated that they conclude their internal processing of STRs within 24 hours on the average and that STRs are generally filed to the FIC immediately suspicion is established. At the end of the banks' internal evaluation process, if the STR is not filed, a record of it is kept with the reasons for not reporting them. Attempted suspicious transactions are also reported to FIC by banks. Banks also stated that they receive feedback from FIC on the quality of their STRs on a regular basis.

Table 5.2: Breakdown of STRS Filed By Banks: Local Vs International Banks

Year	No. of STRs from International Banks	No. of STRs from Domestic Banks & other Sources	TOTAL
2011	90	47	**137**
2012	216	159	**375**
2013	159	197	**356**

[43] Banks with at least 60% of foreign ownership

2014	160	150	**310**
2015	221	148	**369**
2016*	93	90	**183**

*January-June

218 Most of the NBFIs[44], CMOs and insurance companies do not have effective mechanism for monitoring and reporting STRs and other large and unusual transactions. Securities firms had filed only eight (8) STRs with the FIC since 2013, this appears small given the size of the security sector in the country. However, some of the CMOs are owned by the banks[45] and are supported by these banks in establishing CDD measures and setting up monitoring and reporting mechanisms for them. Some insurance firms have information systems that facilitate the monitoring of transactions of clients against their profiles. However, most of these systems are not adequate and appropriate for AML monitoring and data collection. Also, the systems in place to identify and report STRs in the insurance sector are weak. So far only two (2) STRs have been filed to the FIC by insurance companies since 2013 (see Table 5.3 below). In general, understanding of suspicious transaction appears weak across NBFIs, CMOs and insurance companies, thus resulting in the low or non-reporting of STRs. Other factors may include weak human capacity, ineffective systems for monitoring and reporting STRs or lack of effective monitoring in the sectors.

219 In general, compliance to reporting obligation by DNFBPs is poor. Most DNFBPs do not have mechanism for monitoring and generating reports (STRs, CTRs and other reports). Only a lawyer has filed one (1) STR to the FIC since 2013. The assessment team noted that the foreign owned accounting firms showed a good understanding of the ML/FT risks and also have some forms of monitoring and reporting mechanisms based on their group-wide AML/CFT policies but have never filed an STR to the FIC. Furthermore, some casinos interviewed claimed to have some sort of monitoring and reporting mechanisms. For example, they report any transaction (wins) above GHC3, 500 to the GC as part of regulatory requirements. On the whole, the poor reporting by DNFBPs is owing to several factors, including the lack of understanding of what constitute suspicious transaction and mechanism to identify and report STRs. Given the risk associated with the DNFBPs in general, this weakness could limit the STRs available to the FIC for analysis with adverse consequence on LEAs operations, and indeed, national AML/CFT efforts.

220 Most AIs have policies regarding tipping off. Generally, they prohibit tipping off, especially in relation to STRs. Implementation in some FIs, particularly banks, is effective but some improvements required. For instance, one of the banks interviewed by the assessment team stated that there was an instance where it had to redeploy one of its officers due to threats from a client on whom an STR was filed. How the client got to know, the bank did not know. There were also instances where customers' accounts were frozen only for the

[44] NBFIs in Ghana do not include insurance companies and securities operators. Schedule 2 of NBFIs Act 2008 describes non-bank financial Services to include leasing operations, money lending operations, money transfer services, mortgage finance operations, non-deposit-taking microfinance services, credit union operations, and any other services or operations as the Bank of Ghana may from time to time by notice designate as such.

[45] For instance, CAL Brokers Limited Ghana is a wholly owned subsidiary of CAL Bank Ghana; HFC Investment Limited is a wholly owned subsidiary of HFC Bank (Ghana) Ltd; and Prudential Securities Limited Ghana is a wholly owned subsidiary of Prudential Bank Ghana

customer to bring an un-freezing order from the courts the very next day. The bank stated that in such instances, it immediately informs the FIC for advice and the response from regulators on freezing orders or what actions to take have been very quick and encouraging. Generally, the situation resulting to instances highlighted above, potent dangers for the AML/CFT reporting regime and the reporting entities, and thus calls for an effective monitoring mechanism both for staff of the affected banks and the FIC to avoid future occurrence and confidentiality of reports filed to the FIC.

221 The quantity and quality of STRs have consistently improved over the years owing to training provided by the Centre and regulators, enhanced feedback and guidance, greater commitment on part of the institutions. However, the scope of entities filing STRs needs to be broadened as majority of the STRs at the FIC were filed by banks. As noted in Table 3.4 under IO6, the quantity of STRs filed to the FIC improved from 71 in 2010 to 369 in 2015. A breakdown of STRs filed to the FIC between 2013 and June 2016 is presented in Table 5.1 below.

Table 5.3 Breakdown of STRs, CTRs and other reports filed to FIC

SECTOR	2013		2014		2015		2016 (Jan-June)	
	STRs	CTRs	STRs	CTRs	STRs	CTRs	STRs	CTRs
Breakdown by type of Financial Institutions								
Commercial Banks	313	1,251,752	275	2,083,868	337	2,636,935		895,115
Microfinance Banks	1	-	2	-	-	-	-	-
Rural & Community Banks	-	-	1	-	-	-	-	1,158
Finance Houses	2	-	-	-	-	-	-	152
Savings & Loans Companies	20	4,252	20	23,526	14	33,151		18,442
Insurance Companies	1	-	-	-	1	-	-	37
Capital Market Operators	-	-	1	-	2	17	-	4
Others	19	-	11	-	-	-	-	-
Breakdown by type of DNFBPs								
Lawyers	1	-	-	-	-	-	-	-
Other Reports								
Cross-border Declarations Submitted by Customs Division of GRA to FIC	275		301		360		196	
STRs received by the FIC from other sources, (domestic/foreign supervisory bodies, other individuals/corporations)	19		11		9		4	

Internal Controls and Legal/Regulatory Requirements Impending Implementation

222 All FIs are required to have internal controls and procedures. The requirements for FIs to understand and mitigate their ML/TF risks are complemented by requirements to develop and implement adequate internal policies, procedures and controls, taking into account the ML/TF risks facing the institution. All FIs interviewed by the assessment team indicated that they have internal controls policies and procedures. Review of some of the policies indicates that most of them are adequate. However, inspection reports by BOG revealed several deficiencies of internal controls in some smaller banks, including inadequate customer risk profiling measures, ineffective controls relating to PEPs and lack of transactions monitoring tools or software.

223 All foreign banks interviewed indicated implementation of group-wide AML/CFT policies. Assessors were informed that where the Ghana AML/CFT requirements are stricter or more in line with FATF standards, the foreign banks are required to adopt the Ghana's requirements over their group policies. Furthermore, the foreign banks reported that they had information sharing mechanisms at group level and there were no cases where the local jurisdiction had created obstacles to the information sharing. Even though most of the banks stated that the information sharing does not include information relating to STRs, in general, secrecy does not appear to impede the sharing of information in FIs.

224 Securities and insurance companies generally do not have adequate internal controls. The FIC is currently working closely with SEC and NIC to address this deficiency. Deficiencies observe by NIC during on-site inspections of some insurance companies include lack of policy on: (i) customer risk profiling to determine their AML/CFT risks, (ii) PEPs, (iii) staff screening prior to engagement, and (iv) no requirement to obtain beneficial owner information. Similar deficiencies were observed by SEC during its on-site examinations of some securities companies.

225 Majority of FIs provide AML/CFT related trainings to their officials but improvement in scope of training programmes and frequency are required, especially in the NBFIs, insurance and securities sectors. A review of AML/CFT examination reports by supervisors on training shows that some of the FIs have annual training programmes and have provided some training to their officials. However, other than the banking sector, training programmes provided by other FIs are not comprehensive in terms of scope (AML/CFT issues covered) and are rarely extended to officials in other business functions other than compliance units and frontline staff. The assessment team noted that the weak compliance with reporting and other AML/CFT obligations, especially in the NBFIs, insurance and securities sectors may be largely attributed to the lack of or inadequate training.

226 Generally, FIs have designated AMLROs with responsibility for developing and overseeing implementation of institutional AML/CFT programmes and policies, ensuring ongoing employee training, etc. Examination reports of supervisors reviewed by the assessors indicate that the AMLROs, especially in the banking sector are more experience compare to other sectors. However, most of the AMLROs are not appointed at top management level and this may affect their abilities or independence to discharge their responsibilities effectively. The assessment team noted that the AMLROs play coordinating roles between their institutions and competent authorities, especially regulators and the FIC. For instance, amongst other things, they have facilitated several responses to enquiries or requests for information from competent authorities. In addition, the AMLROs, especially in the banking

and securities sectors have established AMLRO's Fora or associations which have helped to further enhance coordination with their sector regulators and the FIC on AML/CFT matters.

227 Majority of DNFBPs lack internal controls and policies. The assessment team's discussions with representatives of real estate sector and lawyers revealed that most operators in these sectors do not even think it is necessary to have any AML/CFT internal controls. However, the FIC is working with some SRBs such as GREDA to increasing the level of awareness and compliance of their members. Generally, more training is required for the DNFBPs to enhance compliance with AML/CFT obligations,

228 Ghana has achieved a low level of effectiveness for IO.4.

CHAPTER 6. SUPERVISION

Key Findings and Recommended Actions

Key Findings

- Ghana has put in place measures for preventing criminals and their associates from participating in the ownership, control or management of FIs. The respective sector supervisors conduct fit and proper tests during licensing and registration process. With the exception of the Gaming Commission, Minerals Commission, GREDA, Institute of Chartered Accountants (ICA) and Ghana Legal Council (GLC) that appear to conduct some fit and proper test on senior management of entities under their purview as part of prudential /membership registration requirements, it is not clear whether adequate fit and proper tests are being conducted on senior management of other DNFBPs.
- BOG has a good understanding of ML/TF risks present in the institutions it supervises. Banks are subjected to appropriate risk sensitive AML/CFT supervision**.** AML/CFT supervision of the insurance and securities sectors is not sufficiently risk based. The supervisory tools/methodologies used by SEC & NIC are biased towards prudential indicators and lack the sophistication to provide comprehensive information on the nature of ML/TF risks at the level of individual institutions. Thus, SEC and NIC do not comprehensively understand the ML/TF risk associated with the institutions they supervise.
- There is limited number of on-site AML/CFT inspections, especially within the securities and insurance sectors, the NBFIs/Other Financial Institutions and none for the DNFBPs. This makes the determination of the extent to which AIs are effectively implementing AML/ CFT preventive measures difficult. It also limits the ability of regulatory authorities to comprehensively understand the risks within these sectors.
- AML/CFT supervision of the banking sector is robust while that of NBFIs, insurance and securities operators is limited in scope. Although, the Minerals and the Gaming Commissions, ICA, GREDA, and GLC have the mandate to carryout out supervision, no AML/CFT supervision has been undertaken in their sectors. Furthermore, resources for AML/CFT supervision are limited across regulatory authorities (BOG, SEC and NIC).
- The sector specific guidelines and feedback provided by the regulators and FIC have enhanced AML/CFT awareness and deepened compliance by financial institutions, except amongst smaller NBFIs. However, the guidelines preceded the revised FATF standards and the publication of NRA report, and thus do not reflect the changes to the FATF standards and outcome of the NRA. No sector specific AML/CFT guidelines have been issued for DNFBPs.
- The legal and regulatory framework governing AML/CFT supervision is generally robust, and there is a wide range of administrative sanctions which regulators can apply in case of a breach. However, these are rarely applied. In addition, pecuniary sanctions have not been clearly spelt out in the laws or regulations, while fines provided for in the AML Act are low and do not appear to be dissuasive. However, the assessment team noted that these gaps have been addressed by "The Banks and

Specialized Deposit Taking Institutions Act, 2016", enacted after the on-site.

Recommended Actions

Ghana should:

- Designate one or more competent authorities or SRBs as supervisory authority with sufficient powers to effectively supervise or monitor DNFBP's compliance with implementation of AML/CFT measures. The Gaming Commission and the Minerals Commission should be strengthened to effectively deliver on their AML/CFT supervisory role.
- Improve Risk-Based Supervision (RBS) especially within the securities and insurance sectors. In this regard, SEC and NIC should adopt a robust risk assessment methodology and take appropriate steps to fully understand the ML/TF risks of the institutions they supervise so that the frequency and intensity of their AML/CFT supervision are guided by risk considerations. In addition, SEC and NIC should deepen the scope of their AML/CFT inspections.
- Update sector specific AML/CFT Guidelines issued by BOG, SEC and NIC in collaboration with FIC to adequately reflect the changes to the FATF standards in 2012 and the outcome/findings of the NRA.
- Strengthen the Regulators Forum and make it more operationally functional. Similarly, Ghana should strengthen cooperation in information exchange between the supervisors and other relevant competent authorities especially in relation to market entry, supervisory matters, etc to foster AML/CFT risk mitigation, including regulatory interventions.
- Improve application of sanctions, especially administrative sanctions, on AIs for non-compliance to enhance the overall compliance with AML/CFT requirements.

229 The relevant Immediate Outcome considered and assessed in this chapter is IO.3. The recommendations relevant for the assessment of effectiveness under this section are R.26–28 & R.34 & 35.

Immediate Outcome 3 (Supervision)

230 AML/CFT supervision in the financial sector is undertaken by BOG (banks and NBFIs), SEC (capital market operators), and NIC (insurance companies). They have sufficient powers to regulate and supervise institutions under their purview for AML/CFT purposes.

231 The supervisory framework for AML/CFT supervision is well developed in the banking sector while those of the insurance and securities sectors are still evolving. The BOG understands the risk in the banking sector and undertakes AML/CFT supervision on risk based approach. SEC and NIC are yet to carry out comprehensive assessment of institutions under their purview and AML/CFT supervision is not guided by any risk consideration. Overall, supervisory actions have more positive impact on compliance in the banking sector compare with that in the NBFIs, securities and insurance sectors which are mixed and vary.

232 In relation to the DNFBPs, there is no designated competent authority to regulate the entire DNFBPs sector for AML/CFT, however there is the Gaming Commission which regulates Casinos (games of chance) and the Minerals Commission which regulates the mining sector. Similarly, GREDA, General Legal Council, and Institute of Chartered Accountants are designated as "competent authorities" under the AML Act. In general, these competent authorities and SRBs do not understand their AML/CFT responsibilities, lack AML/CFT supervisory capacity and have not issued any sector specific AML/CFT guidelines or supervisory framework. AML/CFT supervision is yet to commence in the DNFBP sector.

233 In all, the size and structure of the financial sector in Ghana (see Table 5.1) shows the magnitude of the supervisory challenge faced by BOG, given the number of institutions it has to deal with (well over 1200 institutions, including, commercial banks, rural and community banks, MFIs, BDCs, finance houses etc). The same situation applies to SEC and NIC. The lack of sufficient human and material resources for AML/CFT purposes across the regulators adds to this challenge.

Licensing, registration and controls preventing criminals and their associates from entering the market

234 ***Financial institutions*** – BOG, SEC and NIC have controls in place to prevent criminals and their associates from accessing the financial system. These controls include a strong licensing framework and measures for the vetting of individuals who occupy key positions in financial institutions, such as directors, members of the key management personnel, significant or controlling shareholders in accordance with the "fit and proper" standards. A "Fit and proper person" means a person with appropriate integrity, competency, experience and qualification determined by the sector regulators. Such tests are necessary where applications are made for licence, or when changes of directors, management or shareholders are made by institutions. However, it appears the fit and proper measures applied by regulators do not extend to beneficial owners. These procedures are mainly set out in the relevant pieces of legislation of the different Supervisory bodies. The "Fit and Proper Test" is supplemented by comprehensive background checks, including CID criminal checks, BNI security checks and clearance by the FIC. In addition, screening against BOG's database of dismissed staff by banks is also undertaken in the case of the banking sector. The process applied by especially BOG is effective. The BOG provided instances in which applications were rejected for reasons of fitness or propriety. These include two occasions in which BOG rejected applications for bank licence due to failure to satisfy the basic requirements as set out in the Regulations, as per Table 6.2 below.

Table 6.2: Rejected Bank Applications, due to failure of "Fit and Proper Test"

	Reasons for Rejection of Application
Case 1: Fortune Bank	The application by Fortune Bank Ltd presented information that could not be authenticated. On November 15, 2012, BOG issued a letter to the promoters communicating the decline of the application under Section 9(1) of Banking Act 2004, Act (673), as amended. The reason for the decline was the inconsistent information provided by the applicants during the screening by BOG and following consultations with Reserve Bank of New Zealand. This is a hallmark of international co-operation with foreign counterpart, especially when the situation has cross-border ramifications

Case 2: Crest Finance House Ltd	The BOG rejected application for a Universal Banking Licence by Crest Finance House Limited due to inconsistent information provided as required by pre-licensing requirements.

235 Another reported case was when BOG rejected the transfer of shares between a shareholder and a potential investor from Uganda, on the grounds that the latter was linked to a fraud which occurred in Uganda. The BOG has a database of disqualified persons of this nature, which reporting institutions have effectively utilized when conducting their own screening of customers for like purposes. Sanctions are applied on accountable institutions for non-compliance.

236 The authorities are aware of instances where some entities have been providing financial services without the appropriate authorization. A good example is the case of the Fun Clubs. Where the authorities have become aware of such operations, they have taken steps to terminate or reorganized their activities as in the case of microfinance institutions. However, the activities of Fun Clubs are yet to be terminated or reorganized as at the time of onsite. The activities of these entities could open the gate for criminal activities. It is important to state that beyond the licensing/fit and proper test by regulatory authorities, financial institutions also undertake fit and proper assessments whenever there are changes in the persons subject to the these reviews. Such assessments must be reviewed and confirmed by institutions' board of directors. These are among the issues reviewed by supervisors during their on-site supervision.

237 Another competent authority that performs regulatory functions within the financial sector is the National Pensions Regulatory Authority[46] (NPRA). The NPRA is tasked with the supervision of Pension Fund Managers. Ghana adopted a new contributory three-tier pension scheme, where public and private sectors employees contribute towards their pension benefits and entrust them with professional fund managers, which are supervised by the NPRA. The NPRA has issued several guidelines including Guidelines for Fund Managers and other industry players which specify licensing (registration) /eligibility criteria aimed at controlling market entry. However, as at the time of onsite, even though the NPRA has signed MOU with the FIC in 2013 to strengthen collaboration on AML/CFT matters, the NPRA is yet to demonstrate any involvement in AML/CFT activities and therefore supervision of Pension Fund Managers and other industry operators for purposes of AML/CFT is non-existent. There is no information as to whether any application has been declined by NPRA on account of non-conformity with regulatory requirements.

238 ***DNFBPs*** – There are some measures in place to prevent criminals and their associates from operating within the DNFBP sector. However, significant improvement is required. Self-Regulatory Bodies such as ICA, GLC/Ghana Bar Association, and GREDA have registration procedures which are akin to fit and proper requirements for membership. These bodies carry out on-going monitoring of their members including oversight of conduct, with a specific emphasis on meeting high ethical and integrity standards. Though this process is yet to integrate AML/CFT elements, it however, provides some controls that help to prevent criminals or their associates from operating within the sector. It is important to note that membership of some of these SRBs is voluntary and thus majority of DNFBPs are not subject to the internal procedures of these bodies. Nonetheless, some SRBs seem to apply screening

[46] Established by Act 766 of 2008

measures prior to entry, such as GREDA, Institute of Chartered Accountants and General Legal Council, as well as, PMMC and the Gaming Commission, although these are not AML/CFT specific. In addition, the assessment team noted during the onsite that the legal framework to prevent criminals or their associates from being accredited are very limited especially for the legal profession, where lawyers who are convicted of criminal offences after being initially accredited by the professional body cannot be prevented from resuming their professions as lawyers. The same applies to judges, particularly those prosecuted for involvement in the recent corruption case within the judiciary.

239 Though Ghana has not designated any regulatory body to regulate the entire DNFBP sector for AML/CFT, it has however established some specialized supervisory bodies to undertake regulatory compliance monitoring. These include the following:

(a) **Gaming Commission -** The Gaming Commission has responsibility for licencing operators of games of chance (casinos). The Commission can only licence companies that are registered as limited liability companies under the Companies Act. To obtain approval for a licence to operate a game of chance, an applicant must: (a) establish an identifiable office; (b) have a service mark or logo; (c) have the minimum required capital and agreed to maintain cash or cash equivalent as determined by the Commission; (d) submit a criminal clearance certificate in respect of all the directors of the company; (e) agree to permit the Commission to have access to the records of the accounts and other financial records; (f) be partly or wholly Ghanaian owned; and (g) agree to provide other information as may be requested by the Commission. A person is not permitted to operate a game of chance unless duly licensed by the Board of the Gaming Commission to operate a specified game of chance. In order to ensure that criminals or their associates are prevented from operating a casino, holding a management function or holding (or being the beneficial owner of) a significant or controlling interest in a casino, the Commission grants a licence only if a person has not been declared bankrupt or convicted by a court of tribunal of an offence of fraud or dishonesty. The Commission keeps a register of licences granted and licences are required to be renewed annually. The Commission only issue or renew a licence for the operation of a game of chance when the applicant provides proof of the lawful origin of capital for the proposed operation, or in the case of renewal, the lawful origin of its additional capital for this purpose. The Commission has powers to revoke licences when the Casino is in breach of the Act. However, the authorities did not provide any instances where applications were denied due to failure to meet basic regulatory requirements. Though the Commission informed assessors that it carries out supervision/monitoring of casinos, it was unable to demonstrate that such oversight functions cover AML/CFT matters, neither has it issued any sector specific guidelines in this regard. The assessment team noted that the Commission lacks requisite capacity to effectively supervise and/or monitor casinos for AML/CFT purposes. However, the Commission is collaborating with the FIC to train some casinos on AML/CFT and establish some sort of AML/CFT monitoring of the sector.

(b) **Minerals Commission** - The Minerals Commission is responsible for "the regulation and management of the utilization of the mineral resources of Ghana and the coordination and implementation of policies relating to mining. It also ensures compliance with Ghana's Mining and Mineral Laws and Regulation through effective monitoring"[47]. At the point of entry, the Commission conducts a review of applications for a range of activities in the mining sector. The Commission indicated that a proper due diligence is always carried out to

[47] http://www.mlnr.gov.gh/index.php/agencies/minerals-commission

prevent criminals from infiltrating the sector, including background checks with support of other agencies such as Bureau of National Investigation, and the Police. In addition, applicants must obtain Certificate of incorporation from the Registrar of Companies, and Certificate of commencement of the business and a Company Code from the Commission, before they are issued mining licence. Up to 300 licences are currently in operation in this sector, however, there is no information as to whether the Commission has rejected any application on account of non-compliance with regulatory requirements. The Commission seems to be aware that potential ML/TF risks exist within the mining sector but has not conducted any formal risk assessment to identify the risks. The assessors were informed that the Commission supervises the mining companies and that all Small and Medium Scale Enterprises (SMEs[48]) which trade in gold, diamonds, and precious stones, are required to register with it and be issued with the requisite license before commencing business operations in the country. However, the regulation or monitoring of these entities appears limited to regulatory requirements.

240 Though a number of the DNFBPs are registered as companies under the Companies Act, there are capacity and resource constraints at the Registrar General's Department to carry out proper background checks, including on the directors, senior management of the DNFBPs. This coupled with the lack of a dedicated supervisory authority, weak regulation/monitoring, and proliferation of unregistered DNFBPs, created a gap for possible infiltration of criminals and their associates within the sector.

Supervisors' understanding and identification of ML/TF Risks.

241 The risk in the banking sector is well understood by BOG but significant efforts are required to properly understand the risks in the NBFIs sector. Generally, BOG demonstrates a sound knowledge of the risk associated with the banks but limited understanding of risk in the NBFIs. The BOG has developed risk analysis methodologies specific to ML/TF that take into consideration elements of risks associated with products, services, customers, delivery channels, geographic locations etc. The risk assessment process involves the analysis of information or data collected from banks on a quarterly basis and results of self-assessments by banks vide a risk self-assessment questionnaire. The questionnaire completed by banks seemed comprehensive enough, and data collected is crosschecked against information held on each bank by the Banking Supervision Department (BSD) of the BoG. Once data validation is completed, a summary sheet is prepared (risk hit map), indicating the placement of institutions into Low, Medium and High risk. It seems BOG's reliance on the risks questionnaires is appropriate and gives a good measure of risks factors in banks. Where necessary, follow-ups are made to ensure high standards of compliance. This is combined with financial soundness indicators and key ratios to determine the extent of risks in institutions. In addition, the BOG has mapped out geographic areas with high or low risks based on information obtained from Police reports on predicate offences and their prevalence in the ten regions of the country. Collectively, this guides supervisory approach of the BOG.

242 SEC and NIC are yet to carry out a comprehensive risk assessment of the institutions they supervise and do not demonstrate sufficient understanding of the risk associated with the institutions/sectors under their supervision. The risk methodologies used by both supervisors (SEC & NIC) are biased towards prudential indicators and lack the sophistication to provide

[48] The registration of the SMEs was hitherto done by the Precious Minerals Marketing Company

comprehensive information on the nature of ML/TF risks at the level of individual institutions. Thus, SEC and NIC do not comprehensively understand the ML/TF risks associated with the institutions and sectors they supervise.

243 In relation to the DNFBPs sector, the Gaming Commission, Minerals Commission and SRBs do not have risk assessment methodologies or guidelines for understanding the risks in their sectors or amongst their members. There are no systems to help them monitor developments in these risks and ensure that they are known, understood and taken into account when applying preventive measures and controls. Notwithstanding the NRA, the ML/TF risk in the DNFBP sector is largely not well understood by the sector supervisors and relevant SRBs.

Risk-based supervision of compliance with AML/CFT requirements

244 AML/CFT supervision of the banking sector is robust and risk based, with varieties of off-site and on-site examinations. The frequency and intensity of AML/CFT supervision by BOG are guided by risk considerations and occasionally information from the FIC. The BOG demonstrated how its risk hit map guides supervisory approach and also provided instances where inputs/information provided by the FIC triggered targeted examination in two banks. The BOG has developed a comprehensive Examinations Manual (2015) with the assistance of the United States Department of Treasury. The Manual provides detailed guidance on how to approach the issue of AML/CFT Examinations, scoping and planning process of examinations but needs to be domesticated to reflect local risks issues, indicate the kinds of customer identification documents to consider acceptable during inspections, as well as take cognizance of the relevant domestic laws that provided the basis for the implementation of AML/CFT in Ghana. In all, the Manual guides the operations of the BOG's Financial Integrity Office (FIO) that has primary responsibility for AML/CFT compliance monitoring/supervision (off site and onsite). The FIO conducted 16 dedicated AML/CFT inspections of banks in 2015 using the Risk Based Approach. In all, the RBA applied by the BOG has led it to concentrate onsite examination on institutions considered high risk.

245 The BOG does not conduct consolidated supervision of financial institutions belonging to group ownership structure, given the absence of provisions in this regard. In the absence of provisions for consolidated supervision, BOG should encourage more information exchange between it and other Supervisors, particularly given the possibility of increased presence of Bank Holding Companies in the West African Sub-region.

246 A review of sample on-site examination reports by the Financial Integrity Office (FIO) of BOG revealed a good depth of coverage and in general, the Examiners demonstrate a good knowledge of the issues and institutions inspected. The examinations covered critical AML/CFT issues including Corporate Governance, adequacy of CDD measures, record keeping/documentation, internal controls, training etc. Outcome of the examinations show that some financial institutions still face varied challenges, including poor governance, a few cases of lack of Board Approval of AML/CFT policy documents, inadequate AML/CFT personnel, failure to file electronic transaction reports to the FIC and not embracing the required KYC measures, such as the failure to verify customer details during account opening. Findings of the on-site examination reports are always shared with institutions, with deadlines set by BOG for implementation of corrective measures. BOG informed the assessment team that, it is currently shifting supervision and support to the microfinance banks in line with its RBA. The BOG on-site examination calendar included plans for visits

to targeted institutions, which were determined to be high risk institutions. The IMF's Technical Assistance visit to BOG to conduct training on Savings and Loans Risk Assessment is scheduled to take place in the second half of 2016. This includes planned workshops on KYC/CDD for Savings and Loans, Rural Banks and Micro-finance institutions, as well as a continuation of the risk-based on-site visits to selected rural banks. These steps put into perspective the BOG's strategy towards expansion of risk-based AML/CFT supervision across all financial institutions under its purview. The FIO provided evidence of some on-site examinations conducted among NBFIs (see Table 6.1 below), although out of the ten regions in the country, the examinations covered only two regions. The examinations covered, savings and loans institutions, rural and community banks, as well as, micro finance institutions mainly in 2016 and the rest are yet to be covered.

247 Despite ongoing supervisory efforts in the insurance sector, significant improvement is required in the application of RBA to AML/CFT supervision by NIC. The NIC has a dedicated AML/CFT Unit with mandate for AML/CFT examination. In its 2015 Annual Report, NIC indicated efforts towards full adoption of Risk Based Supervision (RBS). The assessment team was informed that until recently, implementation of AML/CFT regulations by NIC was primarily focused on sensitizing operators on their obligations and to promote a compliance culture. The NIC had just completed a pilot inspection of 8 insurance institutions. However, these examinations were not done with full regard to the specific ML/TF risks of the institutions, as NIC does not have a robust risk assessment methodology and is yet to fully understand the ML/TF risks of the entities it supervises and the sector in general. The pilot inspections reveal weak implementation of AML/CFT measures, including lack of training of management, inadequate due diligence measures, while some institutions were yet to appoint AMLROs. A number of insurance companies have conducted self-assessments of their risks, although these were not comprehensive and it is not clear if the desired results were achieved. More joint efforts are required between FIC and NIC to increase awareness in this sector, as well as complete the development of a comprehensive risk matrix with the IMF to enhance capacity of NIC to undertake risk based supervision.

248 AML/CFT supervision by SEC requires significant enhancement. The SEC has carried out a few AML/CFT examinations on CMOs between 2010 and 2016 (see table 6.3 below). For instance, in its Annual Report of 2014, SEC indicated that 12 CMOs were inspected to ascertain their level of compliance with the laws and regulations on AML/CFT**.** The inspections covered a mere 7.94 percent of the institutions within the sector and were not risk sensitive. Although the SEC on-site visits seem to demonstrate implementation of some form of risks analysis, it is yet to develop appropriate risk assessment methodology and merely runs through a checklist of issues during on-site inspections. A review of on-site inspection reports revealed a lack of comprehensiveness, as the reports did not show evidence of risks analysis as regards AML/CFT nor evidence of risk assessment methodologies. Some of the weaknesses identified in the inspection reports by SEC include incomplete information on KYC form, and lack of risk categorization of clients, compliance policy, as well as, AML/CFT training. The SEC is being assisted by the IMF to develop robust risk assessment tool for their sector SEC has a dedicated Unit responsible for AML/CFT compliance monitoring/supervision.

249 The table below compares the number of AML/CFT and prudential examinations carried out by the three regulatory authorities between 2010 and June 2016. The table reveals a concentration of resources on prudential supervision compared to AML/CFT, although this is changing gradually with improving commitment of the supervisors on AML/CFT issues.

250 As indicated in the Table 6.3 below, Bureaux de Change (BDCs) are subject to prudential supervision. However, no AML/CFT supervision has been undertaken in the sector. This could account for the weak implementation of AML/CFT measures in the sector. Similarly, AML/CFT supervision for credit unions is yet to commence. A bill [Co-operative Credit Union Regulations (2015) Bill)] expected to facilitate the monitoring of credit unions is still pending in Parliament.

Table 6.3 AML/CFT Examination (Financial & DNFBP Sectors) (2010-2016)

Sector	2010		2011		2012		2013		2014		2015		2016	
	Prudential	AML/CFT	Prudential	AML/CFT	Prudential	AML/CFT	Prudential	AML/CFT	Prudential	AML/CFT	Prudential	AML/CFT	Prudential	AML/CFT
BANKING														
Banks	26	N/A	27	N/A	26	N/A	26	15	27	15	29	16		10
INSURANCE														
Insurance Companies	0	0	0	0	0	0	3	0	5	0	16	1	6	8
SECURITITES MARKET														
Capital Market Operators	32	0	24	0	17	0	52	5	61	12	26	6	21	5
OTHER FINANCIAL INSTITUTIONS														
Microfinance Institutions (MFIs)	N/A	N/A	N/A	N/A	N/A	N/A	165	N/A	220	N/A	250	0	147	20
Bureau de Change	N/A	N/A	N/A	N/A	N/A	N/A	120	-	225	-	260	0	270	0
Savings and Loans / Finance Houses.	29	N/A	27	N/A	11	N/A	27	5	24	15	50	12	-	10
Others (Rural & Community Banks	119	N/A	78	N/A	133	N/A	133	-	139	-	139	3	42	0

251 Table 6.3 above shows that on-site inspections are not done adequately across the various sectors. That notwithstanding, the table shows that regulators focused more on prudential inspections rather than AML/CFT examinations. In some cases, inspections carried out were not informed by risk analysis. Assessors noted that resources for AML/CFT supervision are limited across regulatory authorities. Though BOG, SEC and NIC have dedicated units for AML/CFT, these units are grossly under staffed. For instance, as at the time of onsite, the Financial Integrity Office of the BOG had only 6 staff, while the AML/CFT Units of the SEC and NIC each has 2 and 4 staff members respectively. Notwithstanding the fact that some of the supervisory staff are professionals with extensive experience, the regulators indicated that the existing staff cannot fully and effectively engage the entire operators in their respective sectors, thus posing the risk of inadequate compliance monitoring. The BOG has commenced the process for engaging additional staff. In addition,

the assessment team notes that other than BOG, the SEC and NIC will require serious improvement in financial resources to effectively deliver on their responsibilities.

Table 6.4: Supervisory staff available to Regulatory Authorities

Regulator	Number of Staff dedicated to AML/CFT
BOG	6
SEC	2
NIC	4
Gaming Commission	Not Available (NA)
Minerals Commission	NA
National Pensions Regulatory Authority	NA

252 Domestic cooperation and collaboration amongst financial sector regulators is good but requires some improvement. The Regulators Forum exists and serves as a platform for operational cooperation and collaboration amongst the supervisors. The Forum meets quarterly and discusses issues affecting the financial sector, including AML/CFT supervisory matters. For instance, the Forum was involved in the drafting of the Banks and Specialized Deposit Institutions Bill, review of the Securities Industry Law, and development of common database of licenced financial institutions. Reports of the meetings of the Forum indicate that, the Forum has a Technical Committee which periodically organizes joint training sessions for members on specialized topics. Nevertheless, assessors were informed that the Forum has not been meeting regularly in recent times.

253 Cooperation between supervisory authorities and their foreign counterparts is good but can be enhanced. BOG is cooperating well with the Central Bank of Nigeria (CBN) in supervising Nigerian banks operating in Ghana. This is very important given the strong presence of Nigerian banks in the country. The BOG provided instances where it carried out joint examination with the CBN on three Nigerian banks operating in Ghana. NIC has signed cooperation agreements (MOUs) with its counterparts in Kenya and Uganda and is also a party to the Multilateral MOU (MMoU) signed between Insurance Supervisors of Ghana, Liberia, Nigeria, Sierra Leone and The Gambia. This has helped to enhance cooperation and information exchange between the NIC and its counterparts within and outside the West African sub-region. The SEC is a member of the West African Securities Regulators Association (WASRA) and regularly participates in sub-regional meetings to facilitate information exchange.

254 Supervision of DNFBPs for AML/CFT remains non-existent and SRBs are yet to demonstrate an understanding of risks in their sectors. Although, the Gaming Commission, Minerals Commission and some of the SRBs have powers to exercise some form of monitoring over operators in their sectors, with the exception of the casinos, authorities and SRBs met during onsite could not demonstrate that such monitoring are actually being carried out. The assessment team noted that no AML/CFT onsite examination has been undertaken in the DNFBPs sector. The vulnerability of the sector to ML/TF, the weak implementation of AML/CFT measures across the sector, and the lack of AML/CFT supervision/monitoring, are serious gaps that present the sector as a weak link in the overall AML/CFT supervisory regime of Ghana.

Remedial actions and effective, proportionate and dissuasive sanctions

255 BOG, SEC and NIC have powers to apply sanctions on all reporting entities under their supervision. Also, a broad range of sanctions (criminal, civil, or administrative) are available and applicable to natural or legal persons for noncompliance with the AML/CFT requirements. However, these sanctions are rarely applied in practice and may have adverse impact on effectiveness. The weakness in implementation of sanctions is demonstrated in Table 6.5 below, where in the case of banks, few sanctions were reported, and none for the other sectors. The assessment team noted that administrative sanctions available to supervisory authorities appear limited as no financial penalties are specified in their sector AML/CFT Regulations or the law establishing them, nor in the AML laws[49]. This limits their capacity to apply pecuniary sanctions in cases of non-compliance with AML/CFT obligations relating to preventive measures. This position is reinforced by findings from the NRA, which states that Supervisors exercise some level of forbearance, particularly in the area of AML/CFT, in which there is concern that the AML law (Act 749) as amended, did not provide enough basis to apply sanctions for non-compliance with AML/CFT requirements.

256 No sanction has been applied by SEC and NIC for the securities and insurance sectors. Both supervisory institutions informed the assessment team that because implementation of AML/CFT is nascent in their sectors, their enforcement strategy focuses on fixing the problem before sanctioning. In most cases, deficiencies identified by them through their compliance activities are remediated by reporting entities according to the recommendations and requirements issued by them after the examinations.

257 Statistics provided by BOG revealed that sanctions were negligible or few and far between. Between 2010 and June 2016, BOG indicated that it barred 58 officials of institutions under its purview from employment on AML/CFT related cases. BOG did not report any pecuniary sanction/fines for violations of AML/CFT requirements, except for two occasions in 2016, when fines of GHC 14,000 and GBP4000 were reported by the Authorities, which relate to loss of funds by customers due to fraud and for which BOG ordered the concerned banks to refund customers. These are few and not commensurate with the severity of deficiencies highlighted in examination reports issued by BOG and reviewed by the assessment team. In addition, this situation reveals major weaknesses regarding imposition of sanctions for non-compliance. The Authorities are aware of this limitation and as at the time of onsite, had presented a Bill to the Parliament which will give BOG a range of pecuniary sanctions. The Bill was enacted into law after the onsite. The new law[50] has strengthened the penalties from a minimum of 3000 penalty points (equivalent to $9000), to a maximum of 10,000 penalty points (equivalent to $30,000). It is hoped that the implementation of this new penalties by BOG will enhance compliance, especially within the institutions it supervises, and ultimately, the effectiveness in the fight against ML/TF/FP.

258 Supervisors in Ghana take a range of remedial actions. BOG, SEC and NIC require reporting entities to remediate any deficiencies identified during the examination process. As a matter of practice, supervisory authorities issue letters to institutions that have been examined for AML/CFT highlighting findings which the reporting entities are required to

[49] The administrative sanctions for the banking sector has been strengthened through the "Banks and Specialized Deposit Taking Institutions Act, 2016", enacted after the on-site visit

[50] The Banks and Specialized Deposit Taking Institutions Act, 2016", was enacted after the on-site visit to strengthen the penalties in Ghana

take appropriate remedial action. In addition, they have monitoring and follow-up processes, including follow-up meetings, further examinations, action plans, and sanctions to ensure remediation. Assessors were shown evidence of follow up letters and remedial actions taken by some financial institutions.

259 Statistics of regulatory actions in relation to AML/CFT provided to the assessment team during the onsite is presented in the table below.

Table 6.5 Regulatory Sanctions for AML/CFT Deficiencies, 2010-2016

SECTOR	Total Number of Regulatory Action (2010-June 2016)						
	No of Written Warnings Issued	No of Officials Barred from Employment	Number of Remedial Actions Issued which the Institution is to Address	Amount of Financial Sanction ($)	No of Entities Suspended from Operations	No of Licenses Withdrawn	Others
Banks	NONE	58	Each on-site examination is subject to addressing deficiencies within a given period	2016 GHC 14000.00 GBP4000.00		none	3 cases on fraud identified and the banks directed to refund victims
Insurance Companies	Nil	Nil	8	Nil	Nil	Nil	Nil
Securities Market	None	None	96	None	None	None	
DNFBPs	-	-	-	-	-	-	-

Impact of supervisory actions on compliance

260 Supervisory actions have more positive impact on compliance in the banking sector compared to other sectors. Within the banking sector, the BOG has noted marked improvement in AML/CFT compliance as a result of enhanced engagement and supervisory actions. Similarly the Assessors noted improvements within the banking Sector compared to when the country was subjected to its first ME, particularly with regards to implementation of guidelines. Furthermore, positive results are seen especially in the areas of the development of risk framework/risk assessment by banks, improvement in quality and quantity of STRs filed to the FIC, enhanced staff training, improved collaboration with the BOG & FIC, and greater oversight and understanding of ML/TF risks by the board and senior management of FIs and the implementation of more comprehensive policies and procedures. Bank officials

that met with the assessment team during the onsite confirmed that supervisory actions, including AML/CFT inspections have enhanced their compliance with AML/CFT requirements. The impact of supervisory actions on compliance in the NBFIs, securities and insurance sectors is mixed and uneven. Though some of the reporting entities in these sectors have appointed AMLROs and have adopted some AML/CFT measures as a result of supervisory activities, generally, the impact of supervisory actions on their compliance level remains limited, due largely to the low number of supervision/monitoring; weak system of monitoring the remediation of deficiencies (weak follow-up system) and limited engagement between regulators and operators. For instance, while SEC and NIC provided samples of examination findings, they could not demonstrate where their actions including follow up activities have had effect on compliance by specific institutions in their sectors. In relation to the DNFBP sector, the team noted that since the sector did not conduct supervision on AML/CFT, there could be no compliance with AML/CFT requirements. .

Promoting a clear understanding of AML/CTF obligations and ML/TF risks

261 The AML/CFT Guidelines issued jointly by regulatory authorities (BOG, SEC, NIC) and the FIC as well as the NRA report provide the main basis for an understanding of ML/TF risks and AML/CFT obligations by financial institutions. Key Guidelines jointly issued by regulatory authorities and the FIC are: (i) BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions (2011); (ii) SEC/FIC AML/CFT Compliance Manual for CMOs (2011); and (iii) NIC/FIC AML/CFT Guidelines for Insurance Companies and Intermediaries (2011). These guidelines are comprehensive and have helped the financial institutions to have a better understanding of their AML/CFT obligations. Some of the financial institutions that met with the assessment team during the onsite confirmed that these Guidelines have helped them to draft their internal AML/CFT policies and processes. These Guidelines coupled with the NRA report published in August 2016, provide financial institutions a good understanding of the risks within their sectors. However, the Guidelines were issued before the revised FATF standards and the NRA and thus will require review to adequately reflect the changes to the FATF standards and incorporate the findings of the NRA.

262 Supervisory authorities and the FIC carried out several outreach and sensitization programmes to reporting institutions to broaden their awareness on ML/TF risks and the obligations arising from Ghana's AML/CFT legal and regulatory framework. This has been achieved by organizing and participating in seminars and workshops, through the use of presentations, publication of information guides/pamphlets on AML/CFT related issues, periodic meetings with compliance officers and focused group discussions to discuss and sort out regulatory issues (this last initiative appears to be working well to rectify irregularities and improve understanding of AML/CFT requirements, especially in the banking sector); etc. For instance, the BOG conducted several training workshops for financial institutions, which was followed by the issuance of relevant materials to guide them in carrying out their institutional risks assessments. A similar matrix was refined to suit smaller institutions like the savings and loans companies. The team noted that Ghana is yet to develop an appropriate risk matrix for the other NBFIs. During the onsite, banks and the NBFIs that met with the assessment team, confirmed that the FIC and the BOG, were generally very proactive in undertaking initiatives to engage with them. While SEC and NIC also engage with reporting institutions in their sectors, feedback indicates that significant improvement is required.

263 The FIC does not conduct on-site inspections but has gained tremendous visibility within Ghana, through its sensitization and support extended to stakeholders on AML/CFT issues. As noted above, the FIC has collaborated with other regulators to issue AML/CFT Guidelines. The FIC also undertakes sensitization and provides capacity building programmes for stakeholder institutions and accountable institutions to enhance their understanding of ML/TF risks and AML/CFT obligations. For instance, the FIC organized a national stakeholders' workshop where the outcome of the NRA was discussed with participation from the private sector. This contributed immensely to the understanding of the conclusions and finding of the NRA by both public and private sector stakeholders. In addition, FIC's feedback mechanism and continuous engagement with accountable institutions has helped to improve their general understanding of risks, and their compliance with reporting obligations. This has resulted in improvements in the quality of STRs filed to the Centre. The FIC's Annual Reports and other periodic publications on AML/CFT related matters have contributed greatly to stakeholders' understanding of the risk environment in Ghana and their overall AML/CFT obligations. The FIC has received commendation for its work in promoting the understanding of stakeholders, especially reporting entities of their obligations and risks. Numerous examples were cited where FIC gave technical support and valuable information across all sectors. However, the FIC needs to collaborate with the appropriate competent authority to reach out more to the DNFBPs, NPOs and other sectors yet to demonstrate a good knowledge of ML/TF risks and their AML/CFT obligations. The website of the FIC which, at the time of onsite, was moribund, should be made active and updated with relevant information to serve as another veritable medium or window for awareness creation.

264 Ghana has embarked on training and sensitization campaign to elevate the level of awareness in the banking, Insurance and Securities Sectors. Table 6.6 shows some of the training workshops conducted to create awareness and improve capacities within the financial institutions. The Insurance Sector reported lesser activity in this area, which goes to underline the need to further enhance capacity in other sectors other than banks. Generally, this has helped to improve compliance with AML/CFT reporting obligation as noted in the statistics of STRs, CTRs etc provided under IO 4.

Table 6.6 Some key outreach activities/ capacity building programmes provided by regulatory authorities/FIC

2014	2015	2016
Banking Sector	**Banking Sector**	**Banking Sector**
Workshop on Risk Assessment and Risk Methodology organized by Bank of Ghana for Universal Banks. Date: 3rd April, 2014	Interactive Workshop on AML/CFT Preventive Measures organized by Bank of Ghana for Rural Banks and NBFIs Southern Zone Date: 8th – 9th June 2015.	Sensitization Seminar on Second round of Country AML/CFT Mutual Evaluation Exercise organized by Bank of Ghana for Universal Banks, NBFIs and Rural Banks. Date: 29th August – 1st September, 2016.
Training on the usage of the 'Electronic Transfer Confirmation Form' to enhance CDD/EDD	Interactive Workshop on AML/CFT Preventive Measures organized by Bank of Ghana for Rural Banks	Workshop on risk Assessment and Risk

2014	2015	2016
procedures organized by FIC for Compliance Officers of banks Twenty-seven (27) Compliance Officers participated. Date: **24th March, 2014**	and NBFIs Northern Zone. Date: 26th – 29th October, 2015.	Methodology organized by Bank of Ghana for Savings and Loans Institutions. Date: 2nd December, 2016.
Capital Market Operators	**Capital Market Operators**	**Capital Market Operators**
Workshop on Filing of Cash Transaction Reports (CTRs) using the prescribed templates for the Capital Market Operators (CMOs) organized by FIC and SEC for Sixty five (65) AMLROs. Date: 08/02/2014 Capital Market Operators (CMOs) MLROs/Compliance Officers Forum, organized by FIC and SEC at the Centre for Scientific (CSIR) and Industrial Research, Science and Technology Policy Research Institute (STEPRI), Accra. The Forum was attended by seventy five (75) Compliance Officers. Date: May 2014	AML/CFT training session/ AMLROs Forum for the designated Compliance Officers/ AMLROs in the Securities sector organized by FIC and SEC. Ninety eight (98) participants were trained. Date: **27th August, 2015**	2016 first bi-annual AMLROs Forum for Broker Dealers and Fund Managers organized by FIC and SEC. The meeting discussed Ghana's 2nd Round Mutual Evaluation process in September 2016, responsibilities of the AMLROs and sanctions for non-compliance. **Date: 9th March, 2016.** AML/CFT Workshop for Broker Dealers and Fund Managers in the securities sector organized by FIC and SEC. One hundred and thirty one (131) participants were present. **Date: 26-27 May, 2016** 3rd Session of the CMOs Forum for 2016, organized by FIC and SEC, at Science and Technology Policy Research Institute (STEPRI) Council for Scientific and Industrial Research (CSIR), Accra Sixty (60) participants were trained. **Date: 30th November, 2016**

2014	2015	2016
Insurance Sector	**Insurance Sector**	**Insurance Sector**
		Training on Know Your Customer/ Customer Due Diligence (KYC/CDD) organized by FIC and NIC for Life and Non Life insurance companies. The above training was also organised for Broking Companies in the same sector. Thirty five (35) participants were trained. **Date: 2nd March, 2016** NIC/FIC organized AML/CFT Training session for the Insurance Sector. The training was attended by three (3) National Insurance Commission (NIC) officials and twenty–nine (29) staff from the insurance sector including brokerage firms. Date: **11th March, 2016** AML/CFT Workshop for Life and Non-Life insurance companies and Broking Firms, organized by FIC and NIC, at the NIC Auditorium, Accra. The workshop focused on Ghana's 2nd Round of Mutual Evaluation process in September 2016, responsibilities of the AMLROs and sanctions for non-compliance. **23rd August, 2016**

265 Generally, there is a cordial working relationship between the FIC, regulators and AIs. The existence of industry associations, such as the Anti-Money Laundering Reporting Officers (AMLROs) Forum for the Securities sector, Compliance Officers Forum of Banks, GREDA, Ghana Micro Finance Institutions Network, etc provided a platform that have helped strengthened the working relationship, coordination and collaboration between regulators, the FIC and AIs. All the AIs the assessment team met during the onsite confirmed that there is a sound collaborative relationship with their sector supervisors and the FIC. The regulators/FIC are generally available to provide technical support and constructive feedback. For instance, the FIC and BOG have organized trainings to address specific issues, like risk assessment to enhance banks understanding and implementation. Similarly, SEC collaborates with the FIC to meet with the AMLROs (at least twice every year) to discuss AML/CFT compliance issues. On the whole, this facilitates a cordial relationship and helps to foster compliance by reporting entities.

266 No sector specific guidelines have been issued for the DNFBPs. Majority of DNFBPs do not have a clear understanding of the ML/TF risks to which they are exposed to, as well as their AML/CFT obligations. Some of SRBs who met the assessors, particularly, Ghana Real Estates Developers Association, appears to have a clear agenda to further promote understanding of ML/TF risks and compliance amongst its members, but lacks the technical capacity and will require support from the FIC.

267 Ghana has achieved a Moderate level of effectiveness for Immediate Outcome 3.

CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

Key Findings and Recommended Actions

Key Findings

- The registration process for legal persons in Ghana requires companies to provide basic information thus, basic information on most types of legal entities is publically available at the Registrar General's Department Website.
- Competent authorities can obtain basic information on all types of legal persons created in Ghana in a timely manner..
- Ghana has identified and assessed some elements of the vulnerabilities of the misuse of legal person and arrangements. However, a deeper assessment is required to comprehensively understand the risks of misuse of these entities for ML/TF purposes.
- Ghana has a range of measures available to collect information on the control and ownership structures of legal entities including through the FIs, R-GD Office and GRA, among others.
- The Companies Amendment Act 2016 requires legal persons to maintain beneficial ownership information. The Act also requires legal persons to provide beneficial ownership information to the RGD however, implementation at the RGD is yet to commence.
- Trustees are not required to maintain beneficial ownership information and make such information available on a timely basis to competent authorities.

Recommended Actions

Ghana should:

- Conduct a comprehensive assessment of the ML/TF risks associated with all types of legal persons created in Ghana, disseminate findings of the assessment to all stakeholders especially supervisors and AIs and implement measures to mitigate the risks identified.
- Provide guidance to AIs on Beneficial Ownership and conduct outreach to lawyers and other DNFBPs to enhance their compliance with the obligation to obtain beneficial ownership information.
- Provide sensitization and training to LEAs to enhance their ability to obtain beneficial ownership information especially where complex structures or foreign legal persons and arrangements are involved.
- Put in place oversight mechanisms to ensure that basic and beneficial ownership information maintained by a legal entity or the RGD is adequate, accurate and current.
- Require trustees to maintain beneficial ownership information and make such information available on a timely basis to competent authorities.
- Apply proportionate and dissuasive sanctions for non-compliance with requirements to keep adequate, accurate and current records, or provide relevant information to the RGD.

268 The relevant Immediate Outcome considered and assessed in this chapter is IO.5. The recommendations relevant for the assessment of effectiveness under this section are R.24 & 25.

Immediate Outcome 5 (Legal Persons and Arrangements)

269 The relevant laws on legal persons and arrangements in Ghana are the Companies Act, 1963 (Act 179), the Companies (Amendment) Act, 2012 (Act 835), the Incorporated Private Partnership Act, 1962 (Act 152), Registration of Business Names Act, 1962 (Act 151); the Public Trustees Act, 1952 (No. 24), the Trustees (Incorporation) Act, 1962 (Act 106) and the Companies (Amendment) Act, 2016 (Act 920) which was enacted in August, 2016. Under Ghanaian laws, legal persons are organizations created and registered under any of the business laws of the country. These includes, companies limited by guarantee. Trusts are recognized in Ghana under both common law and statutory law[51] but there is generally no requirement for registration of private trusts. The Trustees (Incorporation) Act 1962 (Act 106) however, permits trustees of certain voluntary associations to become incorporated to enable them hold property in trust on behalf of members.

Table 7.1 Types and Number of registered legal persons in Ghana as at August 2016

Type	Total Number Registered
Limited liability companies	83229
Guarantee companies	3574
External companies	711
Partnerships	1227
Sole proprietorship / business names	188748
Subsidiary Business Name	2358
Total	**279847**

270 The central authority for the registration of businesses in Ghana is the Registrar-General's Department (R-GD) under the Ministry of Justice and Attorney-General's Office.

271 Trust arrangements that fall outside the Trustees (Incorporation) Act are privately owned and there is no direct obligation on trustees to maintain or disclose beneficial ownership information to competent authorities and financial institutions. The AML law however, requires banks to obtain beneficial ownership information from all customers, including legal persons and arrangements. Trust and Company Services in Ghana are sometimes provided by lawyers who have obligations to conduct CDD under the AML law. Moreover, in June 2014, the AML Act 2008 (Act 749) was amended to designate Trust and Company Service Providers[52] as "Accountable Institutions" thereby making them subject to the AML obligations.

[51] Refer to paragraphs 707-709 of Ghana's first MER

[52] Particularly those that prepare for or carry out transactions on behalf of a customer in relation to services such as (i) acting as a formation, registration or management agent of a legal person, (ii) acting as or arranging for another person to act as a director or secretary of a company or a partner of a partnership, or to old a similar position in relation to a legal person, (iii) providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement, (iv) acting as, or arranging for another person to act as a trustee of an express trust or similar arrangement.

Public availability of information on the creation and types of legal persons and arrangements

272 Basic information on the types, forms and features of corporations under Companies Act, 1963 and a detailed guidance on the incorporation process are publicly available on the Registrar General Department's website. This website is easy to find and provides public access to the relevant laws that describe the various legal entities available; the name and contact information for the relevant competent authority for registration; and the procedures to be followed to establish a legal entity.

273 The Companies Act, 1963 outlines the basic information required for the registration of legal persons under Section 32. The Companies (Amendment) Act, 2016 provides for the inclusion of the names and particulars of beneficial owners of companies in the register of members. The Act also requires legal persons to provide the RGD with beneficial ownership information. However, implementation at the RG-D was yet to commence. Ghana is encouraged to create awareness and provide necessary support for effective implementation of the new law.

Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities

274 Ghana has assessed some elements of ML/TF risks and vulnerabilities involving legal persons and arrangements through the NRA, however a deeper assessment is required to comprehensively understand the risks of misuse of these entities for ML/TF purposes. Ghana has evaluated and reviewed the relevant legal and regulatory framework but the country has not reviewed specific cases where corporate vehicles have been misused for criminal purposes in order to identify typologies that indicate higher risk.

275 In 2016, the FIC organized a Consultative Workshop on Beneficial Ownership which formed the basis for the Companies (Amendment) Act 2016 which mainly deals with beneficial ownership. The workshop analyzed the current legal framework, attempted to make a working definition of beneficial ownership and identified mechanisms to obtain and access beneficial ownership by competent authorities and AIs. The Companies (Amendment) Act, 2016[53] aims to improve transparency of legal persons in Ghana. As a result of the workshop and other meetings, competent authorities that met with the assessment team during the onsite visit had a relatively fair understanding of the risks posed by legal persons.

Mitigating measures to prevent the misuse of legal persons and arrangements

276 Ghana has a range of measures aimed at preventing and mitigating the misuse of legal persons. These include transparency of basic information through registration and a requirement to update the information at the R-GD within 28 days and CDD obligations for banks, providing for access to information by the authorities. With respect to transparency, information held by the R-GD is publicly available. The exclusion of bearer shares and bearer share warrants from the corporate landscape in Ghana also enhances transparency of legal

[53] Full implementation of the Act at the RGD had not commenced as at the time of the onsite.

persons. Measures by Ghana to collect information on the control and ownership structures of legal entities is outlined below:

i. In cases where a legal entity enters into a business relationship with a FI or DNFBP, the institution is required to collect and maintain basic and beneficial ownership information;

ii. The RG's registration process for legal persons and certain legal arrangements in Ghana requires companies to provide basic information on companies and their directors and the new Act 920 now require legal persons to provide beneficial ownership information;

iii. The RG also requires all legal entities to update it with any changes to their ownership structure.

iv. Ghana Revenue Authority (GRA) also collects information on legal entities as part of the taxation process;

v. The legal persons themselves are required to keep records of their activities, shareholders and directors and their beneficial owners[54]. For public companies listed on the stock exchange, disclosure requirements exist for shareholders with direct or indirect control over 10 percent of the company's voting rights.

277 The R-GD ensures that the information provided to it is complete but does not specifically verify the accuracy or currency of the information it receives or the authenticity of the documents submitted. It operates on the presumption that the data which has been provided is accurate because documents submitted to the registry must be original documents or a copy of the original certified by a notary and the submission of false data to the registry is a criminal offence.

278 Financial institutions in Ghana are required to obtain basic and beneficial ownership information from legal persons and arrangements in accordance with the AML/CFT Act, 2008 (Act 749). Many of the FIs that the assessors met said that they require their customers to provide information on beneficial ownership and to a large extent take reasonable steps to verify the accuracy or completeness of such information. Nevertheless, there are some difficulties in verifying this information especially in cases where foreign directors are involved. Most FIs, especially banks, take steps to identify and verify the identity of beneficial owners (even in situations where such persons are not listed as shareholders in the company). For instance, Account Opening Forms of banks require legal persons and arrangements to provide information on beneficial owners, as well as, provide the means of identification of such individuals, even where they are not shareholders or directly linked to the company. Similarly, in the course of business relationship, where the bank suspects a person has links or control over a company, they take steps to establish the relationship and identify and verify the beneficial owner. In situations where the beneficial owner does not have a direct link with the company, the bank relies on the goodwill of the customer to provide such information. This finding is consistent with the outcome of the NRA which indicates that banks are largely compliant in respect of establishing the ownership and control structures and determine the natural persons who ultimately own and control legal entities[55]. In general, most FIs take steps to establish the identity of beneficial owners, and carry out

[54] Act 920

[55] NRA 2016,

independent verification, where practicable. However, financial institutions generally stated that they faced challenges when conducting independent verification, especially where some of the directors are foreigners. On the whole, the potential risk arising from the possible lack of beneficial ownership information has been mitigated by the new Companies (Amendment) Act, 2016 (Act 920), which requires companies to provide information on beneficial owners to the RGD and include this information in their Register of Members. Although comprehensive implementation of this law as regards providing information to the RGD was yet to commence as at the time of onsite. However, the assessment team was told by authorities that the RGD recently commenced the process which will result in re-registration of all legal entities in Ghana to ensure the collection of more comprehensive basic and beneficial ownership information from legal entities.

279 As part of its tax revenue collection obligation the GRA also collects information on legal entities. Although this information does not include beneficial ownership information, the information can be made available to LEAs and other competent authorities for the purpose of establishing or determining the beneficial owner of a legal entity.

280 All legal persons in Ghana are subject to record keeping obligations under the Companies Act, 1963. The Act requires legal persons to maintain records such as share registers, basic company information, accounting records, directors' meeting minutes, shareholders' meeting minutes as well as company bylaws and related amendments. The RG's Office has statutory powers to enforce compliance with regulatory requirements, including accuracy and adequacy of information and annual report filed through monitoring and onsite visits. However, no company has been sanctioned for failure to provide or keep accurate and comprehensive company records In March 2015, the RGD issued a statement to the effect that all legal persons that do not update their records at the RGD will be struck off the Companies Register. The RGD is currently implementing this measure and proactively ensuring that information at the Department is accurate and current.

Timely access to adequate, accurate and current basic and beneficial ownership on legal persons and arrangements

281 Competent authorities can obtain basic information on all types of legal persons created in Ghana in a timely manner from RGD Registry and the website. In case of companies, this information on legal ownership is verified through the synchronization with the GRA system. The GRA and RGD systems are synchronized therefore at the stage of incorporation through a Tax Identification Number (TIN) every officer and member of the company requires the Tax Identification Number. This information is verified by GRA through GVIVE, a central verification platform. For information that is not publicly available, Ghana has a wide range of law enforcement powers available to obtain beneficial ownership information which is available at FIs.. Beneficial ownership information on Ghanaian companies is not currently available at the R-GD, since the law is yet to be implemented but, the recently passed Companies Amendment Act, 2016 (Act 920) requires companies to maintain beneficial ownership information.. Assessors also noted that beneficial ownership information is not readily available where there are foreign legal persons or arrangements involved in the ownership and control structure. In general, access to beneficial ownership is not as timely when LEAs utilize the RGD as further investigation may be needed to confirm beneficial ownership information when investigating ML cases.. It is thus noted, that while LEAs generally have the powers to obtain timely beneficial ownership

information from AIs via (either directly –EOCO) the FIC. It is unclear to what extent this is done by them in practice.

282 Ghana generally has the ability to cooperate and respond to international requests on basic and beneficial ownership information relating to legal persons and arrangements and has done so via the FIC and other competent authorities. The FIC provided two cases where the Centre liaised with relevant institutions in Ghana to respond to two requests for beneficial ownership information from two different countries. However, LEAs interviewed by the assessment team stated that they face some challenges in obtaining information on foreign directors of Ghanaian legal entities during investigations, due to delay or the non-cooperative attitude of some countries when such requests are made by Ghana.

283 Beneficial ownership information of legal persons and arrangements is most often available at the AIs, particularly the banks with which they maintain account relationship or conduct business. As a matter of practice, banks obtain, retain and verify beneficial ownership information, where practicable.

284 DNFBPs, including lawyers, who sometimes provide trust and company services in Ghana, are required to conduct CDD. However, some of the lawyers and notaries interviewed by the assessment team seemed to be unaware of any obligation to conduct CDD or obtain beneficial ownership information from their corporate clients and when registering companies on behalf of their clients. Trust service providers including lawyers (who may not necessarily be trustees) typically keep copies of trust deeds which will indicate the parties to the trust. Although, there is no overarching requirement for all trustees to hold and maintain accurate and up to date information on beneficial owners, trustees normally administer the trust property and as such, will typically have copies of the trust deed which will indicate persons or entities that are parties to the trust, including beneficiaries. Furthermore, where a trust involves landed property in Ghana, the trust deed is required to be registered. There is the need to provide some guidance to DNFBPs, particularly trust and company service providers and lawyers on conducting CDD and obtaining beneficial ownership information.

Effectiveness, proportionality and dissuasiveness of sanctions

285 There are sanctions under the new Companies Act, 2016 for legal persons that do not maintain or provide beneficial ownership information to the RGD. However, these sanctions have not been applied as implementation of the law is yet to commence. Administrative sanctions are available under the Companies Act 1960 for failure to notify and update the R-GD on changes in basic information. The R-GD has applied fines in some instances. However, the R-GD should be more pro-active in monitoring compliance with legal requirements and ensuring enforcement actions are applied where basic and beneficial ownership information is not current. Sanctions for breaches of general record keeping requirements are provided in Section 39 of Act 749 and these apply to all AIs.

286 Ghana did not provide specific instances where sanctions have been applied for failure by AIs to identify the beneficial owner or confirm the accuracy of the information. However, inspection reports of regulatory authorities indicate that remedial measures have been applied in instances where beneficial ownership information kept by FIs was not adequate. So far, no legal entity in Ghana has been sanctioned for breaches of the requirements on transparency and beneficial ownership of legal arrangements.

287 Overall, Ghana has achieved a Low level of effectiveness on Immediate Outcome 5.

CHAPTER 8. INTERNATIONAL COOPERATION

Key Findings and Recommended Actions

Key findings

- Ghana provides a wide range of international cooperation, including mutual legal assistance (MLA), extradition and other forms of cooperation. There is some limitation in extradition matters as extradition in Ghana is based on treaties.
- The International Cooperation Unit at the MOJ has a case management system that ensures timely processing of incoming requests. However, compilation of statistics on matters related to international cooperation could be improved.
- Feedback received from international partners confirms that the assistance provided by Ghana was in general timely and of a good quality.
- Ghana leverages international networks like West African Police Information System (WAPIS), INTERPOL, and utilizes liaisons at embassies in Ghana to facilitate international cooperation.
- The FIC's cooperation with foreign counterparts is constructive and timely.
- Ghana proactively seeks international cooperation when intelligence or evidence is needed from foreign partners although a number of competent authorities pointed out that international cooperation was not reciprocated by some countries.
- The Bank of Ghana collaborates with its counterparts in the sub-region, particularly with home country supervisors when supervising financial institutions and also conducts joint on-site inspections.
- Competent authorities have the ability to cooperate and respond to international requests on basic and beneficial ownership information relating to legal persons although this information is not always readily available.

Recommended Actions

- Ghana should ensure that beneficial ownership information on legal persons and arrangements is readily available and can be provided to competent authorities in third countries upon request.
- Ghana should provide statistics on the number and value of assets frozen and arising from international cooperation and improve statistics on international cooperation.

288 The relevant Immediate Outcome considered and assessed in this chapter is IO.2. The recommendations relevant for the assessment of effectiveness under this section are R.36-40.

Immediate Outcome 2 (International Cooperation)

289 International cooperation is a key aspect of Ghana's AML/CFT regime. The Ghanaian authorities understand the importance of international cooperation in ML/TF given the global nature of these crimes. As a result of its geographical location within the West African sub

region, Ghana perceives that TF threats are imminent and therefore readily co-operates with foreign countries on TF matters. Authorities in Ghana cooperate closely with authorities in other jurisdictions on a wide range of issues via the Ministry of Justice and other relevant competent authorities. The instruments used include bilateral treaties and multilateral agreements for MLA and extradition, the Mutual Legal Assistance Act 2010, (Act 807) and the Extradition Act 1960, (Act 22).

290 The responses and feedback received from 11 countries noted that requests for cooperation made to Ghana were generally responded to in a timely manner and information provided by the Ghanaian authorities was of good quality.

Providing constructive and timely MLA and extradition

291 Ghana provides a wide range of international cooperation, including mutual legal assistance (MLA), extradition and other forms of cooperation to foreign counterparts. The central authority for MLA and extradition is the Ministry of Justice (MoJ). In accordance with the Mutual Legal Assistance Act 2010, (Act 807), requests from other jurisdictions are usually channelled through the Central Authority located at the Ministry of Justice. Dedicated officers at the International Cooperation Unit of the MoJ handle such requests. Upon receipt of a request, the Ministry of Justice disseminates the request to the relevant competent authorities in Ghana including EOCO, NACOB, FIC, the Ghana Police Service and the Ghana Immigration Service.

292 Requests for Mutual Assistance are prioritised. The MoJ/A-G typically considers the level of urgency or other deadlines indicated on the request by the requesting state. The International Cooperation Unit has a case management system that ensures timely processing of incoming requests. A request for Mutual Legal Assistance is usually photocopied. The hard copies are archived at the Attorney General's office while the photocopy is sent to the relevant Competent Authority. There are mechanisms to track and monitor requests to ensure that the timelines of the requests are met. On average, it takes one month for a competent authority to submit a response to the Ministry of Justice for onward transmission to the requesting country, in accordance with the internal procedures. Ghana also sends out appropriate formats for requests to requesting states where the requesting states' documents are inadequate. The Prosecution Department at the MoJ is in the process of creating an electronic database for its processes. When completed, the database will store both the requests for Mutual Legal Assistance made to Ghana and the responses given by Ghana. The authorities noted that members of staff at the International Cooperation Unit of the MoJ receive specialized training regularly. The assessors were informed that MLA requests are rarely rejected and difficulties only arise were a request is made in a foreign language. In the case of requests for Mutual Legal Assistance, Ghana does not base its assistance on dual criminality. Section 11 of the MLA Act guarantees confidentiality in processing these requests. The table below shows that between 2011 and 2016, Ghana responded to a total of 176 MLA requests on money laundering. Ghana made a total of 257 requests for legal assistance in cases involving money laundering during the same period. Ghana did not break down the statistics to indicate how many of the ML-related requests involved self-laundering, foreign predicates or third party laundering.

Table 8.1 MLA requests for ML and Associated Predicate Offences

Mutual Legal Assistance	2011	2012	2013	2014	2015	2016
Total number of requests received	67	74	70	70	80	86
Total number of requests received on ML	18	29	25	31	39	34
Total number of requests received on Predicates	6	8	4	7	15	10
Total number of requests received on TF	-	-	-	-	-	-
Total number of requests refused	-	-	-	-	-	-
Total number of requests made by Ghana on ML	45	53	48	38	33	40
Total number of requests made by Ghana on TF	-	-	-	-	-	-

293 Ghana responds to various types of requests for cooperation including those related to asset identification, freezing, seizure and confiscation of assets. All types of information, including bank information, can be provided. The table below shows the types of requests processed by Ghana.

Table 8.2 Types of MLA requests received and processed

Types of requests	2011	2012	2013	2014	2015	2016
Asset tracing (with a related freezing/confiscation request)	5	4	-	6	2	1
Asset tracing (without a related freezing/ confiscation request) (asset identification)	3	1	1	-	1	-
Request for bank information	43	56	39	45	23	41
Others	12	5	3	8	5	4

294 Ghana has also shared assets confiscated with third countries. Ghanaian law allows the country to enforce a foreign judgment for confiscation. However, there has been no foreign request to enforce a judgment pertaining to money laundering.

295 Prosecutors and investigators that handle terrorism and terrorist financing cases in Ghana also cooperate with third countries on TF matters. Ghana has not received a formal request for cooperation on any terrorist financing or terrorism case. However, Ghana cooperated with counterparts in the FTF case indicated in Box 4. Cooperation in TF cases is also pursued through intelligence channels and law enforcement cooperation.

296 As regards request for extradition, Ghana does not rely on its status as a signatory to UNCAC to respond to extradition request[56]. Extradition in Ghana is based on treaties and this limits the scope of international cooperation in extradition matters. Ghana has extradition treaty with the USA, UK, Germany, Egypt and all ECOWAS countries. The authorities emphasized that there must be an existing treaty between Ghana and the requesting state before an extradition request can be processed. Thus, the number of requests that Ghana can respond to is limited. Where an extradition treaty exists, a request may still be refused where the evidence provided in a request does not satisfy Ghanaian evidentiary requirements. Ghana

[56] Ghana has not made any material reservations to the UNCAC Article on extradition

gave an example of a request to extradite a well-known public/political figure in the requesting state for the offence of armed robbery. The facts adduced in the case did not meet the evidentiary standards and the request was refused. Ghana has also refused requests where the offence for which extradition is sought does not fall within the list of extraditable offences under the Extradition Act 1960. The table below shows the number of extradition by Ghana.

Table 8.3 Extradition request received from other countries through the MoJ

	2013	2014	2015	2016
All extradition requests received	7	10	4	7
Extradition requests received on ML	-	-	-	-
Extradition requests granted on ML	-	-	-	-
All Extradition requests refused	2	1	1	1

297 As indicated in the Table 8.3 above, there has been no extradition request relating to ML nevertheless, extradition requests for predicate offences have been granted. Box 7 highlights a case where extradition request was granted.

Box 7: International Cooperation (Extradition)

A Note Verbale was received from INTERPOL requesting for the extradition of two (2) fugitive criminals of Ghanaian nationality. The two (2) were involved in a scheme to defraud the United States of America (USA) by assisting in the preparation and filing of fraudulent income from 2002 to 2005. They later claimed false business losses that lowered the tax payer's adjusted gross income tax, thereby placing the tax payer into a lower tax bracket. One of the fugitives was subsequently arrested and per a warrant issued by the Minister for the Interior for the surrender of the said fugitive criminal, he was handed over to the authorities of the United States of America**.**

298 The limitation relating to the legal framework on extradition is minimized by the provision of section 8 of the Immigration Act, 2000 (Act 573) which empowers relevant LEAs to remove a non-Ghanaian who has been convicted of an extraditable offence in a foreign country from Ghana. Section 35 of Act 573 also grants the relevant Minster broad powers to remove any person whose presence in Ghana is not conducive to the public good. Ghana has utilized these provisions to hand over a fugitive criminal where the requesting state had no extradition treaty with Ghana. Furthermore, the Agreement on Cooperation in Criminal Matters between the Police of member States of the Economic Community of West African States (ECOWAS) permits the handing over of suspects or fugitives to another member State based on warrants of arrest or court judgments. The statistics on ML cases where suspects or fugitives have been handed over are noted in table 8.4below.

Table 8.4 Suspects and fugitive handed over to foreign jurisdictions

Number of suspects/fugitives handed over based on requests	2011	2012	2013	2014	2015	2016
Requests received related to ML	2	4	3	3	4	1
Requests granted related to ML*	1*	2*	2*	2*	4	1

Requests Denied	-	-	-	-	-	-
Requests made by Ghana related to ML	-	-	2	1*	3*	2*

*****ECOWAS citizens handed over to counterpart police via INTERPOL channels based on ECOWAS Agreement on Cooperation in Criminal matters between the Police of Member States.

Seeking timely legal assistance to pursue domestic ML, associated predicate and TF cases with transnational elements

299 Ghana proactively seeks legal assistance for international co-operation to pursue ML and associated predicate offences in cases that have transnational elements. International cooperation on MLA and extradition is strengthened by contacts with focal persons at the various diplomatic missions in Ghana. The Ghanaian authorities however indicated their frustration with regard to requests made by Ghana to foreign counterparts and noted that the country's proactive engagement with other countries is not reciprocated by some countries. Authorities mentioned a case where a request was sent to multiple foreign jurisdictions, but which in return only received assistance informally (i.e. the request did not receive any response formally). In some cases, when responses to requests for information are delayed, these are followed up with reminders through phone calls or through informal meetings at international seminars.

300 Ghana has extended the scope of international judicial cooperation by the use of video conferencing to hear witnesses. Ghana proactively uses MLA and extradition to investigate and prosecute ML and TF. An example of a request for mutual legal assistance is indicated in Box 8 below.

Box 8 - Request for MLA

Mr. C, a non-Ghanaian resident in Ghana was alleged to have defrauded Ms K, an European resident through a romance scam. Between the period of January 2015 and April 2015, the victim transferred the sum of CHF 403,571.10 to the suspect through two different banks in Ghana. Ghana has sought MLA from the foreign counterparts in Europe to prosecute money laundering while investigation continues.

Seeking and providing other forms of international cooperation for AML/CTF purposes

301 Besides the requests that are made formally through the MLA process, there are a number of cooperation between Ghana and some foreign counterparts which has delivered appropriate information, financial intelligence and evidence. An example of this is the collaboration and cooperation between Ghanaian authorities and other countries through country representatives or Attachés of the Embassies in Ghana. Competent authorities including the FIC and other LEAs seek and provide international cooperation. Ghana also leverages international networks like the Camden Asset Recovery Inter-Agency Network (CARIN), Asset Recovery Interagency Network of West Africa (ARIN-WA). In all, Ghana provides other forms of international cooperation for AML/CFT purposes in the field of law enforcement, financial intelligence, taxation, customs, and financial supervision.

Providing other forms international cooperation for AML/CFT purposes

Law enforcement

302 Law enforcement authorities in Ghana cooperate with counterparts around the world. There is no central authority for law enforcement cooperation. Requests for information are made directly to the relevant LEA although requests may also be made via the Ministry of Justice. Law enforcement cooperation is processed through the relevant agencies, including the EOCO and the Police CID. Within the West African sub region. Ghana, has signed the ECOWAS treaty on cooperation on Mutual Legal Assistance and Extradition matters, this treaty allows Ghana to co-operate with ECOWAS member states directly through the West African Police Information System (WAPIS). Ghana also cooperates with countries outside the ECOWAS through the INTERPOL National Centre Bureau (NCB). Statistics on cooperation is indicated in the box below.

Table 8.5 Statistics on Information Exchange – Ghana Police Service

	2010	2011	2012	2013	2014	2015	2016*
Requests received from other Countries on ML	219	140	217	339	172	102	10
Requests on ML executed	100	87	98	117	73	13	5
Requests made by Ghana to other countries on ML	74	67	121	64	131	87	22
Requests on ML responded to	63	35	76	40	92	23	8

* January – June 2016

303 The ECOWAS cooperation treaty also permits Ghana Police Service to hand over proceeds of crime to the police in other member States and Ghana provided some cases where proceeds of crime were handed over to foreign counterparts in the region. Ghana LEAs took part in a joint criminal investigation with an European counterpart in a terrorism case involving their citizens residing in Ghana.

Table 8.6 - Statistics on Information Exchange – EOCO

	2010	2011	2012	2013	2014	2015	2016*
Requests received from other Countries on ML	02	07	06	03	-	02	06
Requests on ML executed	02	06	06	02	0	02	06
Requests made by Ghana to other countries on ML	0	02	03	115	08	0	11
Requests on ML responded to by counterparts	0	01	01	16	21	2	1
Requests received from other Countries on TF	0	0	0	0	0	0	1
Requests made by Ghana to other countries on TF	0	0	0	0	0	1	0

*January – June 2016

FIU to FIU

304 The Ghana FIC provides information to other FIUs both spontaneously or upon request (Table 3.7). Ghana is a member of the Egmont Group of FIUs therefore, FIU to FIU cooperation takes place through a shared platform (the Egmont Secure Web). Exchange of information also takes place at a bilateral level between the FIC and other counterparts based on agreements. The FIC has signed over 20 MoUs with counterpart FIUs. Ghana's AML law allows the country to share information with foreign counterparts. The FIC frequently requests the assistance of foreign counterparts on behalf of LEAs and other competent authorities within Ghana. Table 8.7 below shows the number of requests made by various competent authorities to the FIC for international cooperation.

Table 8.7 - Statistics on requests for information exchange by competent authorities to the FIC

Competent Authorities	2011	2012	2013	2014	2015	2016*
Police	-	3	4	34	59	77
Bureau of National Investigation	2		8	5	9	3
NACOB	1	1	5	4	14	18
EOCO	4	1	5	4	8	19
NSCS	2	45	22	1	3	
AG		1				
GRA				3		7
MFARI			2			
Total*	9	51	46	51	93	124

* Not all requests go through the Central Authority due to exceptions permitted under ECOWAS protocol.

305 The FIC also received requests from foreign FIUs. These requests are prioritised effectively by FIC. As indicated in Table 7.3, between 2012 and 2016, Ghana made 111 requests for information to foreign FIUs and received and responded to 493 requests for information and other forms of assistance. Statistics provided by Ghana showed that 67 of the 493 requests were regarding banking information.

306 The FIC leverages on networks like the ARINWA and CARIN to facilitate information exchange. An example of such cooperation is indicated in Box 9 below.

Box 9 Assistance from the CARIN

The FIC received a Suspicious Transaction Report in August from a Ghanaian Bank on a fraudulent transfer of the sum of $34,241 into an account in the Czech Republic. The funds were reportedly for the payment of galvanized steel slit Coils purchased in Bulgaria. However, some unknown fraudsters had intercepted communication and provided alternative beneficiary account details into which the transfer was made. The Ghanaian Bank sent an initial request for a recall of funds to the Czech Bank but the account had already been credited. Nonetheless, access to the funds was restrained by the bank. The Czech Bank notified the relevant Czech authorities to liaise with the relevant authorities in Ghana. The FIC subsequently liaised with CARIN to assist with the recovery of the funds to Ghana. The Czech authorities have initiated arrangements for a hearing in court and subsequent repatriation of the funds to Ghana.

GRA- Domestic Tax Division

307 Ghana is able to exchange information with other jurisdictions via the Global Forum on Tax Transparency. Ghana Revenue Authority relates well with international counterparts. Ghana received a total of seventeen (17) requests from foreign counterparts between 2013 and 2016 and has responded to all of those requests. Ghana made four (4) requests to foreign counterparts between 2015 and 2016 and received only one response in 2015.

GRA- Customs Division

308 The GRA can exchange information informally on the information platform of Customs Enforcement Network Communication (CENCOM). Customs occasionally receives requests from counterparts for assistance. Ghana has not made any request of its own.

Supervisory information

309 The Bank of Ghana collaborates with its counterparts in the sub-region and also home country supervisors when supervising financial institutions. There is home-host cooperation and regular exchange of information on AML/CFT-issues. The Bank of Ghana has conducted some joint on-site inspections with home country supervisors. Ghana shares information through the supervisory college.

International exchange of basic and beneficial ownership information of legal persons and arrangements

310 The Companies Registry maintains basic information on legal persons and this can be accessed by the public. LEAs can access and share information on basic and beneficial owners with foreign counterparts. The registry is able to carry out a comprehensive search in collaboration with other competent authorities to determine the beneficial owner of a legal person. Some of the requests for beneficial ownership information are processed through the FIC. The authorities did not provide any statistics on exchange of beneficial ownership information but indicated that this type of request has been made by foreign jurisdictions. For example, the FIC recently received a request in respect of a Ghanaian Mining Company. The state-owned company in the requesting state was interested in importing gold from Ghana through a Ghanaian Company and needed to establish the beneficial owners of the Ghanaian Company. The FIC liaised with the relevant Ghanaian authorities to provide the information.

311 The Companies Registry does not currently maintain comprehensive basic and beneficial ownership information on foreign corporations operating in Ghana. However, the new Companies (Amendment) Act 2016 requires foreign corporations to provide the Companies Registrar with comprehensive basic and beneficial ownership information. The maintenance of a register of beneficial owners obligated under the Companies (Amendment) Act 2016 will definitely facilitate the process of exchanging beneficial ownership information. No request has been received with respect to legal arrangements.

312 Ghana has a substantial level of effectiveness for IO2.

ANNEX I. - TECHNICAL COMPLIANCE ANNEX

This annex provides detailed analysis of the level of compliance with the FATF 40 Recommendations in their numerological order. It does not include descriptive text on the country situation or risks, and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.

Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous Mutual Evaluation in November 2009. This report is available from www.giaba.org;

Recommendation 1—Assessing Risks and Applying a Risk-Based Approach

At the time of the 1st Mutual Evaluation Report (MER) there was no requirement for a national risk assessment or the other risk related requirements as set out in R.1.

Obligations and Decisions for Countries

Risk Assessment

Criterion 1.1 - Ghana identified and assessed its money laundering (ML) and terrorist financing (TF) risks by conducting its first NRA between September 2014 and April 2016. The National Security Council Secretariat was the Head of the Planning Committee for the NRA. The NRA was conducted as a self-assessment through various working groups from stakeholder institutions and bodies. The NRA had inputs on threats and vulnerabilities at the national level, vulnerabilities from the financial sector and designated non-financial businesses and professions (DNFBPs), a financial inclusion risk assessment, as well as the overall national ML/TF combating ability. The analysis of money laundering and terrorist financing risks at the national level was based on these inputs as well as, information provided by other competent authorities, including the judiciary and law enforcement agencies. The NRA assessed both ML and TF risks, although the depth of assessment for the TF could be enhanced. The risk assessment focused on ML from criminal activities that take place inside Ghana. The NRA also examined the ML vulnerabilities associated with the activities of reporting entities under the supervision of the Bank of Ghana (BOG) and other supervisors and assessed preventive measures in financial institutions and designated non-financial businesses and professions (DNFBPs). There is limited information and analysis on cross-border controls and illicit flows, NPOs, legal persons and trusts and DNFBPs, particularly DNFBPs related to gaming, dealers in precious stones, real estate agents and lawyers. The risk assessment was generally of good quality. However, the NRA noted that there were difficulties in obtaining data and validating information including the lack of knowledge on ML and TF issues in some sectors constituted limitations.

Criterion 1.2 - The Financial Intelligence Centre (FIC) is designated as the authority to coordinate the NRA.

Criterion 1.3 - Ghana has noted that the risk assessments will be keep updated. The NRA notes that the next national risk assessment exercise should take place between two (2) to four (4) years.

Criterion 1.4 - Ghana has mechanisms in place to provide information on the result of the national risk assessment to all relevant competent authorities, self-regulatory bodies (SRBs), financial institutions and DNFBPs. The information is disseminated via workshops, hosting of copies on the website, delivery of soft and hard copies to competent authorities, SRBs, financial institutions and DNFBPs.

Risk Mitigation

Criterion 1.5 - [Ghana has developed an Action Plan for the implementation of the NRA blueprint**.** There is no indication that Ghana has established a framework to enable it apply a risk based approach to allocating resources and implementing measures to prevent or mitigate ML/TF since the country has only recently concluded the NRA.

Criterion 1.6 - Ghana applies all the FATF Recommendations requiring financial institutions or DNFBPs to implement AML/CFT measures. Ghana has not applied any exemptions from the FATF Recommendations to its AML/CFT framework.

Criterion 1.7 a & b - According to the authorities, the National Risk Assessment blueprint and implementation measures outlined in the action plan requires financial institutions and DNFBPs to take enhanced measures to manage and mitigate high risk situations. Sections 23 of the Anti-Money Laundering (Amendment) Act, 2014 (Act 874) requires all Accountable Institutions, including DNFBPs to identify persons such as PEPs whose activities constitutes high risk and take measures to mitigate such risks. Sections 40 of the Anti-Money Laundering (Amendment) Act, 2014 (Act 874) requires all Accountable Institutions, including DNFBPs to develop and implement risk management procedures. Although Ghana has adopted a risk based approach to AML/CFT, the law does not specifically require financial institution and DNFBPs to take measures to manage and mitigate the higher risks identified in the country's risk assessment nor does it expressly oblige financial institution and DNFBPs to incorporate information on the higher risks identified in the national risk assessments into their risk assessment.

Criterion 1.8 - Ghana allows financial institutions or DNFBPs to take simplified measures for some of the FATF Recommendations when a low risk is identified. In particular, financial institutions and DNFBPs can apply simplified measures where low risks are identified[57]. Where high risks are identified enhanced measures are applied. The application of these measures is not pegged to a country level assessment of ML/TF risks.

Criterion 1.9 - Supervisors of the financial institutions particularly the Bank of Ghana require financial institutions to adopt a risk based approach. Risk assessment and mitigation measures (risk based approach) applicable to financial institutions are also applicable to DNFBPs under the law. However, SRBs have not taken any action to ensure that DNFBPs assess ML/TF risks, mitigate the identified risks and develop policies to manage the risks. Most DNFBPs, some of which were identified as posing high risks, are not subject to AML/CFT supervision and thus not supervised in relation to their obligation under Recommendation 1.

[57] BOG & FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions Pt A para 1.7; SEC & FIC AML/CFT Compliance Manual for CMOs, Pt B para 2 (d); and NIC & FIC AML/CFT Guideline for Insurance Companies and Intermediaries, para 1.5.2 and 1.6.

Obligations and Decisions for Financial Institutions and DNFBPs

Risk Assessment

Criterion 1.10 - Obligations under paragraph 1 of the AML Regulations L.I. 1987 require reporting entities to take steps to assess and document their ML/TF risks assessments though the types of risks that should be assessed are not listed. The AML/CFT guidelines[58] issued by the regulators of financial institutions also require financial institutions to review identify and record areas of potential money laundering risks not covered by the guidelines and report to the supervisory authority and the FIC on a half yearly basis. Section 40 of the AML (Amendment) Act 2014 (Act 874) obliges financial institutions and DNFBPs to manage identified risk.

Risk Mitigation

Criterion 1.11 - The AML (Amendment) Act, 2014 (Act 874) and AML/CFT guidelines issued by the regulators[59] of financial institutions and DNFBPs require financial institutions to have the policies, control and procedures in place to enable them manage identified risks by the reporting entity.

Criterion 1.12 - In certain instances where lower ML/TF risks have been identified, simplified measures to manage and mitigate risks are permitted (BOG/FIC AML/CFT Guidelines for Banks and Non-Bank Financial Institutions Part 1.7 (i)(j)). Financial institutions may only apply simplified measures where there is no suspicion of money laundering and terrorist financing.

Weighting and Conclusion

Ghana conducted its ever first NRA which has largely helped to identify the ML/TF risks the country faces. The requirement under criterion 1.5, 1.7 and 1.8 are partly met. Ghana has not developed a framework to enable it apply a risk based approach to allocating resources to mitigate or prevent identified ML/TF risks. ***Recommendation 1 is rated largely compliant.***

Recommendation 2 - National Cooperation and Coordination

In its 1st mutual evaluation report (MER) Ghana was rated partially compliant with these requirements. The main deficiencies identified were that there was no strategic coordination policy in place for the public and private sector institutions, there was no attempt to assess the ML/FT threats and risks in Ghana, the Board of the FIC that was to provide guideline in terms of national coordination policy had not been appointed, the coordination mechanism was weak and lacked strategic focus, and there was no effective mechanism in place to foster the development of AML/CFT polices in Ghana. Since its last mutual evaluation, Ghana has enacted laws and passed regulations which have strengthened the legal framework for national cooperation and coordination**.**

[58] BOG & FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions Pt A para 1.28; SEC & FIC AML/CFT Compliance Manual for CMOs; and NIC & FIC AML/CFT Guideline for Insurance Companies and Intermediaries.
[59] The Bank of Ghana, the Securities Exchange Commission and the National Insurance Commission

Criterion 2.1 - Ghana implemented its first National Strategy and Action Plan from 2011 – 2014. This Action Plan was not informed by the identified risk. Ghana has recently[60] conducted a National Risk Assessment from which an Action Plan has been drawn. Ghana has indicated that its AML/CFT policy will be reviewed regularly.

Criterion 2.2 - The Inter-Ministerial Committee (IMC) on AML/CFT is the key authority for implementing and coordinating national AML/CFT policies.

Criterion 2.3 - The Inter-ministerial Committee and the Law Enforcement Coordinating Bureau[61] which comprises over 16 of Ghana's key AML/CFT agencies were established as mechanisms through which policy makers and competent authorities in Ghana can cooperate, coordinate domestically and develop and implement AML/CFT policies. Various competent authorities have also executed MOUs for the purpose of ensuring national cooperation and coordination amongst them concerning the development and implementation of AML/CFT policies and activities.

Criterion 2.4 - The Law Enforcement Coordinating Bureau (LECOB) is responsible for co-ordination matters relating to targeted financial sanctions on terrorist financing and proliferation financing. LECOB is the technical committee of the IMC. The Ministry of Foreign Affairs is a member of LECOB. There is a dedicated desk at the National Security Council Secretariat for LECOB's operations Co-operation and coordination mechanisms to combat the financing of proliferation of weapons of mass destruction is however limited.

Weighting and Conclusion

Ghana has met most of the criterion under Recommendation 2. ***Recommendation 2 is rated largely compliant.***

Recommendation 3 -Money Laundering Offence

Ghana was rated partially compliant with respect to the requirements of this recommendation. The main deficiencies identified were that Ghana had not criminalized some predicate offences and there had not been any judicial decisions arising from the Anti-money Laundering Act 2008. In addressing these deficiencies, Ghana passed the Anti-Money Laundering (Amendment) Act, 2014 (Act 874), the Criminal Offences (Amendment) Act, 2012, the Anti-Money Laundering Regulations, 2011 (L. I. 1987), which was passed in exercise of the powers conferred on the Minister for Finance and Economic Planning by section 50 of the Anti-Money Laundering Act, 2008 (Act 749) and the Economic and Organised Crime Office (Operations) Regulations, 2012 (L.I. 21830), which was passed in exercise of the powers conferred on the Attorney-General and Minister responsible for Justice by section 73 of the Economic and Organised Crime Office Act, 2010 (Act 804).

Criterion 3.1 - Ghana has criminalised ML *on the basis of the Vienna Convention and the Palermo Convention.* Section 1 of the Anti-Money Laundering Act, 2008 (Act 749) as amended by the Anti-Money Laundering (Amendment) Act, 2014 (Act 874), criminalises money laundering on the basis of the conventions. The Anti-Money Laundering (Amendment) Act, 2014(Act 874)

[60]The NRA was conducted between September 2014 and April 2016.

[61] The Bureau is made up of the National Security Council Secretariat; the Bank of Ghana; the Attorney General's Department; the Bureau of National Investigation; the Financial Intelligence Centre; the Ghana Immigration Service; the Economic and Organised Crime Office; the Ghana Armed Forces; the Ghana Police Service; the Ghana Maritime Authority; the Securities and Exchange Commission; the National Insurance Commission; the Ghana Revenue Authority; the Ghana Airports Company Limited; the Ministry responsible for Foreign Affairs

amends section 1 (1)(b) of the Anti-Money Laundering Act, 2008 (Act 749) to widen the scope of the definition of money-laundering to include "disposition, movement or ownership of rights with respect to property".

Criterion 3.2 - Ghana has criminalized the full range of offences within the 21 Categories of ML Offences in line with FATF Standard including Tax Crime. Section 1 of the Act (749) makes it an offence to launder "the proceeds of an unlawful activity". The Anti-Money Laundering (Amendment) Act, 2014 (Act 874) amended section 1 (2) of the Anti-Money Laundering Act, 2008 (Act 749) and defined the term 'unlawful activity' as a "conduct which constitutes a serious offence, financing of terrorism, financing of proliferation of weapons of mass destruction or other transnational organised crime or contravention of a law regarding any of these matters which occurs in this country or elsewhere". Section 74 of the Economic and Organised Crime Act, 2010 (Act 804) defines "serious offence" as any…. "offence or related prohibited activity punishable with imprisonment for a period of not less than twelve months." Although the section does not specifically list tax crime as a predicate offence (the other 20 predicate offences are listed) it states that serious crimes include other similar offences or related prohibited activities punishable with imprisonment for a period of not less than twelve months. In this regard, paragraphs 56 - 60 of the seventh schedule to the Income Tax Act, 2015 (Act 896) list failure to pay tax; making false or misleading statements; impeding tax administration; and aiding or abetting a person to commit an offence under the Tax Act as tax crimes where penalties of one year imprisonment can be imposed. Section 5 of the Criminal Offences (Amendment) Act, 2012 (Act 849) amends the Criminal Offences Act, 1960 (Act 29) by the insertion of section 200 A and section 200 B. Section 200B prohibits racketeering and defines unlawful activities associated with racketeering to include bribery, the sexual exploitation of children, narcotic drug offences, money laundering and human trafficking. Section 200A (1) f prohibits participation in the activity of an organised criminal group and defines a "serious offence" as an offence for which the maximum penalty is death and the minimum penalty is imprisonment for a period of not less than five. The definition of a serious offence in the Criminal Offences (Amendment) Act is not consistent with the EOCO Act and the AML Act 749. The EOCO Act and the AML Act describe a serious offence as an offence which carries an imprisonment for a period of not less than twelve months. It could be argued, based on the provisions of the Criminal Offence (Amendment) Act, 2012 that offences with a minimum penalty of less than five years are not serious offences.

Criterion 3.3 - Ghana utilizes a threshold approach pegged to serious offences within the national law and section 51 of the AML Act 749 defines "serious offence" as an offence for which the maximum penalty is death or imprisonment for a period of not less than twelve months.

Criterion 3.4 - The ML offence relates to property that is or forms part of the proceeds of unlawful activity[62]. Section 22 (l) of Act 874 defines "property" to include assets of any kind regardless of its value and defines "proceeds" as property or economic advantage derived or obtained directly or directly through an unlawful activity.

Criterion 3.5 - Ghana's law does not require a conviction for the predicate offence in order to prove that property is the proceeds of crime. It is sufficient that the property was derived from an unlawful activity.

Criterion 3.6 - [Met] - The text of section 1 of Act 749 expressly covers predicate offences that occur in another country.

[62] Section 1 of Act 749,

Criterion 3.7 - The ML offence covers self-laundering**.**

Criterion 3.8 - On the basis of section 11 of the Criminal Offences Act, 1960 (Act 29) the court can draw an inference on the "mens rea" or the mental element of the offence of money laundering from objective factual circumstances.

Criterion 3.9 - The criminal sanctions that may be imposed on a person convicted of an ML offence under sections 1 and 2 of the AML Act 749 are prescribed in section 3 of the Act. The sanctions range from fines of fifty penalty units to not more than five thousand penalty units and terms of imprisonment between twelve months and ten years.

Criterion 3.10 - The sanctions referred to in criterion 3.9 above may be imposed on both natural and legal persons. Section 46 of the Interpretation Act, 2009 (Act 792) defines a person to include a *body corporate, whether corporation aggregate or corporation sole and an unincorporated body of persons as well as an individual.* However, it appears that this provision has not been tested with regards to legal persons.

Criterion 3.11 - The offence of aiding and abetting money laundering is covered under section 2 of Act 749. The offences of attempt, abetment and conspiracy are provided for in Chapter 3 of Part 1 of the Criminal Offences Act, 1960 (Act 29). Section 5 of the Criminal Offences Act covers attempt, abetment and conspiracy offences created in other enactments unless the particular Act specifies a contrary intention.

Weighting and Conclusion

Ghana's ML regime is compliant with the international standards and all of the criteria are met. Furthermore, the 21 designated categories of offences including tax offences, are predicate offences for ML. ***Recommendation 3 is rated largely compliant.***

Recommendation 4—Confiscation and Provisional Measures

In its 1st MER, Ghana was rated non-compliant with these requirements. The deficiencies were due to an absence of confiscation measures under the AML Act, the limited scope of provisional measures in place for the confiscation of proceeds of crime, an absence of provision for *ex-parte* application under the AML Act, lack of a provision for the protection of bona fide third parties and the absence of a provision to void actions or prevent actions that may prejudice the ability of the government to confiscated property that are proceeds of crime.

Criterion 4.1 (a-d) - The Economic and Organised Crime Act, 2010 (Act 804) (section 22-66) sets out broad powers of the Economic and Organized Crime Office (EOCO) aimed at depriving criminals from illicit proceeds or instrumentalities used or intended for use in money laundering or predicate offences. Sections 24 authorises the seizure of property if there is reasonable grounds to suspect that the property is the proceeds of a serious offence. Section 25 of the same Act permits the search or seizure of tainted property. The Act describes tainted property as property used in or in connection with the commission of a serious offence or derived, obtained or realized as a result of the commission of a serious offence. Even though Section 51 of the Act provides that property in a person's possession at the time of, or immediately before arrest will be considered as tainted property, there is no express provision that allows law enforcement officers to confiscate instrumentalities intended for use in the commission of ML or predicate offences. Sections 57 and

59 of Act 804 cover measures to confiscation property of corresponding value in the case where the value of the property is substantially diminished as well as where the property has been commingled or transferred to a bona fide third party.

Criterion 4.2 a - Section 29 of Act 804 and Reg. 12 of L.I.2183 empowers the EOCO to identify, locate and evaluate property that is subject to confiscation. Every person is required to comply with a property tracking order in spite of any law, oath or undertaking on secrecy or an obligation under a contract.

Criterion 4.2 b - Provisional freezing measures are set out in Sections 33 – 44 of Act 804 and Reg. 13 of L.I.2183.

Criterion 4.2 c - Section 53 of Act 804 allows the Court to set aside a transaction related to property which is the subject of a confiscation order where the transaction was made after the seizure of the property or issue of a freezing order. Under section 33 a specified property held by a person or entity other than the person or entity being investigated or tried may be frozen. Pursuant to section 36, a contract or other arrangement made by a person in respect of the tainted property after the issue of the freezing order is of no effect.

Criterion 4.2 d - Law enforcement agents are empowered to conduct appropriate investigative measures and collaborate with other security agencies (section 70 Act 807). Thus, investigative measures available to these agencies should typically be available to the EOCO. Section 25 further sets out a range of investigative measures that could be employed including interception of messages, intercepting and detaining articles in course of transmission by post or courier service.

Criterion 4.3 - The EOCO Act (section 54) makes provision for the protection of rights of third parties who have an interest in a property which is subject to a confiscation order.

Criterion 4.4 - Section 65 and 66 of Act 804 deal with the realisation of property and the utilisation of proceeds of realisable property. Section 27 of the Anti- Terrorism Act, 2008 (762) provides for the management of properties seized pursuant to the Act. Section 23A of Act 874 also imposes duties on financial institutions and other reporting entities to preserve funds, other assets and instrumentalities of crime for a period of one year in order to facilitate investigations. There are no provisions covering the management of illicit proceeds that have been seized by other law enforcement agencies e.g. the Police or the Narcotics Control Board. There appears to be no comprehensive mechanism for managing property that has been frozen, seized or confiscated.

Weighting and Conclusion

Ghana has made considerable efforts to address all the obligations under this Recommendation, however, there is no express provision that authorizes the confiscation of instrumentalities intended for use in the commission of ML or predicate offences. There are also no comprehensive provisions in the EOCO Act dealing with the management and use of illicit proceeds that have been frozen, seized or confiscated. ***Recommendation 4 is rated largely compliant.***

Recommendation 5—Terrorist Financing Offense[63]

In its first MER Ghana was rated partially compliant because no legislative instrument for the implementation of the Anti-Terrorism Act, 2008 (Act 762) had been issued for by the Minister. The Minister issued the Anti-Terrorism Regulation, 2012 (L. I. 2181) for the implementation of the Act on 8th June 2012.

Criterion 5.1 - Terrorist financing is criminalised in section 6 of the Anti-Terrorism Act, 2008 (Act 762). It is an offence to "provide, collect or make property available by any means, directly or indirectly, with the intention or knowing or having reasonable grounds to believe that the property will be used in full or in part to carry out or in relation to carrying out a terrorist act". Section 7 of Act 762 prohibits provision of financial or other related services to terrorists, terrorist organizations or for a terrorist act. The definition of terrorist acts covers the terrorist acts described in article 2(a) and 2(b) of the TF Convention. Regulation 1 of the Anti-Terrorism Regulations, 2012 (L.I. 2181) also prohibits the provision of financial or other related service to a specified entity. A specified entity under section 23 of the Act includes a person and an organization associated with acts of terrorism and declared to be a specified entity by the Minster of Justice.

Criterion 5.2 - As noted above, under section 7 of Act 762, the TF offence covers persons who directly or indirectly provide or make available financial or other related service, with the intention that the financial or other related service be used, in whole or in part to commit or facilitate the commission of a terrorist act, to benefit a person who is committing or facilitating the commission of a terrorist act, or by or for the benefit of a terrorist group. This provision relates only to "financial and other services" and this is narrower in scope than "funds". Under section 6 of the Act, TF offence extends to persons who "provide, collect or make property available by any means… to carry out or in relation to carrying out a terrorist act" only. The TF offence under section 6 should also extend to terrorists and terrorist organizations. The provisions do not explicitly state that the TF offence will be established even in the absence of a link to a specific terrorist act or acts.

Criterion 5.2*bis* - The TF offence does not specifically cover financing the travel of individuals who travel out of Ghana for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training. Nevertheless, sections 14 and 18 of Act 762 respectively prohibit arrangement of meetings in support of a terrorist group and recruitment into a terrorist group. The Executive Instrument 114 issued in August 2016 which amended Executive Instrument 2, 2013 obligates Ghana's Inter-Ministerial Committee (IMC) to co-ordinate with competent authorities for the implementation of United Nations Security Council resolution 2178 regarding suspected foreign fighters and designated foreign terrorist fighters. The manner of coordination is not specified and criminal sanctions are not prescribed under the Executive instrument 114. The criminal sanctions under the Act 762 do not appear to be directly or indirectly applicable to a breach of provisions of the Executive Instruments.

Criterion 5.3 - The TF offence applies to property. The definition of property is consistent with the definition of funds under the TF Convention. The offence also covers provision of financial or other related services and there are no restrictions in the Act that would prevent the TF offences from covering funds/economic resources from legitimate or illegitimate sources.

[63] FATF revised INR.5 and glossary definition of 'funds or other assets' after the on-site visit. The revised version will be taken into account during the follow-up process

Criterion 5.4 - There is no provision that expressly states that for the TF offence, it is not necessary that the funds were actually used to carry out or attempt a terrorist act, or that the funds should be linked to a specific terrorist act.

Criterion 5.5 - As noted in criterion 3.8 above, section 11 of the Criminal Offences Act, 1960 (Act 29) provides that the "mens rea" or the mental element of the offence of TF can be inferred from objective factual circumstances.

Criterion 5.6 - Sanctions apply to natural persons. The penalties imposed for the offence of terrorist financing under sections 6 and 7 of the Act 762 range from a term of imprisonment of 7 years to 25 years depending on the gravity of the offence.

Criterion 5.7 - The Anti-Terrorism Act, 2008 (Act 762) does not prescribe pecuniary penalties for the TF offence. Legal persons are therefore excluded since legal persons are not subject to custodial sentences.

Criterion 5.8 - The Anti-Terrorism Act, 2008 (Act 762) provides for a range of ancillary offences including support, facilitation, harbouring, solicitation, and promotion. The Act does not cover attempt. The Ghana authorities state that, section 11 of the Criminal Offences Act, 1960 (Act 29) Act provides a more detailed framework of ancillary offences in Ghana from which attempt may be inferred.

Criterion 5.9 - TF is designated as a money laundering predicate offence in section 1 of Act 749 as amended by section 1(2) of Act 874.

Criterion 5.10 - Section 5 of the ATA of Act 749 states that the High Court has jurisdiction over an act which constitutes an offence outside the country if the act constitutes an offence in Ghana if the perpetrator ordinarily resident in Ghana, or is a Ghana citizen. The court also has jurisdiction where the act is committed against a Ghana citizen or committed to compel the Government to do or refrain from doing an act.

Weighting and Conclusion

Ghana's TF offence is largely consistent with the international standards, but has some technical deficiencies. These relate to the lack of an express provision criminalizing the financing of individual terrorists who travel out of Ghana to facilitate or participate in terrorist activities and the absence of an express provision that the TF offence will be established even in the absence of a link to a specific terrorist act or acts. ***Recommendation 5 is rated largely compliant.***

Recommendation 6—Targeted Financial Sanctions Related to Terrorism and Terrorist Financing

In its previous MER, Ghana was rated non-compliant as regards these requirements because there was no mechanism for disseminating and monitoring the implementation of UN Security Council Resolutions. Ghana issued the Executive Instrument 2 (E.I. 2) which are Instructions for the Implementation of United Nations Security Council Resolutions 1267 (1999), 1373 (2001), 1718 (2006), 1737 (2006), Successor Resolutions and other Relevant Resolutions on 15th February 2013.

Identifying and designating

Criterion 6.1 a - In accordance with paragraph 2 and 4 of E.I. 2, the Anti-Money Laundering and Counter Financing of Terrorism Inter-Ministerial Committee and its sub-committee, the Law Enforcement Coordinating Bureau are designated to implement the UNSCRs and are responsible for proposing persons or entities to the UN Committee for designation.

Criterion 6.1 b - The Law Enforcement Coordinating Bureau has the responsibility to identify targets for designation using relevant sources and collecting adequate identifier information about an individual, entity or organization (paragraph 16 of E.I. 2). The Inter-Ministerial Committee is required to coordinate with the security and intelligence agency, the law enforcement agency and any other persons concerned with the implementation of the provisions.

Criterion 6.1 c - Pursuant to paragraph 16 of E.I. 2, the Law Enforcement Coordinating Bureau applies a "reasonable grounds" evidentiary stand when deciding whether or not to make a proposal for designation. The proposal is not conditional upon the existence of a criminal proceeding.

Criterion 6.1 d - The procedures for listing are not expressly set out in the E.I. 2 although certain ingredients of the standard form for listing are set out in paragraph 16(3) of the Executive Instrument. Ghana has not proposed any person for designation.

Criterion 6.1e - Paragraph 16 of E.I. 2 requires the Law Enforcement Coordinating Bureau to solicit and consider information on the designee from all relevant sources. The E.I. is silent as regards specifying whether Ghana's status as designating state should be made known.

Criterion 6.2 a - The Law Enforcement Coordinating Bureau is responsible for designating persons or entities that meet the specific criteria for designation, as set forth in UNSCR 1373 (the Domestic List) (paragraph16 of E.I. 2).

Criterion 6.2 b - The mechanisms described in criterion 6.1 also apply to identifying targets domestically under 1373.

Criterion 6.2 c & d - Paragraph 15 of E.I. 2 set down the procedures for third party request and requires the Minister to process the request without delay. A determination as to whether the grounds for designation are satisfied should be based reasonable grounds in accordance with Paragraph 27 of the E.I. 2.

Criterion 6.2 e - The identifying information to be provided when proposing a designation are set out in Paragraph 16 of E.I. 2.

Criterion 6.3 a - The procedures for collecting or soliciting information to identify persons and entities that meet the criteria for designation are set down in paragraphs 15 &16 of E.I. 2. The Bureau is authorized to identify any individual, entity or organization which the Bureau has reasonable grounds to believe is engaged in terrorist acts and financing of terrorism.

Criterion 6.3 b - The Minister is empowered under paragraph 15 (5) of E.I. 2 and section 19 of the Anti-Terrorism Act, 2008 (Act 762) to make an application to the High Court without prior notice to the person, entity or organization against whom the request has been made for an order to declare the person, entity or organisation to be a designated person.

Freezing

Criterion 6.4 - Paragraphs 7, 8 9 & 17 of E.I. 2 require all natural and legal persons within the country to freeze, without delay and without prior notice, the funds or other assets of designated persons and entities.

Criterion 6.5 a - See criterion 6.4

Criterion 6.5 b - The obligation to freeze prescribed in paragraph 8 of E.I. 2 extends to funds described in criterion 6.5(b).

Criterion 6.5 c - The provision of paragraph 10(1) of the E.I. Access to frozen funds are authorized in line with the relevant UNSCRs pursuant to 2 states that a person shall not make any funds or other asset that are frozen available, directly or indirectly, to or for the benefit of a designated person. Paragraph 11 of the E.I. prohibits providing financial or other services to designated persons and also prohibits dealing with funds or other assets of designated persons. Paragraph 10(3) of the E.I. 2 prescribes access to frozen funds as required by the relevant UNSCRs.

Criterion 6.5 d - The mechanisms for communicating designations to financial and DNFBP sectors are set out in the Executive Instrument. Paragraph 7 (2) and (4) of E. I. 2 provides that the minister shall disseminate the information to competent authorities and cause the listing or de-listing of a terrorist individual, entity or organisation to be published in the *Gazette.*

Criterion 6.5 e - Paragraph 9 (c) of E.I. 2 requires an authorised person to submit a written report regarding any funds or other assets that have been frozen as well as any other action taken on receipt of the List to the Centre and the Committee.

Criterion 6.5 f - The E.I. 2 does not expressly provide for the protection of the rights of bona fide third parties. The Ghanaian authorities state that the rights of bona fide third parties are protected under the Ghana constitution and by legal precedent.

De-listing, unfreezing and providing access to frozen funds or other assets

Criterion 6.6 a - Procedures to de-list and unfreeze the funds or other assets of persons and entities that do not, or no longer, meet the criteria for designation in accordance with the UNSCR are set out in Paragraphs 7 of E.I. 2.

Criterion 6.6 b - Paragraphs 15 (8) of E.I. 2 covers de-listing and unfreezing the funds or other assets of persons and entities designated pursuant to UNSCR 1373 if the designee no longer meets the criteria for designation.

Criterion 6.6 c - Paragraphs 15 (8) of E.I. 2 allows, upon request, review of the designation decision before a court.

Criterion 6.6 d & e - The provisions of paragraphs 14 of E.I. 2 offers general guidance to facilitate review by the 1988 or 1989 Sanctions Committee in accordance with any applicable guidelines or procedures adopted by the respective committees.

Criterion 6.6 f - The Anti-Terrorism Regulations, 2012 (L.I. 2181) (regulation 9) empowers the Minister to publish and update the listings, de-listings, orders and revocations published in the Gazette on a publicly available website. The Minster is also required to publish the duties of accountable institutions businesses and individuals. The points of contact which the relevant regulated sectors and members of the general public can contact for information and guidance are

also required to be publicly available on a website. There appears to be no publicly known procedures to unfreeze the funds or other assets of persons or entities with the same or similar name as designated persons or entities, who are inadvertently affected by a freezing mechanism.

Criterion 6.6 g - The Minister is empowered under Paragraph 21 of E.I. 2 to "cause the listing or de-listing of a designated person to be published in the Gazette shall without delay". Competent authorities are also required to inform institutions, businesses or individuals which they supervise, represent or license on the listing or de-listing of designated persons.

Criterion 6.7 - Access to frozen funds or other assets which have been determined to be necessary for basic expenses or for extraordinary expenses in respect of designation made pursuant to 1373 are covered under Paragraph 13 of E.I. 2. while paragraph 10 of E.I. 2 deals with designations made by the UN sanctions committee.

Weighting and Conclusion

Ghana has enacted a comprehensive legislative framework for the implementation of UN Security Council resolutions. ***Recommendation 6 is rated largely compliant.***

Recommendation 7-Targeted Financial Sanctions Related to Proliferation

The Executive Instrument (E.I. 2) are Instructions for the Implementation of United Nations Security Council Resolutions 1267 (1999), 1373 (2001), 1718 (2006), 1737 (2006), Successor Resolutions and other Relevant Resolutions. Specifically the E.I. 2 established an Anti-Money Laundering and Counter Financing of Terrorism Inter-Ministerial Committee which is responsible for the implementation of the obligations under the United Nations Security Council Resolutions including 1718 (2006), 1737 (2006), Successor resolutions and other relevant Resolutions.

Criterion 7.1- Paragraphs 1 of E.I. 2 designates the Inter-Ministerial Committee (IMC) on Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) as the competent authority responsible for the implementation of the stated UN Security Council Resolutions. The functions and powers of the IMC are specified in paragraphs 2 and 3 of E.I. 2. The Law Enforcement Coordinating Bureau which is established in accordance with paragraph 4 (1) of E.I. 2 is responsible for the day to day implementation of the Instructions and other functions directed by the Committee.

Criterion 7.2 a - Paragraphs 9 of E.I. 2 requires all natural and legal persons within the country to freeze, without delay and without prior notice, the funds or other assets of designated persons and entities.

Criterion 7.2 b - By virtue of paragraphs 8 of E.I. 2 the obligation to freeze extends to funds described in criteria 6.5(b).

Criterion 7.2 c - Paragraph 10(1) of the E.I. 2 states that a person shall not make any funds or other asset that are frozen available, directly or indirectly, to or for the benefit of a designated person. Paragraph 11 of the E.I. prohibits dealing with funds or other assets of designated persons and extends to financial and other services. Authorized used of funds are granted in accordance with the relevant UNSCR (Paragraph 10(3) of the E.I. 2).

Criterion 7.2 d - The mechanisms for communicating designations to financial institutions and DNFBPs are set out in the E.I. 2. The Anti-Terrorism Regulations, 2012 (L.I. 2181) (Regulation 9) also empowers the Minister to publish and update on a publicly available website, the listings, de-

listings, orders and revocations published in the Gazette. The FIC also disseminates information on the freezing action taken to local and foreign competent authorities, including Financial Intelligence Units and other entities, who are responsible for counter-terrorism and counter-financing of terrorism. This provision does not mention proliferation financing.

Criterion 7.2 e - Paragraph 9 (c) of E.I. 2 requires authorised persons to submit a written report regarding the frozen funds or assets, as well as any other action taken on receipt of the List to the Centre and the Committee.

Criterion 7.2 f - The E.I.2 does not expressly provide for the protection of the rights of bona fide third parties. But the right of the bona fide third are protected under the broader laws of Ghana.

Criterion 7.3 - The obligation of regulatory bodies to monitor financial institutions and DNFBPs and ensure compliance with the relevant laws including obligations under Recommendation 7 is laid down in Regulation 6 (2) and Regulation 10 of L.I. 2181. The E.I.2 provides for sanctions.

Criterion 7.4 a - The procedures to de-list and unfreeze the funds or other assets of persons and entities that no longer meet the criteria for designation in accordance with the UNSCRs are set down in Paragraphs 7 and 14 of E.I. 2.

Criterion 7.4 b - There appears to be no guidance or publicly known procedures to unfreeze the funds or other assets of persons or entities with the same or similar name as designated persons or entities and are inadvertently affected by a freezing mechanism. The regulations however provide for points of contact where the public can obtain information and guidance (see (criterion 7.4 d). The Ghanaian authorities state that the rights of bona fide third parties are protected under the Ghana Constitution and by legal precedent

Criterion 7.4 c - Paragraph 10 (3) of E.I. 2 authorises access to funds or assets determined by the United Nations Sanctions Committee to be necessary for basic expenses.

Criterion 7.4 d - Regulation 9 of the Anti-Terrorism Regulations, 2012 (L.I. 2181)states that the Minister is required to publish and update on a publicly available website the listings, de-listings, orders and revocations published in the Gazette. The publication also includes the duties of accountable institutions, businesses and individuals and points of contact which the relevant regulated sectors and members of the general public can contact for information and guidance. Paragraph 21 of E.I. 2 directs the Minister to cause the listing or de-listing of a designated person to be published in the Gazette shall without delay. Competent authorities are also required to inform institutions, businesses or individuals which they supervise, represent or license about the listing or de-listing of designated persons. Furthermore, Paragraph 14(4) of the E.I. 2 provides that the FIC may direct institutions and businesses to unfreeze the funds and other assets of designated persons after it has been determined by the court that the person has been delisted.

Criterion 7.5a - Paragraph 12(1) and (2) of E. I. 2 permits addition to the accounts frozen funds, including interests or other earnings due on those accounts or payments due under contracts, agreements or obligations that arose prior to the date on which those accounts were frozen.

Criterion 7.5b - A freezing action taken pursuant to UNSCR 1737 does not prevent a designated person or entity from making any payment due under a contract entered into prior to the listing of such person or entity (Paragraph 12(1)). However, there is no explicit exclusion of contracts that are related to any of the prohibited items, materials, equipment, goods, technologies, assistance, training, financial assistance, investment, brokering or services referred to in the relevant Security Council resolution. There is no requirement that a designated person or entity

should not receive the payment either directly or indirectly and there is no provision that the country should submit notification to the 1737 Sanctions Committee before authorizing payments.

Weighting and Conclusion

Minor shortcomings have been noted in the analysis of this Recommendation as the legal instruments provided by Ghana fall short of certain requirements. It appears that the provisions for PF are not well fleshed out and seem to be adjunct to those of TF. Provisions to exclude contracts related to prohibited items, goods or services referred to in the relevant Security Council resolution are absent. The issue of false positives is not captured under the Executive Instrument.

Recommendation 7 is rated largely compliant.

Recommendation 8[64]—Non-Profit Organizations

In its 1st MER, Ghana was rated non-compliant because the legal regime for the supervision of NPOs was limited in scope and required some revision to bring it in line with best practices.

Ghana has designated NPOs as accountable institutions[65], implying that they are subject to the full implementation of the AML/CFT requirements under the AML law. However, the country has limited information on the relative size and importance of each type of NPO, including the number of each type of NPOs (e.g. limited companies, foundations, religious communities, and non-profit associations and others) and the approximate value of funds donated or disbursed annually by each sub-sector.

Criterion 8.1a -. Ghana has not reviewed the adequacy of the laws and regulations that relate to entities that can be abused for the financing of terrorism, including NPOs. The legal frame work for NPO is limited to provisions within the Companies Act, 1963 (Act 179) that provides for registration of NPOs and certain administrative regulations issued by the government to address specific issues. There are no measures to prevent NPOs in Ghana from abused by terrorist.

Criterion 8.1b - Ghana has not undertaken domestic reviews of the country's NPO sector. Although the NRA covered aspects of the NPO sector's vulnerability to terrorism, Ghana will require a more in-depth review, as there is no indication that timely information on the activities, size and other relevant features of NPOs are available to permit the authorities to identify the features and types of NPOs that are particularly at risk of being misused for TF

Criterion 8.1c - Ghana has not indicated that it periodically re-assesses the NPO sector.

Criterion 8. 2 - Outreach to the NPO sector is limited. The Department of Social Welfare has conducted some outreach to NPOs although there is no clear I legal obligation to conduct outreach to the NPO sector on TF risks.

Criterion 8.3 - As indicated in the 1st Mutual Evaluation Report of Ghana, the Department of Social Welfare under the Ministry of Employment and Social Welfare registers NGOs in Ghana

[64] The FATF revised the Recommendation 8 in June 2016. The methodology to assess obligations under Recommendation 8 was updated in October 2016. This revision requires countries to take a risk-based approach, conduct sustained outreach concerning terrorist financing issues, conduct targeted risk-based supervision or monitoring of NPOs and have effective capacity to respond to international requests for information about an NPO of concern. Ghana has not met the obligation under each of the criterion under the revised Recommendation 8.

[65] Schedule 1 of the AML Act 2014

irrespective of their registration with the Registrar-General's Department, where the NPO is a company limited by guarantee. The NRA pointed out that there is lack of clarity as regards registration. NPOs are also required to publish a report on their activities. Asides from the requirement to register and to publish a report on their activities, there are no other policies to promote transparency, integrity and public confidence in administration and management of NPOs that are established within Ghana. However, the policies for international NPOs are a little more transparent.

Criterion 8.4a - NPOs, are required to register with the Department of Social Welfare, and must state their objectives clearly before been issued with a Certificate to operate. NPOs are also required to provide the directors' names and addresses on their profile forms. These requirements relate to NPOs generally. If an NPO is a limited liability company, it is established through the memorandum of association which includes information on the purpose and the identity of their directors. Apart from these instances NPOs are under no obligation to maintain information on the purpose and objectives of their stated activities or the identity of person(s) who own, control or direct their activities. There is also no requirement that the information listed under this criterion should be publicly available either directly from the NPO or through appropriate authorities.

Criterion 8.4 b & c - NPOs that are companies are required by the Companies Act to issue financial statements. Asides from this, there is no obligation for NPOs to issue annual financial statements or have controls in place to ensure that all funds are fully accounted for, and are spent in a manner that is consistent with the purpose and objectives of the NPO's stated activities.

Criterion 8.4 d - NGOs are required to register with the Department of Social Welfare before commencing operations. The assessment team was not provided with any regulation that required NGOs to register with the Department of Social Welfare.

Criterion 8.4.e & f - There are no requirements to follow a "know your beneficiaries and associated NPOs" rule. Ghana requires international NPOs to state the objectives of their stated activities. The obligation to provide annual statements and the names of shareholders is mandatory for NPOs that are legal persons. There is however, no clear obligation to the identify person(s) who own, control or direct their activities, including senior officers, board members and trustees. There is also no requirement to make the information available to competent authorities upon appropriate authority.

Criterion 8.5 - There is no requirement that competent authorities should monitor compliance *of NPOs with Criterion 8.4.* Moreover, most of the obligations under 8.4 are absent hence, there are no sanctions in place.

Criterion 8.6 - The usual law enforcement measures would apply in any investigation of NPOs. This will include the usual collaboration among domestic competent authorities. However, there is no indication that there is any domestic cooperation, coordination and information-sharing among authorities or organisations that hold relevant information on NPOs. There are no specific mechanisms to ensure that relevant information is promptly shared with competent authorities in order to take preventive or investigative action, when there is suspicion or reasonable grounds to suspect that a particular NPO is a front for fundraising by a terrorist organisation or being exploited as a conduit for TF.

Criterion 8.7- The authorities did not indicate that there are points of contacts and procedures to respond to international requests for information regarding particular NPOs suspected of TF.

Weighting and conclusion

Ghana's NPO sector appears to be largely unregulated in terms of AML/CFT compliance. There has been no review of the laws since its 1st MER. ***Recommendation 8 is rated non-compliant.***

Recommendation 9 - Financial Institution Secrecy Laws

Ghana was rated Partially Compliant (PC) in its 1st Mutual Evaluation Report (MER) in relation to the Recommendation on Secrecy laws consistent with the Recommendations. The MER found that the procedure for obtaining a disclosure order was restrictive and cumbersome and may in the end not achieve the purpose for which the confidentiality requirement was waived and there were concerns that the Banking Act may override the AML Act provisions which require the FIC to access information directly from financial institutions. Since the adoption of its MER in 2009, Ghana has amended and enacted relevant laws, including the AML Act, and issued several sector specific regulations and guidelines (BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions; SEC/FIC AML/CFT Compliance Manual for CMOs; and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries) to strengthen measures in relation to R.9.

Criterion 9.1 - Ghanaian financial institutions and Non-Bank financial institutions are required to maintain customer confidentiality, and are subject to data protection provisions. A duty of confidentiality is imposed by sections 83-84 of the Banking (Amendment) Act, 2007 (Act 738), section 159(1) of Insurance Act 2006 (Act 724), section 17 of Security Industry Act, 1993 and section 41 of Non-Bank Financial Institutions Act, 2008 (Act 774) on officials of financial institutions. This duty is to ensure confidentiality of customer information that might come to the knowledge of such employees. However, the duty of confidentiality is waived in certain circumstances, such as when information is required for civil proceedings, execution of a court order, disclosure of information to the FIC/submission of suspicious transaction reports under the AML Act, in fulfillment of obligations under international agreements or under a memorandum of understanding [sections 30-31 of Banking Act 738, section 159 (2) of Insurance Act, 2006, and section 17 (1)(a-b) of Security Act, 1993]. Various sector specific guidelines and regulations also have provisions which allow competent authorities to have access to information at the disposal of the financial institutions for the purposes of combating ML/TF notwithstanding the financial institution's internal policies relating to customer confidentiality (BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institution institutions, Pt A para 1.2; SEC/FIC AML/CFT Compliance Manual for CMOs, Pt A para (1)(d); and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, para 1.2). This applies in all three areas of particular concern set out in the Methodology (access to information by competent authorities; sharing of information between competent authorities, where required; and sharing of information between financial institutions/Non Bank financial institutions).

Weighting and conclusion

The laws and regulations applicable to financial institutions in Ghana do not appear to inhibit the implementation of AML/CFT measures as they provide clear gateways of processing and sharing information for the purpose of AML/CFT. ***Ghana is rated compliant with Recommendation 9.***

Recommendation 10 - Customer Due Diligence (CDD)

Ghana was rated non compliant in its 1st MER in relation to the Recommendation on CDD due to a number of weaknesses, including a lack of express prohibition in law regarding anonymous accounts; an absence of an express provision in law requiring financial institutions to identify the customer and verify that customer's identity using reliable, independent source documents, the lack of an express provision in law requiring financial institutions to verify persons purporting to act on behalf of a customer where the customer is a legal person or legal arrangement and the absence of a requirement to verify the legal status of the legal person or arrangement.

Since the adoption of its MER in 2009, Ghana has amended and enacted relevant laws, including the AML and Anti-Terrorism Acts to significantly address the legal deficiencies in its AML/CFT systems, especially as they relate to R10. Specifically, section 23 of AML Act 749 as amended by section 6 of AML Act 874 places CDD obligations on financial institutions and requires them to apply CDD measures prescribed by Regulations. The Regulations include AML Regulations, 2011 (L.I.1987), the BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions, the SEC/FIC AML/CFT Compliance Manual for CMOs and the NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries.

Criterion 10.1 - Section 6 of AML Act 874 which amends section 23 of Act 749 prohibits accountable institutions, including financial institutions from establishing or maintaining anonymous accounts or accounts in fictitious names. Regulatory Guidelines issued by competent authorities, including SEC/FIC AML/CFT Compliance Manual Pt B para 2a(i), BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions Pt A para1.3, and NIC/FIC AML/CFT Guidelines for Insurance Companies and Intermediaries, para 1.3 have similar provisions

When CDD is required

Criterion 10.2a - Section 23 of Act 749 as amended by section 6 (2) of Act 874 requires accountable institutions to apply CDD as prescribed by Regulations. The BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions Pt A para 1.4 (a), SEC/FIC AML/CFT Compliance Manual Pt B para 2 (A)(iia), and NIC/FIC AML/CFT Guidelines for Insurance Companies and Intermediaries, para 1.3.1.1 have provisions which require financial institutions to undertake CDD when business relationships are established.

Criterion 10.2b - Section 23 of Act 749 as amended by section 6 (2) of Act 874 requires accountable institutions to undertake CDD as required by regulations set out by sector supervisors. Provisions in the BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions, Pt A para1.4 (b); the SEC/FIC AML/CFT Compliance Manual for CMOs, Pt B para 2a (ii) b; and the NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, para1..3.1.2 set the

threshold[66] for occasional transactions and place CDD obligations on financial institutions. Based on the powers conferred on the FIC under section 31A of Act 749 as amended which states that "The Centre shall determine the thresholds of currency transactions for each accountable institutions", the FIC is expected to adjust the threshold for occasional transactions from time to time. Although, the thresholds are still as stated in the guidelines, the FIC has revised the threshold to GHC50,000.00 and has informed reporting entities about the new threshold.

Criterion 10.2c - CDD is required. The BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions, Pt A para1.4 (b), the SEC/FIC AML/CFT Compliance Manual for CMOs, Pt B para 2a (ii) c, and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, para. 2.9b address the requirement for CDD under criterion (c).

Criterion 10.2d - CDD is required. The BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions, Pt A para 1.4 (c), the SEC/FIC AML/CFT Compliance Manual for CMOs, Pt B para 2a (d), and the NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, para 1.3.1.3 address the requirement for CDD under criterion (d).

Criterion 10.2e - CDD is required. The BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions Pt A para 1.4 (d); the SEC/FIC AML/CFT Compliance Manual for CMOs, Pt B para 2a (e); and the NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, para1.3.1.4 address the requirement for CDD under criterion (e).

Required CDD measures for all customers

Criterion 10.3 - Financial institutions are required to identify and verify their customer's identity, using reliable, independently sourced documents, data or information (section 6 (2) of AML Act 874 which amends section 23 of Act 749; BOG/FIC AML/CFT Guidelines for Banks &Non-Bank financial Institutions Pt A para 1.5 (a); SEC/FIC AML/CFT Compliance Manual for CMOs, Pt B para 2b (i); NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, para1.4.1, and paras 13-29 of AML Regulations, 2011 (L.I. 1987).

Criterion 10.4 - The AML/CFT regulations require financial institutions to identify and verify identities of customer's representatives (BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions Pt A para1.5 (b)(i) and 1.5 (d); SEC/FIC AML/CFT Compliance Manual for CMOs, Pt B para 2b (ii)(a) and (iv); and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, paras 1.4.2(a) and 1.4.4.). Also, section 23 of Act 749 as amended by section 6 (7) of Act 874 and par 13(1)(d) of AML Regulation, 2011 require accountable institutions to obtain the full details of a person who makes deposits or withdrawals from an account on behalf of another person. As a matter of practice, financial institutions confirm the veracity of claim by a natural person purporting to be acting on behalf of another. In addition, customers, especially legal entities have designated contact persons which deal with financial institutions, and financial institutions always confirm where the person purporting to act on behalf of the customer is not the known designated person.

Criterion 10.5 - Financial institutions are required to identify and verify the beneficial owners of all customers (BOG/FIC AML/CFT Guidelines for Banks &Non-Bank Financial Institutions Pt A

[66] GHC 20, 000 in the BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institution institutions Pt A para 1.4 (b); and para1.3.1.2 in the NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries; while SEC/FIC AML/CFT Compliance Manual for CMOs - Pt B para 2a (ii) b stipulates a threshold of above $10,000 (or equivalent) for individuals and $25,000 (or equivalent) for corporate persons.

para1.5 (c), 1.5 (e); SEC/FIC AML/CFT Compliance Manual for CMOs, Pt B para 2b (iii) & (v); NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, para 1.4.3&1.4.5; and AML/CFT Regulations, 2011para 16). In the various AML/CFT guidelines and regulations the term "beneficial owner" refers to the natural person(s) who ultimately owns or controls a customer, the person on whose behalf a transaction is being conducted or those persons who exercise ultimate effective control over a legal person or arrangement. However, where the customer or the owner of the controlling interest is a public company subject to regulatory disclosure requirements (i.e. a public company listed on a recognized stock exchange) it is not necessary to identify and verify the identity of the shareholders of such a public company (BOG/FIC AML/CFT Guidelines for Banks &Non-Bank Financial Institutions Pt A para1.5 (e)); SEC/FIC AML/CFT Compliance Manual for CMOs, Pt B para 2b (vii); and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, para 1.4.5).

Criterion 10.6 - Financial institutions are required to obtain information on the purpose and intended nature of the business relationship (BOG/FIC AML/CFT Guidelines for Banks &Non-Bank Financial Institutions Pt A para 1.5 (f)), SEC/FIC AML/CFT Compliance Manual for CMOs, Pt B para 2b (viii) & 2c (iii), NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, para1.4.6, and paragraph 13 (1) (e) of AML/CFT Regulations, 2011).

Criterion 10.7 - Financial institutions are required to conduct ongoing due diligence with regard to the business relationship and scrutinize transactions undertaken throughout the relationship, and where necessary, the source of funds. Also, they are to ensure that relevant documents, data or information collected under the CDD are kept up to date, by undertaking reviews, especially of records in respect of higher-risk business relationships or customer categories (BOG/FIC AML/CFT Guidelines for Banks &Non-Bank Financial Institutions Pt A para1.5 (g)(h)&(i); SEC/FIC AML/CFT Compliance Manual for CMOs, Pt B para 2b (ix),(x)&(xi); NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, para 1.4.7 - 1.4.9; and paragraph 13 (1)(f)(g) of AML/CFT Regulations, 2011).

Specific CDD measures required for legal persons and legal arrangements

Criterion 10.8 - Financial institutions have obligations to take reasonable measures to understand the ownership and control structure of customers that are legal persons or legal arrangements (BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions Pt A para 1.5 (e), SEC/FIC AML/CFT Compliance Manual for CMOs, Pt B para 2b (v), and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, para1.4.5). The requirement to understand the nature of business is a general one which applies to all customers, including legal persons and arrangements (BOG/FIC AML/CFT Guidelines for Banks &Non-Bank Financial Institutions Pt B para 2.0 (a) & 2.2 (a), SEC/FIC AML/CFT Compliance Manual for CMOs, Pt B para 2b (i) (a) & 2b (viii), and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, para1.4.6 & Pt B para 2.0). Financial institutions are required to be alert to circumstances that might indicate any significant changes in the nature of the business or its ownership (BOG/FIC AML/CFT Guidelines for Banks & Non-Banks Financial Institutions Pt B para 2.8 (h), SEC/FIC AML/CFT Compliance Manual for CMOs, Pt C 23 (d)(viii), and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, para 2.4.5.9).

Criterion 10.9 - Comprehensive requirements consistent with the FATF standards are established in the various regulations and guidelines to identify and verify identity of legal persons or legal arrangement using the stated information, including information on the directors, owners and

shareholders, the certificate of incorporation/registration number; the registered corporate name and any trading names used, registered address and any separate principal trading address (BOG/FIC AML/CFT Guidelines for Banks &Non-Bank Financial Institutions Pt B para 2.36 (b), SEC/FIC AML/CFT Compliance Manual for CMOs, Pt B para 25 (3)(b), NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, para 2.6.3.1.2, and paragraphs 21-29 of AML Regulations, 2011). These regulations and guidelines further require accountable institutions to verify the legal status of legal persons or legal arrangements by obtaining proof of incorporation from the Registrar General's Department or similar evidence of establishment or existence and any other relevant information.

Criterion 10.10 - Paragraph 16 of AML Regulations, 2011, the BOG/FIC AML/CFT Guidelines for Banks &Non-Bank Financial Institutions Pt A para 1.5 (b)(c); 1.6, SEC/FIC AML/CFT Compliance Manual for CMOs Pt B para 2b (iii), 2e (i)&(ii)& 2c; and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, para1.4.3, 1.5, require accountable institutions to identify and take reasonable measures to verify the identity of the natural person(s) who has the controlling ownership or exercise ultimate effective control over a legal person. As part of CDD process, the various regulations and guidelines also provide for identification of natural persons who hold positions of senior management, including Directors and all signatories to an account. For private companies undertaking higher risk business, financial institutions are required to identify beneficial owners for shareholders with interests in excess of 10% for banks, Non-Bank financial institutions and insurance operators (BOG/FIC AML/CFT Guidelines for Banks &Non-Bank Financial Institutions Pt B para 2.37 (b); and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, para 2.4.5.8)) and 5% and above, for operators in the capital market (SEC/FIC AML/CFT Compliance Manual for CMOs, Pt C, 23 (d)(vii)). On the whole, financial institutions are to apply a risk based approach. However, where the customer or the owner of the controlling interest is a public company subject to regulatory disclosure requirements (i.e. a public company listed on a recognized stock exchange) it is not necessary to identify and verify the identity of the shareholders of such a public company (BOG/FIC AML/CFT Guidelines for Banks &Non-Bank Financial Institutions Pt A para1.5 (e)); SEC/FIC AML/CFT Compliance Manual for CMOs, Pt B para 2b (vii); and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, para 1.4.5) because the regulatory disclosure requirements of the Ghana Stock Exchange sufficiently address the obligations of c.10.10.

Criterion 10.11 - Section 23 (8) and (9) of Act 749 as amended by section 6 of 874, paragraph 16 of AML Regulations, 2011, the BOG/FIC AML/CFT Guidelines for Banks &Non-Bank financial institutions Pt A para 1.5 (e), Part B 2.8 (i) & Appendix A, section B (ii)(d), the SEC/FIC AML/CFT Compliance Manual for CMOs, Pt B para 2b (vi) and Pt C, 25(c)(vi), and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, para 2.4.5.10, para 2.6.2.4.3, and Appendix A, section B (ii)(d) specified the CDD requirements for legal arrangement. The provisions state that when dealing with legal persons or arrangement, including trusts, accountable institutions should take reasonable steps to verify the trustee, the settlor of the trust (including any persons settling assets into the trust) any protector, beneficiary and signatories. Beneficial owners should also be determined, including establishing the ultimate chain of control/ownership. In the case of a foundation, steps should be taken to verify the founder, the managers/directors and the beneficiaries.

CDD for Beneficiaries of Life Insurance Policies

Criterion 10.12 - Paragraph 16 of the AML Regulations, 2011, has broad requirements, but the NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries have specific requirements requiring CDD measures to be carried out on customers and this could include the beneficiary of life insurance and other investment related policies (NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries para 1.7.3). The guideline also provides that in all cases, identification and verification should occur at or before the time of payout or the time when the beneficiary intends to exercise vested rights under the policy (para.1.7.3 (c)). However, the regulations do not have any express provision(s) that cover circumstances where the beneficiary of a policy may be designated by characteristics or class or by other means.

Criterion 10.13 - Paragraph 1.5 & 1.6 of the NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries deal with higher and lower risk customers, transactions and products, including life insurance policies and require financial institutions to take appropriate (enhanced or simplified) CDD measures. Generally, beneficiaries of life insurance policy are considered high risk in Ghana.

Timing of verification

Criterion 10.14 - Paragraphs 16-18, 21- 22, 25, 27 and 29 of the AML Regulations, 2011 provides for verification of the identity of customers, beneficial owners, and occasional customers before or during the course of establishing a business relationship or conducting transactions. So also are all the sector specific regulations and guidelines (BOG/FIC AML/CFT Guidelines for Banks &Non-Bank Financial Institutions, Pt A para1.8, SEC/FIC AML/CFT Compliance Manual for CMOs - Pt B para 2 (e), and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, paras 1.7.1-1.7.3. The regulations and guidelines have provisions that are consistent with the FATF requirements under c10.14.

Criterion 10.15 - The BOG/FIC AML/CFT Guidelines for Banks &Non-Bank Financial institutions, Pt A para1.8 (d), SEC/FIC AML/CFT Compliance Manual for CMOs, Pt B para 2 (e) (iv), and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, para 1.7.4 have provisions for risk management procedures, where the need arises.

Existing customers

Criterion 10.16 - The sectoral guidelines and regulations have provisions which reflect the elements in c10.16 (BOG/FIC AML/CFT Guidelines for Banks &Non-Bank Financial institutions Pt A para1.10, SEC/FIC AML/CFT Compliance Manual for CMOs, Pt B para 2 (g), and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, para 1.9). Section 23 of Act 749 as amended by section 6 (3) of Act 874[67] provide that accounts and customers existing prior to the implementation of these regulations and guidelines shall be subject to CDD measures within the timeframe and to the extent provided for by the regulations.

[67] See also Paragraph 11 of AML Regulations, 2011.

Risk-Based Approach

Criterion 10.17 - The BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions, Pt A para1.6, the SEC/FIC AML/CFT Compliance Manual for CMOs, Pt B para 2 (c), and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, para 1.5.1 all have provisions which require financial institutions to perform enhance CDD where the ML/TF risks are higher[68].

Criterion 10.18 - The BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions Pt A para 1.7(h-j), the SEC/FIC AML/CFT Compliance Manual for CMOs, Pt B para 2 (d) and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, paras1.5.2 and 1.6. permit simplified CDD where lower risks have been identified. However, simplified CDD procedures will not apply whenever there is suspicion of money laundering or terrorist financing or specific higher-risk scenarios. The sector regulations and guidelines contain some examples of lower risk customers, transactions or products which financial institutions are expected to apply simplified CDD. Other than the BOG, there is no basis for arriving at these lower risk scenarios provided by SEC and NIC in their sector regulations. The requirement in the FATF Standards is that a country can only apply simplified CDD after an adequate analysis of the risks by the country or financial institution has been undertaken. Ghana recently concluded a NRA which highlighted some lower risk scenarios. Financial sector Regulations may require review to incorporate the scenarios identified in the NRA. Similarly, robust ML/TF risk assessment by financial institutions would be necessary to comprehensively identify lower risk products, services etc that will enable them apply simplified CDD.

Failure to satisfactorily complete CDD

Criterion10. 19 - Sector specific regulations and guidelines have provisions which mirror the FATF requirements in c10.19 (BOG/FIC AML/CFT Guidelines for Banks &Non-Bank Financial Institutions, Pt A para1.9; SEC/FIC AML/CFT Compliance Manual for CMOs, Pt B para 2 (f); and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, para1.8).

CDD and tipping-off

Criterion 10.20 - There is no express provision either in law or regulation that directs accountable institutions not to perform CDD if this will result in the customer being tipped off. The FIC has issued an Advice to financial institutions requiring them not to pursue the CDD process but rather file an STR if pursuing the CDD process will result in the customer being tipped off. Ghana confirms that the FIC Advice has the effect of a directive and qualifies as an enforceable means

Weighting and conclusion

Ghana has met the majority of requirements of Recommendation 10. Minor deficiencies, however, still exist, namely: (i) decisions to undertake SDD measures by FIs, especially insurance and capital market operators are not supported by any underlying assessment or analysis of the associated risk

[68]See also, Paragraph 1(1)(2d) of AML Regulations, 2011, and section 23 of Act 749 as amended by section 6 (5) of Act 874

in these situations, and (ii) the NIC AML/CFT Guidelines for the insurance sector does not have any express provision(s) that cover circumstances where the beneficiary of a policy may be designated by characteristics or class or by other means. **Ghana is rated largely compliant with R.10**.

Recommendation 11 – Record Keeping

Ghana was rated partially compliant in its 1st MER with the requirements of this Recommendation due to the lack of effective monitoring and supervision of all sectors to ensure compliance with the record keeping requirement and the inability of law enforcement agencies to access information to conduct investigation on criminal activities from financial institutions in a timely manner. Since the adoption of its MER in 2009, Ghana has reviewed its AML laws, and issued regulations and guidelines to strengthen the requirements for record keeping.

Criterion 11.1 - Section 24 (3) of Act 749 as amended by section 24 of Act 874, the BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions Pt A para 1.15 (a)(b), SEC/FIC AML/CFT Compliance Manual for CMOs, Pt para B 6 (a), and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, para 1.13.1, all have provisions which require accountable institutions to maintain all necessary records of transactions, both domestic and international, for a period ranging between at least, five (5) year to seven (7) years following completion of the transaction (or longer if requested by the relevant regulatory authority or the FIC). Transaction records to be maintained include customers' and beneficiaries' names, addresses, the nature and date of transaction, the type and amount of currency involved. Part 3 of the AML Regulations 2011 requires accountable institutions to have internal rules relating to record keeping. Such rules should take account of any guidelines or law relating to record keeping. Section 24(4)(5)(6) of AML Act 874 permits an accountable institution to appoint a person to keep record on its behalf but the ultimate responsibility remains with the accountable institution. Where this happens, the accountable institution is required to inform the FIC of the appointment within seven days.

Criterion 11.2 - Section 24 (1)(2)(3) of Act 749 as amended by section 24 of Act 874, the BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions Pt A para 1.15 (c), SEC/FIC AML/CFT Compliance Manual for CMOs, Pt B para 6 (b), and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, para 1.13.3, have provisions which requires accountable institutions to maintain records of the identification data, account files and business correspondences, for a period ranging between at least, five (5) year to seven (7) years following completion of the transaction (or longer if requested by the relevant regulatory authority or the FIC).

Criterion 11.3 - Section 24 (2)(b) of Act 749 as amended by section 8 of Act 874 provides that records of transactions should be sufficient to reconstruct each individual transaction for both account holders and non-account holders. Paragraph 3 (e) of AML Regulations, 2011 requires accountable institutions to have the necessary systems, processes and working methods to ensure the accuracy and integrity of the records maintained throughout the period for which records are required to be kept.

Criterion 11.4 - Section 24 (1) of Act 749 as amended by section 8 of Act 874requires financial institutions to keep records of their clients and transactions and ensure that the records are made available to FIC and other competent authorities on timely basis. BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions Pt A para 1.15 (d), SEC/FIC AML/CFT Compliance

Manual for CMOs, Pt B para 6 (c), and NIC/FIC AML/CFT Guideline for Insurance Companies and para 1.13.4 provide that financial institutions should maintain records relating to customers and transactions and ensure that the records are made available to the FIC and their sector regulatory authorities on a timely basis. Section 28 of Act 749 as amended by section 9 of Act 874 gives the FIC powers to request for any information necessary to carry out its functions from accountable institutions. Similarly, BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions Pt A para 1.2 empowers competent authorities to access information held by financial institutions for the purposes of performing their functions in combating money laundering and financing of terrorism including sharing of information between competent authorities, either domestically or internationally. Paragraph 3 (f) of AML Regulations, 2011 requires financial institutions to have internal rules which provide for the necessary processes and working methods to ensure that access that are required can be obtained without hindrance.

Weighting and conclusion

Ghana meets all the criteria of Recommendation 11 ***and is rated compliant.***

Recommendation 12 – Politically Exposed Persons (PEPs)

Ghana was rated non-compliant with the requirement of this recommendation in its 1st MER as a result of significant deficiencies in its legal/regulatory framework with respect to PEPs. The MER noted amongst other things that there was no requirement to put additional risk management systems in place to determine whether a potential customer or a customer or the beneficial owner of a customer is PEP, there was no requirement to obtain senior management approval prior to opening an account for a PEP, no sector was subject to a requirement to obtain senior management approval to continue a relationship when an existing customer is discovered to have been or to have become PEP, and no sector was subject to a requirement to conduct enhanced due diligence should they decide to provide services to a PEP. Ghana has reviewed its AML laws, and issued regulations and guidelines to strengthen measures relating to R.12.

Criterion 12.1 - All the sectoral guidelines as well as the regulations[69] the AML law[70] and the Companies Amendment Act 2016, have provisions which mirror the requirements of the FATF standards in c12.1 (BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions Pt A para 1.11, SEC/FIC AML/CFT Compliance Manual for CMOs, Pt B para 3, and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, para1.10). PEPs are defined in the regulations and guidelines as individuals who are or have been entrusted with prominent public functions both in Ghana and foreign countries and those associated with them. A more comprehensive definition of PEP is provided in the Companies Amendment Act 2016. In the Act, a PEP is defined to include (i) a person who is or has been entrusted with a prominent public function in this country, a foreign country or an international organization, including head of state or of government, senior political, government, judicial or military official, or a person who is or has been an executive in a foreign country of a state owned company, and (ii) a person who is or has been a senior political party official in a foreign country and includes any immediate family members or close associates of that person. This list here is non-exhaustive and meant only to illustrate some examples of PEPs. The FIC issued Advice[71] to financial institutions on additional

[69]paragraphs 8-10 of AML Regulations, 2011
[70] Sections 23 (5), 40 (2)(a)(ii) of Act 749 as amended by sections 6 and 19 of Act 874)
[71] Advice issued to AIs has the effect of a directive.

measures for domestic and foreign PEPs on 6th January 2016. The advice listed persons who are or have been entrusted with prominent functions by an international organization as PEPs.

Criterion 12.2 - The provisions of BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions, Pt A para 1.11(b), the SEC/FIC AML/CFT Compliance Manual for CMOs, Pt B para 3 (ii), NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, para 1.10.2 and paragraph 8 (1) of AML Regulations, 2011 are generally consistent with the requirement of c12.2(a). Measures in 12.1 (b)-(d) are generally applied on PEPs as they are considered higher risk customers in Ghana (BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions, Pt A para 1.6(v), the SEC/FIC AML/CFT Compliance Manual for CMOs, Pt B para 2 (c), NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, para 1.5(e). However, as noted in c12.1, the definition of PEP did not cover international organizations related PEPs.

Criterion 12.3 - Financial institutions are under obligation to apply relevant requirements of criteria 12.1 and 12.2 to family members and closed associates of all categories of PEPs.

Criterion 12.4 - Paras1.10.2-1.10.6 of the NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries have broad requirements which appear to meet the requirements of c12.4 when complimented by the provision in para1.7.3 (c).

Weighting and conclusion

Ghana has frameworks that sufficiently address both domestic and foreign PEPs as required under R.12. ***Ghana is rated compliant with Recommendation 12.***

Recommendation 13 – Correspondent Banking

Ghana was rated non-compliant in its 1st MER in relation to Correspondent Banking because there was no requirement to obtain senior management approval prior to establishing a correspondent relationship; financial institutions were not required to document each others' respective AML/CFT responsibilities; and no regulators placed requirements on their sectors to carry out the necessary CDD on cross border correspondent relationships. Since the adoption of its MER in 2009, Ghana has reviewed its AML laws, and issued regulations and guidelines, including AML (Amendment) Act 874, AML Regulations, 2011 (L.I.1987), BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions; SEC/FIC AML/CFT Compliance Manual for CMOs; and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, to strengthen measures relating to R.13.

Criterion 13.1 - Sections 23 (14) of Act 749 as amended by sections 6 and 19 of Act 874 provides for how accountable institutions should deal with cross border correspondent banking and other similar relationships in relations to c13.1. BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions Pt A para1.12(a) requires financial institutions to carry out the steps highlighted in c13.1 when dealing with correspondent banking relationship. See NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, para 2.7.9 and SEC/FIC AML/CFT Compliance Manual for CMOs, Pt C, par 26(h) for provision related to similar correspondent relationship within the insurance and securities sectors.

Criterion 13.2 - [Met] - Adequately provided for in BOG/FIC AML/CFT Guidelines for Banks & institutions Pt A para 1.12(b).

Criterion 13.3 - [Met] - Shell banks[72] are prohibited in Ghana. Similarly, Ghanaian financial institutions are prohibited from entering into, or continuing correspondent banking relationships with shell banks. They are also required to satisfy themselves that respondent financial institutions do not permit their accounts to be used by shell banks: section 23 (17)(18)(19) of Act 749 as amended by section 6 of Act 874, BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institution institutions Pt A para 1.21, and SEC/FIC AML/CFT Compliance Manual for CMOs, Pt B, par 10 and 26(h)(iii).

Weighting and conclusion

Ghana meets all the criteria of Recommendation 13 and is rated Compliant.

Recommendation 14 – Money or Value Transfer Services (MVTS)

Ghana was rated noncompliant in its 1st MER in relation to MVTS because *MVTS* were not properly supervised for AML/CFT compliance. Since the adoption of its MER in 2009, Ghana has reviewed its AML laws, and issued regulations and guidelines, including AML (Amendment) Act 874; AML Regulations, 2011 (L.I.1987); BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions; SEC/FIC AML/CFT Compliance Manual for CMOs; and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, to enhance measures in relation to R.14.

Criterion 14.1 - MVTS are regarded as non-bank financial institutions in Ghana [NBFIs Act 2008 (Act 774) First Schedule][73]. MVTS providers are required to be licensed by the BOG before commencing operations [section 2(1) NBFIs Act 774), BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions Pt A para 1.34(a)]. Sections 4 & 5 of Act 774 provide for the application and licensing procedures of NBFIs, including MVTS. Qualification requirements for BOG to grant license include being a legal entity incorporated in Ghana, and meeting a minimum capital requirement of GHC 1 million (section 11 of Act 774, and Fourth Schedule).

Criterion 14.2 - Section 2 (1) of NBFIs Act 774 prohibits operations of MVTS without license. The BOG has a task force / compliance and enforcement team that periodically survey the market for any natural or legal person that carries out MVTS without licence. Any person caught operating MVTS without licence commits an offence under the law and is proceeded against by the BOG or relevant authorities. Specific instances cited by the authorities include *Onward Remittance* (an MVTS operator) that was sanctioned for operating without licence.

[72] Shell bank is defined in the BOG/FIC AML/CFT Guidelines as a bank that has no physical presence in the country in which it is incorporated and licensed, and which is unaffiliated with a regulated financial services group that is subject to effective consolidated supervision. Physical presence means meaningful mind and management located within a country. The existence simply of a local agent or low level staff does not constitute physical presence.

[73] Appendix B of BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions describes financial institutions and listed any entity that conducts MVTS businesses as part of financial institutions

Criterion 14.3 - MVTS providers are parts of accountable institutions in Ghana and are subject to AML/CFT laws and regulations, as well as, compliance monitoring by the BOG, the supervisory authority for non-bank financial institutions (NBFIs), including MVTS. The BOG supervisory powers over MVTS and other NBFIs are provided for in sections 31-37 of Act 774. BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions, Pt A para 1.34 (a) subject MVTS to the provisions of the Guidelines and requires them to implement the AML/CFT measures therein. As part of its oversight functions, the BOG monitors them for AML/CFT compliance.

Criterion 14.4 - BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions, Pt A para 1.34 (b) requires MVTS to maintain a current list of its agents. In addition they are expected to gather and maintain sufficient information about their agents. Such list can be accessed by the BOG and other relevant competent authorities.

Criterion 14.5 - BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions, Pt A para 1.34 (c) provides that MVTS providers "shall assess their agents' and correspondent operators' AML/CFT controls and ascertain that they are adequate and effective. They shall obtain approval from the BOG before establishing new correspondent relationships. They shall also document and maintain a checklist of the respective AML/CFT responsibilities of each of its agents and correspondent operators".

Weighting and conclusion

Ghana met the requirements of this recommendation. **Ghana is rated Compliant with Recommendation 14**

Recommendation 15 – New Technologies

Ghana was rated non-compliant in its 1st MER with respect to new technologies because there was no requirement on financial institutions to have policies in place to prevent the misuse of new technologies, regulators had not placed requirements on their sectors to introduce the necessary policies and risk management procedures with regard to non-face to face business. Since the adoption of its MER in 2009, Ghana has reviewed its AML laws, and issued regulations and guidelines, including AML (Amendment) Act 874, AML Regulations, 2011 (L.I.1987), BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions, SEC/FIC AML/CFT Compliance Manual for CMOs; and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries to improve measures relating to R.15.

Criterion 15.1 - Sections 40 of Act 749 as amended by section 19 of Act 874, and Paragraph 1(1)(2a) of AML Regulations, 2011 require accountable institutions to develop and implement AML/CFT programmes, including assessing the risk related to ML/TF. BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions, Pt A para 1.13; SEC/FIC AML/CFT Compliance Manual for CMOs, Pt B, par 4 and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, para 1.11.1 require financial institutions to have policies in place or take such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes (see also sections 40 (2)(d) of Act 749 as amended by section 19 of Act 874). Though not expressly stated, in general, these measures include identifying and assessing the ML/TF risks that may arise in relation to the development of new products and new business practices, including new delivery mechanisms, and the use of new or developing technologies for both new and pre-existing products.

Criterion 15.2 - Financial institutions are required to undertake risk assessments prior to the launch or use of new products, business practices as well as new or developing technologies. This requirement is contained in the Circular and Advice[74] issued by BOG and FIC respectively. In addition, the general requirement in laws and sectoral regulations and guidelines on financial institutions to manage and mitigate ML/TF risk further reinforce this requirement.

Weighting and conclusion

Ghana met the requirements of this recommendation. ***Ghana is rated compliant with Recommendation 15.***

Recommendation 16: Wire Transfers

Ghana was rated non-compliant in its 1st MER in relation to Wire Transfers due to certain shortcomings. Primarily, the AML Act did not provide the type of originator information that should accompany a wire transfer, whether domestic and international transfers and the minimum threshold for the provision of originator information was not indicated in the Foreign Exchange Act and the AML Act. Since the adoption of its MER in 2009, Ghana has reviewed its AML laws, and issued regulations and guidelines, including AML (Amendment) Act 874; AML Regulations, 2011 (L.I.1987); BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions; SEC/FIC AML/CFT Compliance Manual for CMOs; and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries to improve measures relating to R.16.

Ordering financial institutions

Criterion 16.1 - Financial institutions are required to obtain and maintain information relating to the originator of all wire transfers (BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions Pt A para 1.35 (a); See also section 23 (20)(21) of Act 749 as amended by section 6 of Act 874). There is no similar requirement for beneficiary information in BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions and AML Act 749 as amended by section 6 of Act 874.

Criterion 16.2 - - BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions Pt A, para 1.35 (d) provide for cross border wire transfers from a single originator that are bundled in a batch file. However, the ordering financial institutions are only required to include only originator information. The short coming in c16.1 applies to c16.2

Criterion 16.3 - [Not Applicable]

Criterion 16.4 - [Not Applicable]

Criterion 16.5 - [Met] -For domestic wire transfers, ordering financial institution are required to include the full originator information in the message or the payment form accompanying the wire transfer (BOG/FIC AML/CFT Guidelines for Banks &Non-Bank Financial Institutions Pt A para 1.35 (e)).

[74] The FIC's Advice is considered an enforceable means in Ghana

Criterion 16.6 - In a situation where the ordering financing institutions include only the originator's account number or a unique identifier, within the message or payment form in the domestic wire transfer, the institution must provide the full originator information to the beneficiary financial institution and to the appropriate authorities within three (3) business days of receiving the request: BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions Pt A para 1.35 (e)(ii)(f). There is no requirement regarding information on the beneficiary. The short coming in c16.1 applies to c16.6

Criterion 16.7 - Section 23 (20) of Act 749 as amended by section 6 of Act 874 require accountable institutions that carry out activities that include wire transfers to maintain information prescribed by the Regulations. As noted in c16.1, the BOG/FIC Guidelines does not have requirements to maintain beneficiary information. However, the AML law and sectoral regulations require accountable institutions to maintain customers' identification data, account files, all necessary records of transactions, both domestic and international, etc for at least five (5) years after termination of the contractual relationship or completion of the transaction. See R11.

Criterion 16.8 - Section 23 (21)(22) of Act 749 as amended by section 6 of 874 provides for measures/actions accountable institutions, including ordering financial institutions should take, where the requirements of c16.1-16.7 are not met. These include refusing to execute the transfer and filing a suspicious transaction report. Non-compliance with this requirement will attract the sanctions in the relevant laws and regulations. However, the short coming in c16.1 has a cascading effect on c16.8.

Intermediary financial institutions

Criterion 16.9 - BOG/FIC AML/CFT Guidelines for Banks &Non-Bank Financial Institution institutions Pt A para 1.35 (g) requires intermediary financial institution in the payment chain to ensure that all originator information that accompanies a wire transfer is transmitted with the transfer. This does not cover beneficiary information as required by c16.9.

Criterion 16.10 - Section 23 (20) of Act 749 as amended by section 6 of Act 874 require accountable institutions that carry out activities that include wire transfers to maintain information prescribed by the Regulations. BOG/FIC AML/CFT Guidelines for Banks &Non-Bank Financial Institution institutions Pt A para 1.35 (h) requires intermediary financial institution to keep record of information received from the ordering financing institution for at least five (5) years. There is no similar provision in the Guidelines in relation to beneficiary information. However, section 24 (2) (3) of Act 874 requires financial institutions to keep records, including records of clients and transactions for a period not less than 5 years.

Criterion 16.11 - Section 23 (21)(22) of Act 749 as amended by section 6 of 874 provides that where an accountable institution receive a wire transfer that does not contain the complete originator information, the institution should take measures to obtain and verify the missing information from the ordering financial institution or the beneficiary. Where the missing information cannot be found, the institution should refuse the transfer and within 24 hours file a suspicious transaction report. Accountable institutions include intermediary institutions. However, the provision of this law does not cover requirement for beneficiary information.

Criterion 16.12 - Section 23 (21)(22) of Act 749 as amended by section 6 of 874 provides for the conditions under which an accountable institution should refuse to execute a transfer with incomplete originator information, and as a follow up action, file a suspicious transaction within 24

hours. Though there is no specific express provision requiring intermediary financial institutions to adopt a risk based approach in determining when to execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information; the general requirement in various sector regulations and guidelines for financial institutions to adopt risk based approach in the implementation of their AML/CFT programmes, could apply. The provisions in the above AML Act do not cover beneficiary information.

Beneficiary financial institutions

Criterion 16.13 - BOG/FIC AML/CFT Guidelines for Banks &Non-Bank Financial Institutions Pt A para 1.35 (i) requires beneficiary financial institutions to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. There is no provision in relation to beneficiary information.

Criterion 16.14 -The BOG/FIC AML/CFT Guidelines for Banks &Non-Bank Financial Institutions does not contain any provision requiring the beneficiary financial institution to verify the identity of the beneficiary of a wire transfer, where the transaction is equal to or more than USD/Eur 1000 or equivalent, if it has not been previously done, and to keep such information.

Criterion 16.15 - BOG/FIC AML/CFT Guidelines for Banks &Non-Bank Financial Institutions, 1.35 (i)(j) requires beneficiary financial institution to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. The beneficiary financial institution should restrict or even terminate its business relationship with the financial institutions that fail to meet the required standards. Section 23 (21)(22) of Act 749 as amended by section 6 of 874 provides for the conditions under which an accountable institution should refuse to execute a transfer with incomplete originator information, and as a follow up action, file a suspicious transaction within 24 hours. There is no express provision in law or regulation in relation to beneficiary information.

Money or Value Transfer Service Operators

Criterion 16.16 - Section 23 (20) of Act 749 as amended by section 6 of Act 874 require accountable institutions that carry out activities that include wire transfers, including MVTS, to maintain information prescribed by relevant regulations. Sectoral regulations and guidelines require accountable institutions, including MVTS to identify and verify identity of customers; and maintain customers' identification data, account files, all necessary records of transactions, both domestic and international for at least five (5) years after termination of the contractual relationship or completion of the transaction. See BOG/FIC AML/CFT Guidelines for Banks &Non-Bank Financial Institutions, 1.34 for specific AML/CFT requirements for MVTS. However, the lack of requirements for beneficial information in the regulations will have negative impact on c16.16.

Criterion 16.17 - [Not Applicable]

Implementation of Targeted Financial Sanctions

Criterion 16.18 - [Met] -Procedures for implementing the UNSCRs are contained in Executive Instrument E.I. 2 (Instructions for the implementation of the UNSCRs No. 1267 (1999), 1373 (2001), 1718 (2006), Successor Resolutions and other relevant Resolutions). Ghana ensures that accountable institutions take appropriate measures when processing wire transfers, including

seizure/freezing action, submission of a written report and any other action that will give effect to these UNSCRs, Successor Resolutions and other relevant Resolutions (see paragraphs 8 and 9 of the E.I. 2). Accountable institutions also have duties to monitor the list of the UN Sanctions Committee, including the monitoring of wire transfers.

Weighting and Conclusion

The key technical deficiencies in this Recommendation relate to the absence of requirements for financial institutions, especially banks to obtain and maintain beneficiary information, and include beneficiary information on cross border wire transfers. ***Ghana is rated partially compliant with Recommendation 16.***

Recommendation 17 – Reliance on Third Parties

Ghana was rated non-compliant in its 1st MER in relation to Reliance on Third Parties because there was no requirement across all the sectors to ensure that customer identification information will be made available by 3rd parties and financial institutions were not required to satisfy themselves that 3rd parties are duly supervised and regulated for AML/CFT purposes and apply FATF Recommendations to their customers. Since the adoption of its MER in 2009, Ghana has reviewed its AML laws, and issued regulations and guidelines, including AML (Amendment) Act 874; AML Regulations, 2011 (L.I.1987); BOG/FIC AML/CFT Guidelines for Banks &Non-Bank Financial Institutions; SEC/FIC AML/CFT Compliance Manual for CMOs; and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, to strengthen its compliance with Recommendation 17.

Criterion 17.1 - Section 23 (12) & (13) of Act 749 as amended by section 6 of Act 874 permits accountable institutions to appoint an intermediary or a third party to perform some of the elements of CDD. However, the ultimate responsibility for CDD and verification will remain that of the accountable institution that appointed the third party or intermediary. AML Regulations, 2011 and other sectoral guidelines have similar provisions and further require financial institutions relying on intermediary or a third party to observe the requirements in (a)-(c) under c17.1. See Paragraph 31 of AML Regulations, 2011, BOG/FIC AML/CFT Guidelines for Banks &Non-Bank Financial Institutions Pt A para 1.14, SEC/FIC AML/CFT Compliance Manual for CMOs - Pt B para 5, and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, para1.12.

Criterion 17.2 - There is no provision in any law or regulations imposing restriction on the countries 3rd parties can be relied upon. However, sector regulations and guidelines have provisions that require financial institutions relying on third party to satisfy themselves that the 3rd party is regulated and supervised in accordance with the core principles of AML/CFT and has measures in place to comply with the CDD requirements. There is no requirement for financial institutions to have regard for a country's level of risk, where the 3rd party is located in another country which is the focus of c17.2

Criterion 17.3 - There is no specific provision in law or regulation in Ghana on the applicability of third party reliance involving FIs that are part of the same financial group as set out in c17.3 (a)-(c)

Weighting and Conclusion

Ghana has frameworks that address the requirements under c17.1. However, there is no specific requirement: (i) for financial institutions to have regard for a country's level of risk, in situation where they 3rd party they rely on is located in another country, and (ii) on the applicability of third party reliance involving FIs that are part of the same financial group. ***Ghana is rated partially compliant with Recommendation 17.***

Recommendation 18 – Internal Controls and Foreign Branches and Subsidiaries

Ghana was rated partially compliant for both recommendations relating to internal controls, compliance and audit as well as foreign branches and subsidiaries during its 1st MER due to several factors, including an absence of the requirement to set up independent audit functions and appoint compliance officers at senior management level and the lack of a comprehensive and ongoing training programme for staff of financial institutions and an absence of the requirement to report to the home supervisor where financial institutions are not able to implement AML/CFT measures in their host countries. Since the adoption of its MER in 2009, Ghana has reviewed its AML laws, and issued regulations and guidelines, including AML (Amendment) Act 874; AML Regulations, 2011 (L.I.1987); BOG/FIC AML/CFT Guidelines for Banks &Non-Bank Financial Institution institutions; SEC/FIC AML/CFT Compliance Manual for CMOs; and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries to strengthen its compliance with Recommendation 18.

Criterion 18.1 - BOG/FIC AML/CFT Guidelines for Banks &Non-Bank Financial Institutions Pt A para1.18 (a)(c); SEC/FIC AML/CFT Compliance Manual for CMOs - Pt B para 8 (b) (i)(iii); and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, para1.16.1, 1.16.3 have provisions which mirror the elements in (a)-(d) in c18.1.

Criterion 18.2 - There is no provision in law or regulations in Ghana requiring financial groups to implement group-wide programmes against ML/TF as set out in c18.2.

Criterion 18.3 - Section 40 (5) (6) of Act 749 as amended by section 19 of Act 874; BOG/FIC AML/CFT Guidelines for Banks &Non-Bank Financial Institutions Pt A para 1.24; SEC/FIC AML/CFT Compliance Manual for CMOs - Pt B para 8 (b) (i)(iii); and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, para1.17.5 have provisions which require financial institutions to ensure that their foreign branches and subsidiaries apply AML/CFT measures consistent with provisions of these laws/regulations and apply them to the extent that the local laws and regulations permit. There are also provisions that establish what the branches and subsidiaries should do, including informing the home supervisor, where local laws do not allow the proper application of AML/CFT measures consistent with the home country requirements.

Weighting and Conclusion

Ghana has met the requirements of c18.1 and c18.3. Key technical deficiency relates to the lack of requirement for financial groups to implement group-wide programmes against ML/TF. ***Ghana is rated largely compliant with Recommendation 18.***

Recommendation 19 - Higher Risk Countries

Ghana was rated non-compliant with the requirements of this recommendation in its 1st MER. The deficiency related to the lack of requirement to pay special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations; there is no requirement to make written findings available to assist competent authorities. Also, there were no measures being applied to countries that do not apply FATF Recommendations. Since the adoption of its MER in 2009, Ghana has reviewed its AML laws, and issued regulations and guidelines, including AML (Amendment) Act 874; AML Regulations, 2011 (L.I.1987), BOG/FIC AML/CFT Guidelines for Banks &Non-Bank Financial Institutions; SEC/FIC AML/CFT Compliance Manual for CMOs, and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries to strengthen its compliance with the requirements for Recommendation 19.

Criterion 19.1- BOG/FIC AML/CFT Guidelines for Banks &Non-Bank Financial Institutions Pt A para1.23 (a); SEC/FIC AML/CFT Compliance Manual for CMOs - Pt B para 12 (a); and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, para1.17.4.1 provide that financial institutions should pay special attention to business relationships and transactions with persons (natural or legal) from or in countries which do not or insufficiently apply the FATF standards. Financial institutions are required in all cases to apply enhanced due diligence when dealing with customers, transactions or situations that are of higher ML/TF risks (BOG/FIC AML/CFT Guidelines for Banks &Non-Bank Financial Institutions Pt A para 1.6; NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, para1.5).

Criterion 19.2 - As a country, Ghana takes enhanced measures in dealing with business relationships and transactions with natural and legal persons emanating from countries considered as high risk by the FATF, including Iran and Democratic People's Republic of Korea (DPRK). Ghana also applies enhanced due diligence on business relationships and transactions with natural and legal persons emanating countries it perceives as high risk.

Criterion 19.3 - The FIC has the responsibility to advise accountable institutions about weaknesses in the AML/CFT systems of other countries (section 23 (10) of Act 749 as amended by section 6 of 874). As part of the measures to advise financial institutions, the FIC writes to AIs informing them on the weaknesses in AML/CFT system of other jurisdictions (as the need arises). Again discussions are held at various AMLRO fora, where weakness in AML/CFT systems of other countries and key developments in the global AML/CFT environment are shared. In addition, attentions of the compliance officers are periodically drawn to the websites of FATF and FATF Style Regional Bodies for MERs and other major regional and global development in the area of AML/CFT.

Weighting and Conclusion

Ghana has met the requirements of the Recommendation ***Ghana is rated compliant with Recommendation 19.***

Recommendation 20—Reporting of Suspicious Transactions

Ghana was rate partially compliant in the MER for both Recommendations relating to suspicious transactions reporting (old R.13 & SR IV) because there was no implementation of Recommendation 13 due to the fact that the FIC which is supposed to be responsible for receiving STRs had not yet been established. Also, asides from banks, all other sectors were not aware of

their obligation to report STRs to the FIC and there is no effective implementation of Special Recommendation IV. Since the adoption of its MER in 2009, Ghana has reviewed its AML laws, and issued regulations and guidelines, including AML (Amendment) Act 874; AML Regulations, 2011 (L.I.1987); BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions; SEC/FIC AML/CFT Compliance Manual for CMOs; and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries to enhance compliance with requirements of R.20.

Criterion 20.1 - There are express provisions that require financial institutions to report suspicious transactions when they suspect or have reasons to suspect that funds are proceeds of criminal activity or are related to TF. Section 30 (1) of Act 749 as amended by Section 11 of Act 874 requires that STRs should be reported to the FIC within 24 hours after the knowledge of suspicion was formed, while all regulations (Paragraph 33 of AML Regulations, 2011; BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions, Pt A para1.17(f), (a); SEC/FIC AML/CFT Compliance Manual for CMOs, Pt B para 8 (v); and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, para 1.15.2.5) require that suspicious transactions, including attempted transactions are to be reported promptly to the FIC, irrespective of the amount involved. Financial institutions also have obligation to examine any "red flag" or suspicious ML activity detected, where suspicion is confirmed, an STR should be filed to the FIC.

Criterion 20.2 - BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions, Pt A para1.17(f); SEC/FIC AML/CFT Compliance Manual for CMOs, Pt B para 8 (v); and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, para 1.15.2.5) require that suspicious transactions, including attempted transactions are to be reported promptly to the FIC, irrespective of the amount involved.

Weighting and conclusion

Ghana has met the requirements of the criteria and is rated Complaint with R.20

Recommendation 21 – Tipping-off and Confidentiality

Ghana was rated largely compliant in its 1st MER in relation to protection and no tipping off because there was no effective implementation of the requirements under the Recommendation. Since the adoption of its MER in 2009, Ghana has reviewed its AML laws, and issued regulations and guidelines, including AML (Amendment) Act 874; AML Regulations, 2011 (L.I.1987); BOG/FIC AML/CFT Guidelines for Banks &Non-Bank Financial Institutions; SEC/FIC AML/CFT Compliance Manual for CMOs; and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries to strengthen the requirements for R.21.

Criterion 21.1 - Financial institutions and their directors, officials or employee are protected from both criminal and civil liability, if they report their suspicions to the FIC in good faith: Section 32 of Act 749 as amended by section 13 of Act 874.

Criterion 21.2 - Tipping off is prohibited. Section 30 (3) of Act 749 as amended by section 11 of 874, BOG/FIC AML/CFT Guidelines for Banks &Non-Bank Financial Institutions Pt A para1.17(e), SEC/FIC AML/CFT Compliance Manual for CMOs - Pt B para 8 (iv); and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, para1.15.2.4 provides that a person or an accountable institutions should not, except as required by law, disclose to its customers or a third party that a suspicious transaction report or related information will, is being, or has been submitted to the FIC, or an investigation concerning ML, TF or other serious offence is

being or has been carried out. Section 30 (4) of Act 749 as amended by section 11 of 874 provides for circumstances that a disclosure could be made, including to carry out a function that the person has relating to the enforcement of this Act, or any other enactment.

Weighting and conclusion

Ghana has met the requirement of Recommendation. ***Ghana is rated Compliant with Recommendation 21.***

Recommendation 22–Designated Non-Financial Businesses and Professions (DNFBPs): Customer Due Diligence

Ghana was rated non-compliant in its 1st MER in relation to DNFBPs because the DNFBPs were not conducting CDD measures as required by the FATF and there was no effective implementation of AML/CFT obligations across all the reporting entities. Since the adoption of its MER in 2009, Ghana has reviewed its AML laws, and issued regulations and guidelines, including AML (Amendment) Act 874; and AML Regulations, 2011 (L.I.1987) to strengthen compliance with requirements of R.22.

Criterion 22.1 - The CDD requirements set out in section 23 of Act 749 as amended by section 6 of Act 874 and AML Regulations 2011 (L.I 1987) apply to all DNFBPs, including casinos, real estate agents, lawyers, etc. The CDD requirements apply to all DNFBPs, irrespective of transaction thresholds.

Criterion 22.2 - Record keeping requirements apply to all accountable institutions, including DNFBPs. See analysis in R.11

Criterion 22.3 - Section 23 (5) of Act 749 as amended by section 6 of Act 874 and section 40 of Act 749 as amended by section 19 of 874 apply to all accountable institutions, including DNFBPs. See also Analysis in R.12.

Criterion 22.4 - Section 23 (16) and section 40 (2)(d) of Act 749 as amended by section 6 and 19 of Act 874 respectively, apply to all accountable institutions, including DNFBPs. However, the lack of express provision in the AML law and AML Regulations 2011 requiring AIs, including DNFBPs to conduct ML/TF risk assessment prior to the launch or use of new products, business practices as well as new or developing technologies impacts negatively on c22.4. No enforceable means has been issued to address this gap as in the case of the financial sector.

Criterion 22.5 - [Section 23 (12) and (13) of Act 749 as amended by section 6 of Act 874 apply to all accountable institutions, including DNFBPs. However, the lack of requirement: (i) for financial institutions to have regard for a country's level of risk, in situation where they 3rd party they rely on is located in another country and (ii) on the applicability of third party reliance involving FIs that are part of the same financial group as noted in R.17 impact negatively on c22.5.

Weighting and conclusion

Ghana met requirements of c22.1-c22.3, mostly met c22.4 and partly met c22.5. Key technical deficiencies include the lack of express requirement: (i) for DNFBPs to conduct ML/TF risk

assessment prior to the launch or use of a new product, business practices as well as new or developing technologies, (ii) for DNFBPs to have regard for a country's level of risk, in situation where they 3rd party they rely on is located in another country, and (iii) on the applicability of third party reliance involving DNFBPs that are part of the same group. ***Ghana is rated largely compliant with Recommendation 22***

Recommendation 23 – DNFBPs: Other Measures

Ghana was rated non-compliant in its 1st MER in relation to this Recommendation. The main deficiencies were that DNFBPs were not aware of their obligations to file STRs with the FIC, the FIC has not been established therefore no STRs had been submitted, and DNFBPs were not aware of their obligation to maintain internal controls and policy to prevent ML/TF. Since the adoption of its MER in 2009, Ghana has reviewed its AML laws, and issued regulations and guidelines, including AML (Amendment) Act 874; and AML Regulations, 2011 (L.I.1987) to improve compliance with the requirements of R.13. In addition to the traditional categories of DNFBPs identified by the FATF under R22, Ghana has designated car dealers as DNFBPs under AML Act 874.

Criterion 23.1 - Section 30 (1) of Act 749 as amended by section 11 of Act 874 requires DNFBPs to file STRs to the FIC within 24 hours after the knowledge of suspicion was formed, while Paragraph 33 of AML Regulations, 2011 require that suspicious transactions, including attempted transactions are to be reported promptly to the FIC, irrespective of the amount involved.

Criterion 23.2 - Part 1 (1) of AML Regulations, 2011 requires DNFBPs covered in c23.1 (a)-(c) and other DNFBPs to make and implement internal rules to combat money laundering and terrorist financing. Section 40 of 749 as amended by section 19 of Act 874 requires all DNFBPs to develop and implement policies, procedures and programmes to prevent ML, TF and financing of proliferation of WMD or any other serious offence in accordance with the requirements sent out in the act. However, there is no provision requiring group-wide implementation of programmes against ML/TF as set out in c18.2.

Criterion 23.3 - The provisions applicable to FIs in c. 19.1 are also applicable to DNFBPs. See analysis in R.19.

Criterion 23.4 - Section 30 (3) of Act 749 as amended by section 11 of Act 874 requires a person or accountable institution not to, except as required by law, disclose to its customers or to a third party that an STR will be, is being or has been submitted to the FIC. See also analysis in R.21.

Weighting and conclusion

Ghana has met the requirements of c23.1, c23.3 and c23.4. Key technical deficiency related to the lack of requirements for the implementation of group-wide programmes against ML/TF as set out in c18.2. ***Ghana is rated largely compliant with Recommendation 23.***

Recommendation 24 – Transparency and Beneficial Ownership of Legal Persons

In its 1st MER, Ghana was rated non-compliant under these requirements. The 1st MER noted that adequate measures were not in place to ensure accurate and timely access to information on beneficial ownership and the information on the companies register pertained only to legal ownership/control. Ghana has passed the Companies (Amendment) Act, 2016 Act (920). The Act provides for the inclusion of the names and particulars of beneficial owners of companies in its Register of Members and also at the Central Register. Ghana enacted the Electronic Transactions (Amendment) Act, 2012 (Act 838) which mandates the Registrar-General to register companies by electronic means.

Criterion 24.1 - As noted in the 1st MER[75], the Companies Act, 1963 (Act 179) provides the legal framework for the registration of legal persons including, companies limited by guarantee such as foundations, NGOs, associations and trusts. Information on the various types and basic features of legal persons and the processes for their creation are contained in Act 179 and this information is publicly available. Section 32 of Act 179 as amended by section 1 of the Companies (Amendment) Act, 2016 (Act 920) outlines procedures for obtaining beneficial ownership information.

Criterion 24.2 - Ghana has not carried out a comprehensive ML/TF risk assessment of all types of legal persons created in the country.

Basic Information

Criterion 24.3 - All legal persons created in Ghana are registered. Companies are registered pursuant to the Companies Act, 1963 (Act 179). Other legal persons are registered under the Incorporated Private Partnership Act, 1962 (Act 152) and the Registration of Business Names Act, 1962 (Act 151). (1st MER of Ghana, Para 650). The registry records the range of information set out under this criterion and this information is publicly available.

Criterion 24.4 - Section 32 of Act 179 as amended by section 1 of the Companies (Amendment) Act, 2016 (Act 920) and section 27 of Act 179 require companies to maintain a register of shareholders as well as the information set out in c24.3. Section 5 of the Incorporated Private Partnership Act, 1962 (Act 152) and section 2 and 11 of the Registration of Business Names Act, 1962 (Act 151) require legal entities to provide the registrar with a copy of a prescribed form setting out basic information the Act also provides that the Registrar may request this information from a legal entity. Legal entities are required to maintain basic information at the registered office.

Criterion 24.5 - Companies are required to notify the Registrar of any change in the company, including a change of directors, a change in the address of the registered office of the company and any amendment in the company's regulating powers within a period of 28 days[76]. The Companies Act also requires every company to file annual returns that contain updated particulars of every member of the company[77]. Section 8 of Act 152 and Section 5 of Act 151 requires entities to renew registration yearly. There are sanctions for not providing accurate or timely information. Section 122 Companies Act 1963, (179) imposes sanction for failure to file annual returns. Section 9 of Act 152 and Section 7 of Act 151 impose penalties for failure to notify the registrar of any changes in the particulars of the company. Section 32 of the Companies Act 1963 (179) impose sanctions for providing false statements to the registrar. Section 8 of Act 151 imposes sanctions for providing false statements to the registrar. Section 22 of the AML Regulations 2011 requires

[75] Paragraph 652 1st Mutual Evaluation report of Ghana
[76] Companies Act, 1963 (Act 179) Sec. 120, 176 and Sec. 197
[77] Companies Act, 1963 (Act 179) Sec. 122 as amended

accountable institutions to verify the information obtained in respect of entities by comparing the information with information obtained from any other independent source when deemed necessary.

Beneficial Ownership Information

Criterion 24.6 - The Companies (Amendment) Act, 2016 (Act 920) requires companies to provide information on beneficial owners and include this information in its Register of Members. The Act also requires the Registrar-General to maintain a Central Register with up-to-date information on beneficial owners. In addition, Ghana requires financial institutions and DNFBPs to obtain beneficial ownership information in accordance with Recommendations 10 and 22. Reporting entities are required to identify (and take reasonable steps to verify the identity of) the beneficial owner before entering business or executing a transaction. Currently, Ghana is able to use existing information as set out in c24.6(c) to determine beneficial ownership.

Criterion 24.7 - Ghana requires financial institutions and DNFBPs to obtain and update beneficial ownership information in accordance with Recommendations 10 and 22. Section 4 of the Companies (Amendment) Act 2016 (Act 920) requires companies to include beneficial ownership information in annual returns and failure to provide this information or providing false information is an offence under section 3(14) of Act 920.

Criterion 24.8 - Section 33(3) of the Companies Act states that a member of a company or any other person may require an extract or a copy of the register of members upon payment of a fee. The registrar of members contains beneficial ownership information. Additionally, competent authorities can get access to such information from the Registrar-General's Department in a timely manner (see Amendment to the Companies Act, Act 920).

Criterion 24.9 - The Public Records and Archives Administration Act, 1997 (535) require public records to be kept for thirty years after the creation of records. There are no provisions under Ghana's laws which require companies to keep records for five years after the date of dissolution of the company. The law however requires financial institution and DNFBPs to maintain records for five years from the date the company ceases to be a customer.

Other Requirements

Criterion 24.10 - The basic information held in the company registry as well as information held in other registries are publicly available and competent authorities responsible for investigating ML, associated predicate offences and TF have the powers needed to obtain access to all necessary documents and information for use in investigations. Financial institutions, especially banks can provide information on the beneficial ownership to LEAs. Section 7(3) of the Companies (Amendment) Act, 2016 (Act 920) provides that the Registrar-General shall make the register containing basic and beneficial ownership information available to competent authorities.

Criterion 24.11 - As noted in the 1st MER, the Companies Act, 1963 (Act 179) does not allow the issuance of bearer shares. All shares are registered in accordance with section 32 of the Companies Act.

Criterion 24.12 - Nominee shareholders are not allowed in Ghana. Nominee directors are allowed in specific instances and in these cases, the nominee and nominator are known.

Criterion 24.13 - There are provisions that deal with the failure to provide basic and beneficial ownership information under Act 920. The company and every officer in default are liable to pay a fine of twenty-five penalty units per day[78]. The obligation for financial institutions and DNFBPs to identify beneficial owners is set out in Regulation 16 of the AML Regulation 2011, L.I. 1986 and the penalty for a breach of this regulation is set out in regulation 33. These sanctions are proportionate and dissuasive.

Criterion 24.14 - Ghana is able to provide international cooperation through a range of mechanisms (see below R.37-40). The basic information held by the companies registry, including information on shareholders as well as other registries are available to the public on request. Beneficial ownership information is currently held by financial Institutions. Ghana's legal framework allows the country to provide international cooperation on beneficial ownership information.

Criterion 24.15 - There is nothing in Ghana's law that specifically requires competent authorities to monitor the quality of assistance it receives from other countries in response to requests for basic and beneficial ownership information. Ghana did not provide any information on the quality of the assistance it has received from other countries in locating beneficial ownership residing abroad.

Weighting and conclusion

Minor shortcomings have been noted in the analysis of this Recommendation. Ghana has not conducted a ML/TF risk assessment of legal persons created in the country. There are no provisions that require competent authorities to monitor the quality of assistance it receives from other countries in response to requests for basic and beneficial ownership information and there is no direct requirement for companies to co-operate with competent authorities to the fullest extent possible in determining the beneficial owner. ***Recommendation 24 is rated largely compliant.***

Recommendation 25 – Transparency and Beneficial Ownership of Legal Arrangements

In its 1st MER, Ghana was rated non-compliant against these requirements because there were no measures in place to ensure that there is adequate, accurate and timely information on the beneficial ownership and control of trusts and lawyers were not supervised for AML/CFT compliance.

Criterion 25.1- There are no measures in place to require trustees to obtain and maintain the information listed in c25.1.

Criterion 25.2 - There are no measures in place to require trustees to hold and maintain accurate and up to date information listed in c25.2 on a timely basis.

Criterion 25.3 - There is no legal obligation on trustees to disclose their status to reporting entities even though, reporting entities are required to identify any persons acting on behalf of a customer in line with CDD requirements.

Criterion 25.4 - There are no provisions in Ghana's law or regulation that would prevent the disclosure of information regarding legal arrangements.

[78] Approximately equivalent to $75

Criterion 25.5 - The general law enforcement powers would apply to information regarding trusts and legal arrangements. Competent authorities indicated in R. 31 below have powers to access beneficial ownership information of legal arrangements.

Criterion 25.6 - The provisions for cooperation with competent authorities in other countries indicated in R.37-40 below will apply to requests for beneficial ownership information on trust and other legal arrangements. This does not however, mean that such information is readily available in practice. Ghana did not provide any information to demonstrate that authorities rapidly provide international cooperation on information relating to trusts and other legal arrangements.

Criterion 25.7 - There are no obligations (and associated sanctions) on trustees to ensure that they obtain and hold adequate, accurate, and current information on the identity of the settlor, trustees, beneficiaries or any other natural person exercising ultimate effective control over the trust.

Criterion 25.8 - See 25.7

Weighting and conclusion

With respect to this Recommendation, there has been limited improvement of the legal framework to guarantee transparency of legal arrangements since Ghana's first evaluation. ***Recommendation 25 is rated partially compliant.***

Recommendation 26 - Regulation and supervision of financial institutions

Ghana was rated non-compliant in its 1st MER in relation to regulation and supervision of financial institutions. The MER noted that supervisors across all the reporting entities had not commenced the monitoring and supervision of accountable institutions for non-compliance with the AML/CFT obligations, supervisors were not aware of their obligations under the AML/CFT laws, there was no mechanism in place for the supervision of banks, non-banks, insurance firms, securities firms, money transmission services and currency changers for compliance with FATF standards and the supervisory authorities did not have an understanding of the risk based approach to supervision of financial institutions.

Since the adoption of its 1st MER in 2009, Ghana has established the FIC, strengthened its regulatory authorities; reviewed its AML laws, and issued regulations and guidelines, including AML (Amendment) Act 874; AML Regulations, 2011 (L.I.1987); BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions; SEC/FIC AML/CFT Compliance Manual for CMOs; and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, to strengthen the regulatory and supervisory framework on AML/CFT. Similarly, the country has begun supervision of accountable institutions for AML/CFT purposes.

The financial system in Ghana is dominated by the banking sector, controlling over 85%[79] of industry total assets, whilst the rest are smaller and less developed players of the non-banking sector

Criterion 26.1 - Ghana has adopted the multiple regulators model with the Bank of Ghana, Securities and Exchange Commission and Insurance Commission designated as the apex regulatory institutions for the financial institutions for AML/CFT compliance. Section 54 of the Banking Act

[79] BOG Annual Report 2015, p19

2004 and section 31 of the Non-Bank Financial Institutions Act, 2008 (Act 774) empower the Bank of Ghana to regulate and supervise the banks and non-bank financial institutions, respectively. Similarly, the Insurance Act, 2006 (Act 724) establishes the National Insurance Commission (NIC) and designates it as authority responsible for ensuring effective administration, supervision, regulation, monitoring and control of the business of insurance in Ghana. Also, The Securities Industry Act, 1993 (as amended) establishes the Securities and Exchange Commission for the purpose of regulating the securities industry. The Bank of Ghana, Securities and Exchange Commission and National Insurance Commission are listed as competent authorities under section 22 of AML Act 874, 2008, (Act 749 as amended), with responsibility for supervising accountable institutions under their respective sectors for AML/CFT purposes. Apart from the three supervisory bodies named above, section 5 of Act 766, 2008 establishes the National Pensions Regulatory Authority (NPRA) and empowers it to regulate and monitor the operation of the Scheme and ensure the effective administration of pensions in the country. The NPRA is however not listed as a Competent Authority under section 22 of Act 874 for purposes of AML/CFT, although its reporting institutions have been designated as accountable institutions. The FIC collaborates with the various supervisory bodies and regulators to ensure that financial institutions comply with AML/CFT laws and regulations.

Criterion 26.2 - The Banking Act (Acts 673/738), the Non-Bank Financial Institutions Act, 2008 (Act 774); Insurance Act, 2006 (Act 724) and The Securities Industry Act, 1993 (as amended) have provisions which require financial institutions to be licensed before carrying on any business. The respective Supervisory bodies are responsible for the licensing of financial institutions under their purview and have powers to ensure compliance. Money or Value Transfer Service provides are licensed and supervised by the Bank of Ghana under the Banking Act. The Foreign Exchange Act covers the Currency Changing Business and is supervised by the Bank of Ghana as well. Section 6 of AML Act 874, prohibits the establishment of shell banks, or the conduct of business relationship with such institutions where a physical presence has not been established. Similarly, AML/CFT guidelines and regulations issued by sector regulators, particularly paragraph 1.21 of the BOG/FIC Guidelines, 2011, and paragraph 10 of SEC AML/CFT Manual, 2011 provide that financial institutions are not allowed to establish correspondent relationships with shell banks. The Guidelines also make it mandatory on Accountable Institutions to satisfy themselves that respondent financial institutions operating from other countries do not permit their accounts to be used by shell banks.

Criterion 26.3 - There are legislative provisions, especially in The Banking Act, and Insurance Act, 2006 (Act 724) which require that a director and a member of the key management personnel of a financial institution must be a fit and proper person. “Fit and proper person" means a person with appropriate integrity, competency, experience and qualification determined by the Bank of Ghana or the Insurance Commission. Section 38 of Banking Act 2004 (Act 673) provides criteria which disqualify a person from being appointed as a director, officer or employee of a bank; and also, imposes a penalty on a person appointed as director who fails to meet fit and proper test. Section 40 (5) of the Banking Act and section 8 of the Non-Bank Financial Institutions Act requires a bank or NBFI to notify the BOG of the changes in the membership of its board of directors and key management personnel. Similarly, section 49 of the NIC Act empowers the Commission to approve the appointment of directors and principal officers of insurance companies. Insurance operator who appoints directors and principal officers without the approval of the Commission is liable to sanctions. There are regulatory measures to prevent criminals or their associates from holding (or being the beneficial owner of) a significant or controlling interest, or holding a management function, in a financial institution. For instance, when financial institutions are applying for licensing or registration, they are required to provide information about directors, key management

and persons who will hold significant shareholding (section 5 of Banking Act 2004, Act 673; and section 22 of Insurance Act 2006, Act 724). Each sector supervisor is responsible for ensuring that all Directors, senior management and significant shareholders of financial and non-bank financial institutions under their purview undergo "fit and proper" tests to weed out criminals. Comprehensive background checks are done on directors, significant shareholders, and key management personnel. These include CID criminal checks and BNI security checks, as well as screening against BOG's database of dismissed staff by banks. The Third Schedule of the Non-Bank Financial Institutions Act, 2008 (Act 774) states that Savings and Loans companies, Finance Houses and deposit–taking micro-finance institutions, are to be regulated under the Banking Act 2004 (Act 673) as amended. The provisions of section 5 of Banking Act 2004 and other regulatory measures taken by BOG to prevent criminals or their associates from entering the banking sector also applies to Non-Bank Financial Institutions. Again, section 37 of the Banking Act 673 provides measures that may be employed by BOG should any person fail to comply with the requirements of sections 34, 35 or 36 of Act 673, such as the transfer of controlling interest to another person without approval by BOG. However, in the event of such violations, BOG may issue directives against the new shareholder, including the possible denial of dividend payments. Similarly, section 37 (1) of Act 673 provides additional sanctions/measures that the BOG may take in case of non-compliance with provisions of sections 34, 35 or 36 of the Banking Act 673 .

Risk-based approach to supervision and monitoring

Criterion 26.4 - Ghana regulatory authorities supervise all financial institutions under the AML Act, including Core Principles financial institutions, Money or Value Transfer Service providers and 'bureaux de change' (or currency exchange businesses) for AML/CFT purposes. However, it appears that, at the moment, only the Bank of Ghana conducts AML/CFT examinations on Banks and Non-Bank Financial Institutions on Risk Based Approach using Risk Self-Assessment Methodology, quarterly Data Capture Forms and other returns from the accountable institutions. Other supervisory authorities (SEC and NIC) are yet to fully develop standard RBA supervisory frameworks/tools, and thus AML/CFT supervision in the securities and insurance sectors are not being done, having full regard to the specific sector ML/TF risks. SEC is currently developing off-site risk based supervisory tools with support from the IMF. NIC relies on outcome of analysis[80] of quarterly returns received from supervised entities to determine the ML/FT risk level of the entities and thereafter, undertake a risk based on-site inspection. On the whole, it is not clear if the NIC and SEC clearly understand the ML/TF risks inherent in their sub-sectors. Thus, it is doubtful, if indeed, regulation and supervision are being done, having regard to the ML/TF risk in the sub-sectors. Also, BOG does not conduct consolidated supervision of financial institutions belonging to group ownership structures given the absence of provisions in this regard, although this has now been addressed in the new law (Banks & Specialized Deposit Taking Institutions Act, 2016).

Criterion 26.5 - The NRA published recently by Ghana highlighted the ML/TF risks within the financial sector and the country, which are expected to be taken into consideration by supervisory authorities in determining the frequency and intensity of supervision. Ghana indicates that the frequency and intensity of supervision by the BOG is tailored to be commensurate with the ML/TF risks identified by the Bank through Risk Self- Assessment Methodology, quarterly Data Capture Forms and other returns. The frequency and intensity of AML/CFT on-site and off-site supervision by other financial sector regulators appear not to be fully informed by the ML/TF risks and the

[80] The analysis is done based on product and services type, channel of distribution, transaction by geographical region, type of customer i.e. natural or legal, domestic or foreign PEP

policies, internal controls and procedures associated with the institutions, the ML/TF risks present in Ghana, and the characteristics of the financial institutions. The SEC's AML/CFT on-site inspection on risk based approach is still evolving with the supervisory framework being developed with support from the IMF. Currently, supervision is largely determined by certain criteria such as market share, funds under management, and number of clients. NIC rely on the outcome of analysis of quarterly returns to determine the frequency and intensity of its supervision without a formal RBA supervisory framework. Aside from BOG, the AML/CFT supervisory tools being used by regulatory authorities do not appear to provide comprehensive information on the institutions ML/TF risk levels. Similarly, the approach adopted for determining the frequency and intensity of supervision, especially by SEC and NIC do not appear robust enough to meet the requirements of the criterion.

Criterion 26.6 - The BOG uses information obtained through the Risk Self- Assessment Methodology to review the assessment of the ML/TF risk profile of financial institutions under its purview. The BOG verifies the results of the Risk Self Assessments by individual institutions through confirmation and comparison of data with prudential supervisors of the BOG to ensure predictive validity. Both SEC and NIC were yet to deploy risk assessment matrix and are being assisted by the IMF in this regard. There is also no clarity on how and when these supervisors undertake a review of the ML/TF risk profile of institutions or groups under their purview.

Weighting and Conclusion

Ghana has designated authorities to regulate and supervise financial institutions for AML/CFT. The BOG, NIC and SEC are the apex regulatory and supervisory authorities for the FIs and NBFIs in Ghana. The Supervisory Bodies are responsible for the licensing of financial institutions under their purview, and have measures designed to exclude criminals and their associates from the financial system. Ghana has comprehensive arrangements for supervision. The RBA supervisory tools being used by the BOG appear comprehensive and there is need to rollout out the same tool to the Insurance and Securities sectors. However, Ghana has just concluded its NRA and country risks are yet to be applied to inform supervision. ***Ghana is rated largely compliant with R.26***

Recommendation 27 - Powers of Supervisors

Ghana was rated non-compliant in its 1st MER in relation to powers of supervisors to deal with AML/CFT issues. Specific weaknesses identified in the MER include an absence of AML/CFT onsite inspections by the supervisors across all the financial sector industries, a lack of understanding of the risk based approach to supervision of financial institutions by supervisors and powers to apply sanctions and enforce AML/CFT obligations were not effectively utilized by supervisors.

Since the adoption of its 1st MER in 2009, supervisory authorities have undertaken some onsite AML/CFT inspections, and sanctioned some accountable institutions on account of non-compliance. Ghana has also reviewed its AML laws, and issued regulations and guidelines, including AML (Amendment) Act 874, AML Regulations, 2011 (L.I.1987); BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions, SEC/FIC AML/CFT Compliance Manual for CMOs, and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, to strengthen the powers of Supervisors to enhance compliance with the requirements of R.27.

Criterion 27.1 - The BOG, SEC, and NIC have powers under the legislation establishing them[81] to supervise or monitor and ensure compliance with AML/CFT requirements by accountable institutions under their purview. Generally, all the supervisors have wide range of powers, including powers to conduct both onsite and offsite inspections; access information in the custody of financial institutions; compel the production of documents for the purpose of investigation and offsite inspections of accounts and activities of the reporting entities; and powers to apply sanctions for failure to comply with requirements under the various laws. The BOG's power of supervision, types of returns required, examination powers, powers to intervene and remedial action are stated in sections 51- 60 of the Banking Act 2004. Similarly, the inspection and enforcement powers of the Insurance Commission are provided under sections 165 -168 of the Insurance Act 2006, while the supervision powers of SEC are provided for in section 21 of the Securities Industry Act, 1993.

Criterion 27.2 - Sections 54, 59 and 60 of the Banking Act 2004 have provisions which empower the BOG to carry out onsite examination or inspection of financial institutions under its purview. Similarly, the inspection and enforcement powers of the Insurance Commission are provided under sections 165 -168 of the Insurance Act, 2006, while the supervisory powers of SEC are provided for in section 21 of the Securities Industry Act, 1993. Supervisory bodies have authority to conduct inspections of their supervised entities and section 40 (4)(b) of AML Act 749 as amended by section 19 of Act 874 require accountable institutions to make a copy of its internal rules available to a supervisory body which performs regulatory functions over it.

Criterion 27.3 - Generally, supervisors can compel the production of documents for the purpose of investigation and offsite inspections from accountable institutions. However, there seems to be some limitations. Under sections 83 and 84 of the Banking Act, the production of certain documents which would require the waiver of confidentiality obligations of banks to their customers will require a court order. This can negatively impact on access to information in a timely manner. The NIC appears not to have direct statutory powers to compel the institutions under its supervision to provide information. Section 174 of the Insurance Act 2006, requires the NIC to apply to court for an order to compel a person to produce information when the person fails to comply with a notice issued by the Commission. Section 6 of AML Act 2014 (Act 874) appears to require Accountable Institutions to comply unconditionally with request for information by the FIC, which extends to Competent Authorities through the issuance of joint Guidelines with the FIC.

Criterion 27.4 - Section 39 (5) of Act 749 as amended by Section 18 of Act 874, paragraph 44 of the AML Regulations, 2011, and other sector specific regulations and guidelines (BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions; SEC/FIC AML/CFT Compliance Manual for CMOs; and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries), provide for a range of sanctions that could be applied on natural or legal persons that fail to comply with the AML/CFT requirements.

Weighting and Conclusion

Supervisory bodies have sufficient powers to supervise or monitor financial institutions for prudential purposes and enforce compliance. Section 6 of Act 874 appears to empower Competent Authorities through the joint issuance of Guidelines with FIC to compel the production of information. However, the range of administrative sanctions available to supervisors for AML/CFT

[81] The Banking Act 2007, Insurance Act, 2006 (Act 724) and The Securities Industry Act, 1993 (as amended)

purposes is limited as supervisors cannot impose financial sanctions. Also, the role of the FIC to monitor and give guidance to Supervisory Bodies under the AML Act is ambiguous. ***Ghana is rated largely compliant with R. 27***

Recommendation 28 - Regulation and supervision of DNFBPs

Ghana was rated non-compliant in the 1st mutual evaluation in relation to regulation and supervision of DNFBPs. The main shortcomings were that Supervisors, SROs and national authorities had not commenced the supervision of DNFPBs for AML/CFT purposes and the supervisors lacked the capacity and resources to develop AML/CFT supervision based on the risk analysis of the existing threats in their sectors. Since the adoption of its 1st MER in 2009, Ghana has reviewed its AML law and issued regulations and guidelines, including AML Regulations, 2011 (L.I.1987) to strengthen the regulation and supervision of Accountable Institutions, including DNFBPs.

Casinos

Criterion 28.1 - Casinos in Ghana are licensed and supervised by the Games Commission under the Gaming Act 2006 (Act 721). The Act uses the term Operators of Games of Chance under section 27 to describe Casinos. The Commission can only licence companies that are registered as limited liability companies under the Companies Act. A person is not permitted to operate a game of chance unless that person is duly licensed by the Board of the Games Commission to operate a specified game of chance. To prevent criminals or their associates from operating a casino, holding a management function or holding (or being the beneficial owner of) a significant or controlling interest in a casino, the Commission grants a licence only if a person has not been declared bankrupt or convicted by a court or tribunal of an offence of fraud or dishonesty. The Commission is required to keep a register of licences granted and licences are required to be renewed annually. Section 27 of the AML Act 2008 (Act 749) empowers the Gaming Commissioner to issue or renew a licence for the operation of a game of chance only when the applicant provides proof of the lawful origin of capital for the proposed operation, or in the case of renewal, the lawful origin of its additional capital for this purpose. The Commission has powers to revoke licences when the Casino is in breach of the Act as well as powers to enter and inspect the books and premises and facilities of the Casino for the purposes of onsite examination or investigation. The Gaming Commission is listed as a Competent Authority under section 22 of Act 874 and effectively responsible for the AML/CFT Supervision of Casinos.

DNFBPs other than Casinos

Criterion 28.2 - Section 3 (1) (e) of AML (amendment) Act, 2014- Act 874, empowers the FIC to coordinate with the Ghana Revenue Authority to ensure compliance by DNFBPs for AML/CFT purposes. Impliedly, the GRA is the designated authority for the supervision and regulation of DNFBPs. Section 6(g) of Act 749, as amended, mandates the FIC to advise and cooperate with investigating authorities, supervisory bodies and revenue agencies. Though the FIC and GRA had undertaken a visit to the Nigerian Special Control Unit against Money Laundering (DNFBPs regulator) to understudy its operations, it is still doubtful, how the GRA can effectively carry out this function as it lacks AML/CFT supervisory capacity to regulate and supervise DNFBPs as

envisaged by c28.2. Section 22 of Act 874 designates some SRBs as Competent Authorities (Ghana Real Estate Developers Association, Institute of Chartered Accountants and the General Legal Council), as well as the Precious Minerals and Marketing Company (PMMC). Similarly, section 7 of the E.I. 2 designated the same SRBs (Ghana Real Estate Developers Association, Institute of Chartered Accountants and the General Legal Council), and PPMC as competent authorities which gives them some limited TF mandate over the institutions they supervise, especially in relation to the UNSCRs. Though these SRBs perform some oversight function over their members but this in practice it is limited to professional/ethical issues. Also, supervision of the mining sector rest with the Minerals Commission which is not listed as a Competent Authority for purposes of AML/CFT.

Criterion 28.3 - The other categories of DNFBPs lack AML/CFT supervision given the inability of GRA to carry out such mandate, whilst relevant SRBs are yet to adopt appropriate measures in this regard. Nonetheless, they form part of accountable institutions[82] required to comply with AML/CFT requirements under the AML Act 749, as amended by Act 874 and relevant regulations, including AML/CFT Regulations, 2011. Section 40 of Act 749 as amended by section 19 of Act 874 requires accountable institutions to develop and implement policies, procedures and programmes to prevent ML, TF and financing of proliferation of WMD or any other serious offence in accordance with the requirements set out in the law.

Criterion 28.4 - Section 3 (1) (e) of AML (amendment) Act, 2014- Act 874, entrust the FIC to co-ordinate with GRA to ensure compliance with this Act by DNFBPs. However, such co-ordination is vague and there is need for proper designation of a supervisory authority(ies) for DNFBPs. GRA does not have the requisite capacity to supervise and monitor DNFBPs for AML/CFT purposes. It is also doubtful if the GRA has the necessary measures to prevent criminals or their associates from being professionally accredited, or holding (or being the beneficial owner of) a significant or controlling interest, or holding a management function in a DNFBP, especially as it does not have the licensing powers, though the country stated that various SRBs have a rigorous licencing requirement which prevent criminals and their associates from being professionally accredited. Nonetheless, some DNFBPs have designated competent Authorities, such as the Gaming Commission, Minerals Commission, Ghana Real Estate Developers Association, Institute of Chartered Accountants and the General Legal Council. Section 39 of Act 749 as amended by section 18 (5) of Act 874 empowers competent authorities to apply administrative sanctions on persons subject to obligation under the Act. Paragraph 44 of the AML Regulations, 2011, provides that, except otherwise provided, an accountable institution that contravenes a provision of these Regulations commits an offence and is liable on summary conviction to (a) a fine of not more than five hundred penalty units or to a term of imprisonment of not more than three years or to both, where the accountable institution is an individual, and (b) a fine of not more than one thousand penalty units where the accountable institution is a body corporate or a body of persons. Though section 39 of Act 749 as amended by section 18 (5) of Act 874 empowers supervisory bodies under the Act to apply administrative sanctions, the GRA, Gaming Commission, Minerals Commission or other designated SRBs have not issued any AML/CFT guidelines highlighting the range of administrative sanctions applicable on DNFBPs for non-compliance. It is also not clear whether there is adequate legal basis to administer sanctions as required by Recommendation 35 to deal with failure to comply with AML/CFT requirements.

[82] See full list of accountable institutions in the First schedule of AML Act 2008- Act 749.

All DNFBPs

Criterion 28.5 - Whilst institutions under the Gaming and Minerals Commissions are said to be supervised accordingly, there is no indication that DNFBPs have been supervised or are being supervised on a risk sensitive basis. Similarly, the GRA /FIC have not developed any supervisory methodology that would provide them with robust information about the ML/TF risks inherent in the operations of the diverse DNFBPs in the country, as well as, facilitate the determination of the frequency and intensity of AML/CFT supervision of DNFBPs on risk based approach. Also, the FIC has not issued joint Guidelines with the Gaming or Minerals Commissions to facilitate AML/CFT supervision.

Weighting and Conclusion

The FIC is entrusted to co-ordinate with GRA to ensure compliance with the AML/CFT Act by DNFBPs, while there are other specialised DNFBP Supervisors like the Gaming Commission. GRA lacks sufficient powers and the supervisory capacity to undertake the co-ordination function. GRA has not issued any AML/CFT guidelines and does not have any regulatory measures to prevent criminals or their associates from infiltrating the sector, other than the measures in place for Casinos by the Gaming Commission, and the Minerals Commission in the case of the mining Sector. The GRA has no licensing powers over DNFBPs. This can limit its supervisory capabilities, especially its powers to effectively apply administrative sanctions for non-compliance. Three SRBs have been designated competent authorities and other SRBs exists but they all lack sufficient powers, do not have AML/CFT supervisory capacities and have not yet issued any AML/CFT sector specific guidelines for their regulated entities. The NRA identified DNFBPs sector as high risk. The lack of clear supervisory powers for the SRBs and other Competent Authorities remain a concern. ***Ghana is rated partially compliant with R.28.***

Recommendation 29—Financial Intelligence Units

Ghana was rate NC in the MER in relation to the Recommendation on FIU due to a number of deficiencies. The FIC was not operational despite its establishment by the AMLA in January 2008, there was no guidance to direct the reporting entities on how to submit STRs, there was no budgetary provisions for the FIC under the 2009 budget, there was no protection of the security of the tenure of the office of the CEO of the FIC; and the President's power to revoke the appointments of Board members could interfere with the operational independence of the FIC. Since the adoption of its MER in 2009, Ghana has established the FIC, which is fully functional and is a member of the Egmont Group of FIUs. Ghana has also reviewed its AML laws, and issued regulations and guidelines, including the AML (Amendment) Act 874, the AML Regulations, 2011 (L.I.1987), BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institution institutions, SEC/FIC AML/CFT Compliance Manual for CMOs, and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries to strengthen the legal framework of the FIC and provide necessary guidance for accountable institutions as well as meet the requirements for Recommendation 29.

Criterion 29.1 - Ghana FIC was established in 2008 (s. 4 of Act 749) and became operational in January, 2010. It is a national centre responsible for receiving and analyzing suspicious transaction reports and other information relevant to money laundering, associated predicate

offences and terrorist financing; and for the dissemination of the results of that analysis: s.6 (1)(a) of Act 874.

Criterion 29.2 - The FIC is the central agency for the receipt STRs filed by all accountable institutions as required in Recommendation 20 and 23 (s.6 (1)(a) of Act 874). STRs file to FIC relate to ML, TF and financing of proliferation of weapons of mass destruction (s.11 of Act 874). The Centre also receives Currency Transaction Reports (s.31A of Act 874).

Criterion 29.3 - Section 28 of Act 874 empowers the FIC to obtain and use additional information from reporting entities. Section 29 of Act 874 gives the FIC powers to access information held by competent authorities, including police records, tax records held by the GRA, company records held by the Registrar General's Department, records on drug traffickers held by the Narcotic Control Board, as well as, all financial information held by reporting entities that will assist it properly perform its functions. The FIC obtain these information through requests and the information are provided timeously.

Criterion 29.4 - The FIC performs both operational and strategic analysis based on information available to it from accountable institutions and other sources. The centre uses analytical tools such as Oracle Mantas, IBM i2, Microsoft Excel, and Microsoft Access. These tools have storage and data processing capabilities and enable the FIC staff to perform the necessary operational analysis to generate financial intelligence. Funds have also been secured from the UNODC for the purchase of GoAML analytical software.

Criterion 29.5 - The FIC can disseminate information and the results of its analysis upon request or spontaneously to relevant competent authorities (s.6 (1) (a), (2) of Act 874). This is done through direct hand delivery by FIC staff, and through official mailing systems to reporting entities. The dissemination channels are quite secured. Recipients of operational and strategic analysis products are: Law Enforcement Agencies, Ghana Revenue Authority, Supervisory bodies (BOG, NIC & SEC), and reporting entities (banks, CMOs & insurance companies. All reports are classified.

Criterion 29.6 - The FIC has a SOP on security and confidentiality of Information. This provides the procedure and mechanism for handling, storage, dissemination and protection of, and access to information at the disposal of the Centre. Staff have the necessary security clearance levels and good understanding of the responsibilities with respect to handling and disseminating of sensitive and confidential information. Transmission of information to other FIUs is securely done through the Egmont Secure Web. The domestic dissemination channels are also very secured because dissemination is either accomplished through hand delivery by staff of the FIC to designated persons of the recipient entities or through the FIC secure mailing portal. Also S. 21 of Act 874 provides for an oath of secrecy, to which every FIC staff must swear to and abide by, including maintaining confidentiality of information they have access to. The Data Protection Act, 2012, Act 843 also guarantees the protection of data at the FIC. Board members of FIC are subjected to both nominal and positive vetting for both proprietary and criminal clearance (security clearance), as well as, the oath of secret and top secret clearance. There is a comprehensive screening policy in place for staff. The use of mobile phones and related gadgets, including TV, are not permissible in FIC environment. Access to printers and photocopying is controlled. There are other security measures that are confidential.

Criterion 29.7 - Section 4 of Act 749 establishes the FIC as an independent institution with specific functions (S3 of Act 874). The Centre has the authority and capacity to carry out its functions, including independently analyzing and disseminating financial intelligence. The Centre can make arrangements or engaged independently with other domestic competent authorities involved in

AML/CFTT or foreign counterpart. The FIC is adequately resource to carry out its functions. The management (CEO & Deputy CEO) and members of the FIC Board are appointed by the President and the appointment is not subject to parliamentary clearance. The management and decision processes at the Centre are guided by regulation. However, given the powers of the President to appoint and terminate the appointment of the CEO and his Deputy there is risk, including the possibility of political interference or influence which may compromise the operational independence of the FIC. Ghana has indicated that the tenure of CEO and Deputy of the FIC are quite secure. The current CEO has been in office undisturbed since 2009.

Criterion 29.8 - The FIC became a member of the Egmont Group in June 2014. It has since been participating actively in Egmont activities, making use of the Egmont Secure Web for exchange of information, and taking part in Egmont working groups and contributing on issues relating to FIUs cooperation and development.

Weighting and Conclusion

Ghana is rated compliant with Recommendation 29.

Recommendation 30—Responsibilities of Law Enforcement and Investigative Authorities

Ghana was rated largely compliant under these requirements in its 1st MER**.**

Criterion 30.1 - Ghana has designated law enforcement authorities that have the responsibility for ensuring that money laundering, associated predicate offences and terrorist financing offences are properly investigated. The key law enforcement agency is the EOCO. The NACOB, Police, GRA, and BNI are also responsible for investigating ML/TF and associated predicate offences. In addition, the Immigration (Amendment) Act, 2012, (Act 848) empowers the Ghana Immigration Service to investigate cases of migrants smuggling. An Anti-Human Smuggling and Trafficking-in-Persons unit has been established within the Ghana Immigration Service.

Criterion 30.2 - Law enforcement agencies that conduct investigation of predicate offences can also pursue investigation of related ML/TF offences during a parallel financial investigation and may also refer the case to another agency to follow up with the investigation. Law enforcement agencies that investigate predicate offences can also refer ML/TF cases to the EOCO in view of its mandate to handle ML/TF cases.

Criterion 30.3 - Under the EOCO Act 804, the EOCO is empowered to identify, trace, and initiate freezing and seizing of property that is, or may become, subject to confiscation, or is suspected of being proceeds of crime. The FIC[83] and NACOB[84] have powers to and initiate freezing and also seize properties.

Criterion 30.4 - Competent authorities which are not law enforcement authorities, *per se,* such as the GRA have the responsibility for pursuing financial investigations of predicate offences and exercise functions covered under Recommendation 30. Section 5(c) of Act 749 as amended by section 2 of Act 874 allows the FIC to make information available to competent authorities including the Ghana Revenue Authority to ensure enforcement of AML/CFT laws.

[83] The FIC's freezing power is derived from s. 47 of Act 749
[84] NACOB's power of seizure S.24 of the Narcotic Drugs (Control, Enforcement and Sanctions) Act, 1990 (Act 236).

Criterion 30.5 - The EOCO has sufficient powers under Act 804, 2010 and the Regulation L.I.2183 to identify, trace and initiate freezing and seizure of assets as an anti-corruption enforcement authority[85].

Weighting and Conclusion

The legal and institutional frameworks, powers and procedures of competent authorities extensively address the obligations under this Recommendation. ***Ghana is rated compliant*** *on* ***Recommendation 30.***

Recommendation 31—Powers of Law Enforcement and Investigative Authorities

Ghana was rated largely compliant under these requirements in the 1st MER. As noted in the 1st MER,[86] legislation establishing various investigation and prosecution authorities that are responsible for the enforcement of AML/CFT laws in Ghana include the 1992 Constitution, Criminal and Other Offences Act, 1960 (Act 30), Police Service Act, 1970 (Act 350), Serious Fraud Office Act, 1999 (Act 466), Narcotic Drugs (Control, Enforcement and Sanctions) Act, 1990, Customs Excise and Preventive Service (Management) Act, 1993 (PNDCL 330) and the Security and Intelligence Agencies Act, 1996 (Act 526). The country enacted Economic and Organised Crime Office, 2010 (Act 804) and the Economic and Organised Crime Office (Operations) Regulations, 2012 (L.I. 2183). The Anti-Money Laundering (Amendment) Act, 2014 (Act 874) also expands the scope of actions that can be taken under the Act in this regard.

Criterion 31.1 - The competent authorities conducting investigations of ML/TF and associated predicate offences are able to obtain access to all necessary documents and information for use in those investigations sections 19, 63 and 64 of Act 804 empowers the EOCO *to* obtain access to all necessary information and document. The police also have powers to search persons and premises. Section18 of Act 804 states that "officers authorised by the Executive Director shall exercise the powers and have the immunities conferred on a police officer in the Criminal and Other Offences (Procedure) Act, 1960 (Act 30), the Police Service Act, 1970 (Act 350) and any other law related to a police officer including taking witness statements". Sections 25– 27 of Act 804 expressly empower the EOCO to search persons and premises.

Criterion 31.2 - Competent authorities conducting investigations are able to use the wide range of investigative techniques for investigating ML/TF and associated predicate offences including undercover operations, intercepting communications, accessing computer systems, and controlled delivery.[87]

Criterion 31.3 - There are some mechanisms through which the law enforcement officers can identify whether natural or legal persons hold or control accounts. Under an order of a court prescribed in section 63 of Act 804, law enforcement agents can obtain this information from

[85] Economic and Organised Crime Office Act, 2010 (Act 804) ss. 18, 19, 20, 23, 24, 25, 26, 27, 29, 33 and Economic and Organised Crime Office Regulations Reg. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 of L.I.2183

[86] Paragraph 268

[87] Sections 1 & 35 of the Police Service Act, 1970 (Act 350) and reproduced in the Police Service Regulations, 2012 (CI 76), sections 10, 88, 93, 94, 95, 112, 145, 146, 147, 150, 223, 224, 317 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30); Regulation 23 of EOCO (Operations Regulations), 2012 (LI 2183), and section 31 of the Security and Intelligence Agencies Act, 1996 (Act 526).

reporting entities and competent authorities. Section 19 also permits EOCO to obtain access to any information relevant to an investigation. Section 9 of Act 874 (amending Section 28 of Act 749) grants the FIC powers to request for information in a timely manner, including identifying assets without prior notification to the owner.

Criterion 31.4 - The competent authorities investigating ML, TF and associated predicate offences are able to ask for all relevant information held by the Ghana FIC and may use such information as intelligence to further their investigations. Section 5 of Act 749 as amended by section 2 of Act 874 obliges the FIC to make information available to investigating authorities, intelligence agencies and revenue authorities to facilitate the administration and enforcement of the law. Section 19 (1) of Act 804 empowers the EOCO to obtain information that is relevant to any investigation.

Weighting and Conclusion

Ghana meets all the criteria under this Recommendation. Law enforcement authorities have powers to conduct investigations of ML, TF, and associated predicate offenses, including the powers to obtain or access all available documents and information for use in their investigations**.** ***Ghana is compliant with Recommendation 31.***

Recommendation 32—Cash Couriers

In the 1st MER, Ghana was rated non-compliance with the requirements of this Recommendation due to a number of shortcomings including the fact that the requirements of the AML Act and the Foreign Exchange Acts were not applied in a consistent manner particularly at the various points of entry and exit and collection of currency declaration information at all points of entry were implemented on an *adhoc* basis. In addition, there was no standardized reporting mechanism and guidance in place to collect declaration information and transmit them to the FIC and records were not maintained in a database in an efficient manner. Furthermore, customs officials were not aware of their obligation under the AML Act and the CEPS was not adequately resourced and funded to undertake its mandate under the AML Act.

Criterion 32.1 - Ghana practices the declaration system. This requires that all persons making physical cross-border transportation of currency of a value exceeding the prescribed threshold are required to submit a truthful declaration to the designated competent authorities (Paragraph 296 of 1st MER). Section 51 the AML Act defines currency as travellers' cheques or other financial instruments denominated in the currency of Ghana or in foreign currency. This will cover Bearer Negotiable Instruments. However, there appears to be no provision relating to disclosure of cross border transportation of currency by mail and cargo as required under this criterion.

Criterion 32.2 - Section 33 (1) of the AML Act requires a person who intends to convey currency that exceeds the amount prescribed by the BOG to or from the country to declare the particulars of the currency and amount to be conveyed to the BOG or its authorised agent at the port of entry or exit. The Regulation requires residents of Ghana to declare foreign currency in excess of USD10, 000.00 with supporting documents upon departure (Paragraph 297 of MER). Section VI of the Operational Guidelines, Notices No. BG/GOVSEC/2007/3 and BG/GOV/SEC/2007/4 to the BOG Foreign Exchange Act, 2006 (Act 723), require travellers arriving in Ghana to complete the Foreign Exchange Declaration Form (T.5) if they intend to convert all or part of their foreign currency at a later date. Declared currencies are to be checked and endorsed by officials of the Customs, Excise

and Preventive Service[88] (CEPS). The endorsed forms are to be surrendered to officials of the Customs, Excise and Preventive Service at the point of departure and subsequently submitted to the BOG for monitoring purposes. The official at the port of entry shall also provide a copy of the declaration to the FIC (Paragraph 298 of 1st MER). Persons travelling abroad are allowed to carry up to USD 10,000 or its equivalent in traveller's cheques or any other monetary instruments. (Paragraph 299 of 1st MER).

Criterion 32.3 - [N/A] Ghana uses a declaration system

Criterion 32.4 - 32.5 - The authorities indicated in the 1st MER that upon the discovery of a false declaration or a failure to declare, the currency is subject to seizure after which investigations are conducted to ascertain the source and purpose for of the currency and a report is submitted to the Commissioner of Customs for further directives *(*Paragraph 306 of 1st MER*)*.

Criterion 32.6 - Copies of the currency declaration reports are submitted to FIC as required by section 33 Anti-Money Laundering (Amendment) Act, 2014 (Act 874)

Criterion 32.7 - Section 49 of the AMLA provides for co-operation by officers of public agencies with officers of the FIC in the performance of functions under the Act. The AML/CFT Inter Ministerial Committee also provides another platform for both operational and strategic cooperation for implementation of issues related to Recommendation 32. Coordination among specific agencies or departments indicated under this criterion is not expressed in any legal or policy document. However, response from the Ghanaian authorities revealed that this obligation is met by the police, immigration, customs authorities, under the LECOB, the Income Tax Act 2015, (Act 896), the Income Tax Amendment Act 2016 (Act 907) and the Customs Act, 2015 (Act 891).

Criterion 32.8 - Certain security agencies like the Bureau of National Investigations, Ghana Immigration and the Police are empowered to carry out further checks on persons suspected to be carrying currency in excess of the prescribed amount. The FIC may also request for additional information concerning the declaration (Paragraph 300). Subject to section 274 of the Customs Excise and Preventive Service (Management) Act (CEPSA), Customs officials are empowered to seize goods, including aircraft, ships and vehicles, used in the importation, attempted importation, landing, removal, conveyance, exportation or attempted exportation of any prohibited or restricted goods, or any other goods which may be liable to forfeiture under the CEPSA. An officer may seize anything liable to forfeiture under the Act at any place on land or water, and shall immediately deliver it into the care of the Commissioner. Section 341 of the CEPSA defines "goods" to include currency (Para 301 of 1st MER). Unlawful exportation/importation of goods is not permitted and offenders would be handed over to the security agencies for prosecution (Paragraph 302 of 1st MER).

Criterion 32.9 - At the international level, the Customs, Excise and Preventive Service has bilateral agreements in the area of trade facilitation with neighbouring countries such as Burkina Faso, Cote d' Ivoire and Niger. Even though exchange of information does not cover AML/CFT measures, it could be extended to the AML/CFT matters in future. Ghana retains information relating to false information declaration and declaration which exceeds the prescribed threshold. There is a possibility of providing the information to foreign counterparts.

[88] The Institution referred to in the Document as the "Customs Excise and Preventive Service", has been absorbed as a sub-institution of the Ghana Revenue Authority pursuant the Ghana Revenue Authority Act, 2009 (Act 791). The institution is now known as "the Customs Division of the Ghana Revenue Authority"

Criterion 32.10 - Ghana has necessary safeguards in place to ensure proper use of information obtained from declaration systems without restricting trade payments. Trade payments are conducted through the banking system and records on all such transactions reported to BOG. In addition, as a member of the ECOWAS, Ghana respects the principle of free movement of capital within the region and information obtained from the declaration system are not used in a way that will restrict legitimate trade.

Criterion 32.11 - Persons are forbidden from carrying out physical cross-border transportation currency that is related to ML/TF or predicate offences. There have been sanctions imposed for a breach of this obligation.

Weighting and Conclusion

The declaration system of currency does not extend to declaration of cross-border transportation of currency by mail and cargo. ***Ghana is largely compliant with Recommendation 32.***

Recommendation 33—Statistics

In its previous MER, Ghana was rated non-compliant with these requirements. The main technical deficiency was that there was a general lack of statistics on issues related to AML/CFT.

Criterion 33.1 - Ghana maintains some statistics on matters relevant to effectiveness of its AML/CFT systems. The Financial Intelligence Centre (FIC) maintains data on Suspicious Transaction Reports received and disseminated and the freezing orders obtained. Ghana indicated that the Economic and Organised Crime Office (EOCO), the Ghana Police (GPS) and Narcotics Control Board (NACOB) all maintain data on ML/TF investigation, property frozen, seized and confiscated. The Attorney General's Department also maintains statistics on mutual legal assistance (MLA) requests made or received. Ghana did not submit statistics on ML investigations by the Ghana Police Service or EOCO. There are no comprehensive statistics on properties frozen, seized or confiscated by most of the competent authorities, including the GRA. It appears that there is no legal obligation as such for the different competent authorities to maintain comprehensive statistics on matters relevant to the effectiveness of their AML/CFT system.

Weighting and Conclusion

There appears to be no proper system of maintaining statistics in Ghana. ***Ghana is rated partially compliant with Recommendation 33.***

Recommendation 34—Guidance and Feedback

In its previous MER, Ghana was rated non-compliant with these requirements on the basis that none of the supervisors, aside from the Bank of Ghana, had issued AML/CFT related guidance to the industry and the guideline issued by the Bank of Ghana was not comprehensive and was not being effectively implemented across all reporting entities. Also, no guidance had been issued across all the DNFBPs and there was no feedback mechanism between supervisors and reporting entities.

Criterion 34.1 - Supervisory authorities have issued sector specific guidelines (BOG/FIC AML/CFT Guidelines for Banks &Non-Bank Financial Institutions, 2011; SEC/FIC AML/CFT

Compliance Manual for CMOs, 2011; and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries, 2011). In addition, Ghana has also issued AML/CFT Regulations, 2011 which applies to all accountable institution. No sector specific AML/CFT guideline has been issued for the DNFBPs either by a competent authority or an SRB.

Regulation 38 & 40 of the Anti-money Laundering Regulation, 2011 (L.I. 1987) requires the FIU to provide feedback on information, including information on sanitized cases, results of investigation into disclosures and current techniques, methods and trends of money laundering. The FIC provides feedback information, including information on sanitized cases, methods and trends of money laundering, and results of investigated cases to accountable institutions through outreaches, workshops and its annual reports. The FIC also provide specific feedbacks to institutions that made submit statutory reports (STRs, CTRs etc). In addition, supervisory authorities provide feedback to institutions under their purview, especially after every examination and through their annual reports, workshops etc. However, AML/CFT feedback to DNFBPs is limited in the absence of a supervisor.

Weighting and Conclusion

Ghana has met majority of the requirements of the recommendation. Key deficiencies are: (i) AML/CFT Guidelines by supervisors (BOG, SEC and NIC) were issued prior to the changes to the FATF standards and publication of the NRA report and therefore not up to date to properly guide financial institutions, (ii) there is no robust sector specific AML/CFT guidance for the DNFBPs sector, and (iii) Feedback mechanism within the DNFBPs sector is poor in the absence of a supervisor for the sector while feedback within the securities and insurance sector is weak. ***Ghana is rated largely compliant with Recommendation 34.***

Recommendation 35—Sanctions

Ghana was rated partially compliant in the 1st MER for the Recommendation relating to sanctions due to the absence of sanctions, low minimum penalty and ineffective implementation of the sanction regime.

Since the adoption of its 1st MER in 2009, Ghana has reviewed its AML laws, and issued regulations and guidelines, including AML (Amendment) Act 874, AML Regulations, 2011 (L.I.1987); BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions; SEC/FIC AML/CFT Compliance Manual for CMOs and NIC/FIC AML/CFT Guidelines for Insurance Companies and Intermediaries, to strengthen its sanctions regime. However, the NRA noted that "regulatory bodies do not feel confident to apply sanctions laid out in section 39 of the Anti- Money Laundering Act 2014 as they believe that they do not have the power within their establishing law to sanction entities who do not comply with AML/CFT measures". Incorporating AML/CFT sanctions in the respective establishing law for each of these sectors will ensure adequate compliance with R35.

Criterion 35.1 - Section 39 of Act 749 as amended by section 18 of Act 874; Paragraph 44 of the AML Regulations, 2011, and other sector specific regulations and guidelines (BOG/FIC AML/CFT Guidelines for Banks & Non-Bank Financial Institutions, SEC/FIC AML/CFT Compliance Manual for CMOs and NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries), provide for a range of sanctions that could be applied on natural or legal persons that fail to comply with the AML/CFT requirements of Recommendations 6, and 8 to 23, including custodial

sentences. The Banks and Specialised Deposit Taking Institutions Act 2016[89], provides for stiffer sentences. Section 39 of Act 749 as amended by section 18 (5) of Act 874 empowers competent authorities to apply administrative sanctions on persons subject to obligation under the Act. Paragraph 44 of the AML Regulations, 2011, provides that, "except otherwise provided, an accountable institution that contravenes a provision of these Regulations commits an offence and is liable on summary conviction to (a) a fine of not more than five hundred penalty units or to a term of imprisonment of not more than three years or to both, where the accountable institution is an individual, and (b) a fine of not more than one thousand penalty units where the accountable institution is a body corporate or a body of persons". Though no specific range of sanctions were stated, the various sector regulations also provide that financial institutions that fail to comply with the provisions contained in the Guidelines will attract appropriate sanction in accordance with existing laws. Section 18 of Act 874 prescribes 2,000 penalty units equivalent to $6,000.00 or up to 5 years in prison. Supervisors also have powers to deal administratively with the entity and revoke license. It appears that the pecuniary penalties are not proportionate as it set a limit of $6,000 no matter the amount involved and this may not be sufficiently dissuasive particularly in instances where significantly large sums are involved.

Criterion 35.2 - Sanctions provided for in section 39 (3) and (4) of Act 749 as amended by section 18 of Act 874, apply to all persons (which could be natural or legal), including accountable institutions, and their directors and senior management. However, the specific administrative sanctions applicable are not stated.

Weighting and Conclusion

A wide range of sanctions (criminal, civil, or administrative) are available and applicable to natural or legal persons, including Directors and Senior Management of institutions for non-compliance with the AML/CFT requirements. However, administrative sanctions appear limited as there are no clear provisions for financial sanctions. Also, the pecuniary penalties under section 18 of Act 874 are not proportionate or dissuasive, as it sets a limit of $6,000 no matter the amount involved. Findings from the NRA report show that Supervisory Bodies consider themselves inadequately empowered to enforce sanctions in accordance with section 18 of Act 874, although sanctions are found in the respective legislations establishing them for violations of prudential requirements. ***Ghana is rated partially compliant with R.35.***

Recommendation 36—International Instruments

In its 1st MER Ghana was rated partially compliant under these requirements because Ghana had not ratified the Palermo Convention and there was no effective mechanism in place for the implementation of the Conventions.

Criterion 36.1 - Ghana is party to all four conventions mentioned in the standards. Ghana ratified the Vienna Convention on 10th April, 1990 and the Terrorist Financing Convention on the 6th September, 2002. Ghana also ratified the United Nations Convention against Corruption (the Merida Convention) on the 27th June, 2007. The country acceded to the Palermo Convention on 14th January 2014.

Criterion 36.2 - Ghana has taken legislative steps to implement the provision of the conventions. Ghana enacted the Mutual Legal Assistance Act, 2010 (Act 807) which provides for the

[89] This new law was enacted after the on-site inspection of Ghana, precisely in mid October 2016

implementation of agreements or other arrangements for mutual legal assistance in criminal matters for states and foreign entities. The Criminal Offences (Amendment) Act, 2012 (Act 849) amended the Criminal Offences Act, 1960 (Act 29) to include the offences of unlawful use of human parts, enforced disappearance, sexual exploitation, illicit trafficking in explosives, firearms and ammunition, participation in an organised criminal group, racketeering and to provide for related matters in accordance with the convention. The Economic and Organised Crime Office Act, 2010 (Act 804) established the Economic and Organised Crime Office as a specialised agency to monitor, investigate and prosecute economic and organised crime and recover the proceeds of crime. It provides for application of pre-emptive measures including seizure, freezing and confiscation of proceeds of crime and other related matters.

Weighting and Conclusion

Ghana has ratified and implemented all the relevant conventions. ***Ghana is rated compliant with R. 36.***

Recommendation 37—Mutual Legal Assistance (MLA)

In its last Mutual evaluation Ghana was rated partially compliant under these requirements. The MER noted a lack of comprehensive legislation on MLA and an absence of guidelines on procedure for management of MLA requests in a timely manner. The Mutual Legal Assistance Act, 2010 (Act 807) sets out the framework for the implementation of agreements or other arrangements for mutual legal assistance in criminal matters for foreign states and entities.

Criterion 37.1 - Ghana has a legal basis for providing a wide range of mutual legal assistance in relation to money laundering associated predicate offences and terrorist financing investigations, prosecutions and related proceedings. The Mutual Legal Assistance Act, 2010 (Act 807) provides the framework for assistance in respect of criminal matters under an agreement or other arrangement between the Republic and a foreign state or a foreign entity. The Act applies to acts that will be classified as serious offences if they were committed in Ghana. Moreover, provision of Mutual Legal Assistance is subject to an agreement or arrangement between Ghana and the foreign state and limited to conduct that is classified as a serious offence in Ghana. It appears that Ghana has not issued guidelines to provide for timely and efficient management of requests.

Criterion 37.2 - By virtue of section 6 of Act 807 the Ministry of Justice of the Republic is the central authority for the transmission and execution of requests. Ghana follows standard operating procedures for the execution and timely prioritization of MLA requests and has a case management system in place.

Criterion 37.3 - Sections 15 to 17 of Act 807 Mutual Legal Assistance Act 807 deal with grounds for refusal of mutual legal assistance and provision of assistance with conditions. These grounds do not prohibit or subject MLA request to unreasonable or unduly restrictive conditions.

Criterion 37.4 - Section 15 of Act 807 sets out the grounds for refusal of a request for MLA. Section 15 (3) of Act 807 states that *secrecy rules of a banking or financial institution shall not be the sole ground for a refusal* to provide the required assistance. The grounds for refusal under the Act do not include references to tax offenses or financial institutions and DNFBPs secrecy or confidentiality requirements therefore, confidentiality requirements do not constitute an obstacle to MLA.

Criterion 37.5 Section 11 of Act 807 requires competent authorities to maintain the confidentiality of requests.

Criterion 37.6 - Ghana does not make dual criminality a condition for rendering assistance. Section 17 of Act 807 empowers the Minster to consider the details of the underlying conduct of a criminal offence for which the assistance is sought and adopt measures that may be necessary to facilitate the provision of the assistance required.

Criterion 37.7 - Section 17 of Act 807 covers dual criminality. The section provides that where a request is made by the competent authority of a foreign state for mutual legal assistance in respect of an act which does not constitute a criminal offence in the Ghana, the Minister will consider the details of the relevant conduct underlying and the adopt measures to facilitate the provision of the assistance in accordance with the national laws.

Criterion 37. 8 - (a) The powers and investigative techniques that are available to domestic competent authorities relating to the production, search and seizure of information, documents, or evidence (including financial records) from financial institutions, or other natural or legal persons, and the taking of witness statements can be used in response to requests for mutual legal assistance. (b)Section 52 and 54 of Act 807 empower law enforcement authorities to conduct special co-operation and joint investigation. Law enforcement agents are also empowered to conduct covert investigations pursuant to Section 53 of Act 807.

Weighting and Conclusion

Minor shortcomings have been noted in the analysis of this Recommendation. It appears that Ghana has not issued guidelines to provide for timely and efficient management of requests. ***Ghana is rated largely compliant with this recommendation.***

Recommendation 38—Mutual Legal Assistance: Freezing and Confiscation

In its 1st MER Ghana was rated partially compliant under these requirements because mechanisms for timely response to MLA on identification, freezing, seizure and confiscation of laundered property was limited in scope.

Criterion 38.1 - Ghana has the authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize or confiscated laundered property and proceeds from, and instrumentalities used or intended for use in ML/TF and predicate offences, or property of corresponding value in accordance with sections 20, 21, 55 and 56 of Act 807.

Criterion 38.2 - There is no express provision that deals with non-conviction based confiscation. However, under section 21 (1) of Act 807, Ghana can provide assistance where the court receives an application for a search and seizure and is satisfied by evidence on oath that there are reasonable grounds to believe that a serious offence over which the respective foreign state or foreign entity has jurisdiction has been or may have been committed and evidence of the commission of the offence may be found in a Ghana.

Criterion 38.3 - (a) Under section 63 of Act 807 the Minister may enter into an administrative arrangement with the central authority of a foreign state for the reciprocal share-out with that state of the whole or a part of the property that is realised in the foreign state or Ghana, following the execution of a request for the confiscation of property located in the foreign state. Section 32 of the Economic and Organised Crime Act, 2010 (Act 804) deals with mutual legal assistance and refers to Act 807. (b) Although the EOCO Act lays down some procedures on managing property that has been frozen, seized or confiscate, there are no comprehensive mechanisms for the management, and when necessary, the disposal of such property.

Criterion 38.4 - Ghana is able to share confiscated property with other countries, particularly when confiscation is directly or indirectly a result of coordinated law enforcement actions. Sections 52-54 of Act 807 allows coordinated law enforcement actions and sections 63 Act 807 provides for reciprocal sharing of confiscated property.

Weighting and Conclusion

There is no specific provision covering the situation in 38.2 which relates to assistance regarding non-conviction based confiscation. ***Ghana is rated largely compliant with Recommendation 38.***

Recommendation 39—Extradition

In its last mutual evaluation report, Ghana was rated partially compliant on these requirements. The main deficiency was that extradition under the Ghanaian law is treaty based and is restrictive in terms of application. Ghana has prepared a new Extradition Bill which is before Parliament.

Criterion 39.1 - The Extradition Act 1960 (Act 22) provides for the extradition of fugitive criminals to, and from Commonwealth countries and other foreign States which have signed bilateral treaties with Ghana. Money laundering and terrorist financing are extraditable offences under Ghanaian law. Ghana has a case management system and clear processes for the timely execution of extradition requests including prioritization. As noted in the 1st MER, (paragraph 808-821) Ghanaian law is treaty based and is restrictive in terms of application. There is currently an Extradition Bill before Parliament which intends to do away with the treaty based system.

Criterion 39.2 - The Extradition Act 1960 applies to a “fugitive criminal” and does not have any restriction on extradition of nationals.

Criterion 39.3 - There is no express provision in the Extradition Act 1960 (Act 22) that the requirement for dual criminality is deemed to be satisfied whether or not both countries place the offence within the same category of offence, or denominate the offence by the same terminology so long as both countries criminalise the conduct underlying the offence. The requirement of 39.3 is not incorporated in the extradition treaties. However, the authorities state that in practice, the requirement for dual criminality is deemed to be satisfied whether or not the offence is denominated by the same terminology as long as the underlying conduct is criminalised.

Criterion 39.4 - There is no express provision in the Extradition Act 1960 (Act 22) that Ghana has simplified mechanisms for extradition. However, Ghana indicated that simplified extradition mechanisms are incorporated in treaty based agreements. In addition, under sections 1 and 8 of the Immigration Act, 2000 (Act 473), a prohibited immigrant, described as a person other than a citizen of Ghana who *has been sentenced in a foreign country for any extraditable crime within the*

Extradition Act of Ghana, can be ordered to be removed from Ghana and detained pending arrangements for such removal.

Weighting and Conclusion

Ghana does not have an extradition law that is consistent with Recommendation 39***. Ghana is rated partially compliant with this recommendation.***

Recommendation 40—Other Forms of International Cooperation

In the last mutual evaluation, Ghana was rated partially compliant for Recommendation 40. The provisions of Recommendation 40 relating to former Recommendation 32 were considered inadequate, and Ghana was rated partially compliant for former Special Recommendation V. The MER noted a lack of streamlined procedure to respond to requests, a lack of coordination between financial institutions supervisory authorities and law enforcement authorities on how to access information from accountable institutions, an absence of comprehensive legislation on international cooperation and there was a lack of effective implementation of the Anti-Money Laundering Act and the Anti-Terrorism Act. Ghana enacted some laws and passed regulations which were aimed at strengthening international cooperation. These include the Mutual Legal Assistance Act, 2010 (Act 807) (MLA Act) and Anti-Money Laundering (Amendment) Act, 2014 (Act 874).

General Principles

Criterion 40.1 - The Ghana FIC has the power to exchange information and cooperate with foreign counterparts in accordance with section 6(2) of the Anti-Money Laundering (Amendment) Act, 2014 (Act 749), as amended by sections 3 of Act 874. The Act states that such information should be used for the purpose of combating money laundering, terrorist financing and financing of proliferation of weapons of mass destruction or any other serious offence. Section 6(1)(g) of Act 746 as amended by section 3 of Act 874 also provides that the FIC is able to "inform advise and co-operate with investigating authorities, supervisory bodies, revenue agencies intelligence agencies and foreign counterparts". Section 52 of MLA Act provides for disclosure of "information in the possession of a competent authority in Ghana to the Central Authority of a foreign State or the competent authority of a foreign entity". Under the same section, the Ministry of Justice is able to make a spontaneous dissemination on matters related to proceeds of crime. The Anti-Terrorism Reg. 4 of L.I. 2181 also permits component authorities to provide a competent authority in a foreign state information relating to persons entering or leaving Ghana, as well as persons on board an aircraft or vessel.

Criterion 40.2 - As noted in the Previous MER, Article 73 of the 1992 Constitution provides a legal basis for international co-operation based on the principle of reciprocity. Ghana has mechanisms in place for cooperation and exchange of communication with counterparts in the Attorney-General's Office, law enforcement agencies, judiciary and financial sector supervisory authorities which are employed through the Ministry Foreign Affairs. Section 85 of the Banking Act, 2004 (Act 673) "states that "Notwithstanding the provisions of any other section, the Bank of Ghana may... (b) share supervisory information, on a confidential basis, with other official agencies, both domestic and foreign, responsible for the safety and soundness of the financial system, if the information is used only for purposes related to the effective supervision of the institutions concerned". Requests regarded as extremely confidential are dealt with through the Bureau of National Investigations and

Interpol. The FIC is empowered to exchange information and cooperate with any foreign counterpart agency that performs similar functions, subject to reciprocity (section 6(2) of the Anti-Money Laundering (Amendment) Act, 2014 (Act 749), as amended by sections 3 of Act 874). The MLA also allows disclosures of information in possession of a competent authority in Ghana to competent authorities in third countries. Such information is subject to confidentiality requirements under section 11 of the MLA Act. Section 3 of the EOCO Act empowers the EOCO to co-operate with relevant foreign or international agencies and Reg. 42 of the AML Regulation 2011 empowers the Minister to apply for membership of the Egmont group to foster worldwide cooperation. Ghana has become a member of the Egmont Group. The country's membership has provided another crucial channel for information exchange. Section 48 of the AML Act 2008 compels for confidentiality of information. Another mechanism for cooperation is the FIU.net. FIU.net is a common platform used by the various FIUs in four West African countries, namely Nigeria, Ghana, Capo Verde and Senegal for the exchange of information on criminals using the ports to traffic narcotics from West Africa to Europe. Ghana also utilizes the West African Police Information System (WAPIS), a system of automated national databases that have been integrated on a regional level for the purpose of combating terrorism and organised crime particularly trafficking in human beings and narcotics and illicit arms trafficking.

Criterion 40.3 - Pursuant to sections 6(2) of Act 749 as amended by sections 3 of Act 874, the FIC is empowered to share information, upon request or on its own accord with foreign counterparts regardless of the nature of the agency, subject to reciprocity or mutual agreement. Section 5 of Act 749 as amended by sections 3 of Act 847 also empowers the FIC to exchange information with similar bodies in other countries. The FIC has negotiated and signed twenty-one (21) MOUs with foreign counterparts for the purpose of cooperation. As regards the financial sector, the competent authorities[90] have signed MOUs on co-operation and information exchange with some foreign counterparts.[91] Ghana has also signed a multilateral agreement on Mutual Administrative Assistance which will enable the country to adopt an information sharing mechanism aimed at reducing tax evasion.

Criterion 40.4 - There is no provision in Ghana's law that prevents provision of feedback to foreign counterparts. Ghanaian authorities stated that it generally provides feedback to competent authorities on the usefulness of information obtained.

Criterion 40.5 - The MLA does not prohibit or place unreasonable or unduly restrictive conditions on information exchange or assistance. Sections 15 and 16 of MLA Act 807 list the circumstances in which Ghana may refuse a request for assistance. Ghana does not refuse requests for assistance on any of the four grounds listed in this criterion. Also, no undue or restrictive conditions are imposed on information exchange by the FIC. Section 6(2) of Act 746 as amended by Act 874 provides that the FIC can share information with foreign counterparts regardless of the nature of the agency.

Criterion 40.6 - Ghana has controls and safeguards to ensure that information exchanged by competent authorities is used only for the intended purpose. Section 6 (3) – (5) of Act 749 as amended by section 2 of Act 874 states that the FIC will require that any information provided to foreign counterpart is used in the same manner as the FIC uses information it collects domestically.

[90] The Bank of Ghana, the National Insurance Commission and the Securities Exchange Commission.

[91] Nigeria Securities & Exchange Commission; Capital Market & Securities Authority of Tanzania; Capital Market Authority of Kenya; Capital Market Authority of Uganda; Financial Services Board of South Africa; Capital Market Advisory Council of Rwanda and Central Bank of the Gambia. The NIC has additionally signed MOU with Gambia and Sierra Leone.

Information can only be used for the purpose for which it was sought except prior consent is obtained from the FIC.

Criterion 40.7 - Competent authorities are required to maintain appropriate confidentiality for any request for cooperation and the information exchanged by virtue of sections 11 and 12 of the MLA Act 807. There are no express provisions in the MLA Act 807 that permits competent authorities to refuse to provide information if the requesting competent authority cannot protect the information effectively.

Criterion 40.8 - The FIU can conduct inquiries on behalf of their foreign counterparts, and exchange all information that would be obtainable by them if such inquiries were being carried out domestically. Section 6 (5) of Act 749 as amended by section 23of Act 874 states that the centre may obtain information based on the request of a foreign counterpart and may take further action in support of the request, consistent with its authority domestically. Section 52, 53 & 54 MLA provides that Ghana may disclosure information in the possession of a competent authority in Ghana to the competent authority of a foreign State and can conduct investigations on behalf of foreign states.

Exchange of Information between FIUs

Criterion 40.9 - The FIC provides cooperation on Money Laundering and Terrorist Financing Proliferation Financing and other serious offence to foreign counterparts in accordance with section 6 (3) - (5) of Act 749 as amended by Section 2 of Act 874.

Criterion 40.10 - The FIC provides feedback to its foreign counterparts in keeping with paragraph 19 of the Egmont principles of information exchange, 2013.

Criterion 40.11 - Pursuant to section 6 (3) - (5) of Act 749 as amended by section 2 of Act 874, the FIC has power to exchange all information in its possession based on the principle of reciprocity.

Exchange of Information between financial supervisors

Criterion 40.12 - Within the banking sector, financial supervisors have legal basis for cooperating with their foreign counterparts. Section 85 of the Banking Act, 2004 (Act 673) *permits information exchange if the information is used only for purposes related to the effective supervision of the institutions concerned.* Sections 40 and 41 of the Securities Industry Act, 2016 (Act 929) provides the legal basis for the SEC to cooperate and exchange information with foreign counterparts. In addition, Section 2(2) (k) of the Insurance Act 2006 (Act 724) requires the National Insurance Commission to maintain contact and develop relations with foreign insurance regulators however, information exchange is not expressly mentioned in the Act. All Financial supervisors also cooperate with foreign counterparts on the basis of MOUs executed by the parties as well as through College of Supervisors.

Criterions 40.13 - As indicated under Criterion 40.12, financial supervisors cooperate and are able to exchange information with foreign counterparts through the College of Supervisors. The BOG, SEC and NIC have also signed MOUs with foreign counterparts to facilitate information sharing.

Criterion 40.14 - Financial supervisors can exchange the types of information listed under criterion 40.14 through the College of Supervisors. Financial Supervisors are able to share regulatory, prudential and general information, information on business activities, beneficial ownership and fit and properness as well as information relating to internal AML/CFT procedures and policies, CDD, customer files and transactions within their sectors with foreign regulatory counterparts.

Criterion 40.15 - Financial supervisors are not empowered by law to conduct inquiries on behalf of foreign counterparts or as appropriate, authorize or facilitate the ability of foreign counterparts to conduct inquiries themselves in the country, in order to facilitate effective group supervision.

Criterion 40.16 - See 40.15

Exchange of Information between Law Enforcement Authorities (LEAs)

Criterion 40.17 - Ghana can exchange domestically available information with foreign LEAs directly although a foreign competent authority is typically required to make the request through the Ministry of Justice and not directly to the LEA. Section 52, of the MLA states that the *Minister may disclose information in the possession of a competent authority in Ghana to the Central Authority of a foreign State or the competent authority of a foreign entity if the disclosure is likely to assist in carrying out any investigation* or may lead to the tracing, freezing and confiscation of the proceeds of crime. Furthermore, the Ministry of Justice is also permitted to disclose information on proceeds of crime without prior request from a third country. Also, the Anti-Terrorism Reg. 4 of L.I. 2181 permits competent authorities to provide a competent authority in a foreign state information relating persons entering or leaving Ghana, as well as persons on board an aircraft or vessel.

Criterion 40.18 - Law enforcement authorities can use their powers, including any investigative techniques available in accordance with their domestic law, to conduct inquiries and obtain information on behalf of foreign counterparts. Information can be exchanged through police cooperation channels such as the i-24/7 from Interpol which is a global police communication system that connects law enforcement officers in all Interpol member countries and enables authorized users to share information globally with their counterparts. The West African Police Information System (WAPIS) is a system of automated national databases that have been integrated on a regional level to facilitate the fight against terrorism and organised crime particularly trafficking in human beings and narcotic and illicit arms trafficking.

Criterion 40.19 - Section 54 of MLA Act 807 provides for joint investigation teams after consultation with the Ministers responsible for the Interior and Foreign Affairs. *Law enforcement authorities may set up a joint investigation team with the Central Authority of a foreign State or the competent authority of a foreign entity for a specific purpose and for a fixed period to carry out criminal investigations within and outside* Ghana where a serious offence has been committed and it requires complicated and demanding investigations which have a nexus with that foreign State or foreign entity such as to necessitate the coordinated and concerted action of the competent authorities Ghana.

Exchange of Information Between Non-Counterparts

Criterion 40.20 - There is no provision under Ghana's law that allows competent authorities to exchange information indirectly with non-counterparts.

Weighting and Conclusion

Ghana has met most of the criteria under this Recommendation. However, there remain some gaps that could impede international cooperation. Specifically, there is no express provision in the law that allows financial supervisors to conduct inquiries on behalf of foreign counterparts. Also, there is no provision under Ghanaian law that allows competent authorities to exchange information indirectly with non-counterparts. ***Ghana is rated largely compliant with this recommendation.***

SUMMARY OF TECHNICAL COMPLIANCE—KEY DEFICIENCIES

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) Underlying the Rating**
1. Assessing risks and applying a risk-based approach	LC	• Ghana is yet to develop a strategic action plan or National AML/CFT Policy. • Ghana is yet to establish a framework to enable it apply a risk based approach to allocating resources and implementing measures to prevent or mitigate ML/TF risks. • The law does not expressly require financial institution and DNFBPs to take measures to manage and mitigate the higher risks identified in the country's risk assessment nor does it expressly oblige financial institution and DNFBPs to incorporate information on the higher risks identified in the national risk assessments into their risk assessment.
2. National co-operation and coordination	LC	• Co-operation and coordination mechanisms to combat the financing of proliferation of weapons of mass destruction are limited.
3. Money laundering offense	C	• The Recommendation is fully met.
4. Confiscation and provisional measures	LC	• There is no comprehensive mechanism for managing property that has been frozen, seized or confiscated. • There is no express provision to confiscate instrumentalities intended for use in the commission of ML or predicate offences.
5. Terrorist financing offense	LC	• TF offence does not specifically cover financing the travel of Foreign Terrorist Fighters. • There is no express provision that the TF offence will be established in the absence of a link to a specific terrorist act or acts. • Sanctions for legal persons are inadequate.

Recommendation	**Rating**	**Factor(s) Underlying the Rating**
6. Targeted financial sanctions related to terrorism and TF	LC	• There are no publicly known procedures to unfreeze the funds of persons with the same or similar name as designated persons or entities, who are inadvertently

		affected by a freezing mechanism.
7. Targeted financial sanctions related to proliferation	LC	• There is no explicit exclusion of contracts that are related to any of the prohibited goods and services.
8. Non-profit organizations	NC	• There has been no review of the adequacy of measures within the sector including laws and regulations. No review of the NPO sector and the threats posed to the sector has been conducted. • There is no periodic re-assessment of the NPO sector. • Outreach to the NPO sector is limited. • There are no clear policies to promote transparency, integrity and public confidence in administration and management of NPOs. • There is no obligation for NPOs to maintain information on the purpose and objectives of their stated activities or on person(s) who own, control or direct their activities. • There is no obligation for NPOs to have controls in place to ensure that all funds are fully accounted for, and are spent in a manner that is consistent with the purpose and objectives of the NPO's stated activities. • There are no requirements to follow a "know your beneficiaries and associated NPOs" rule. • There is no requirement that competent authorities should monitor and supervise compliance. • There is no domestic cooperation, coordination and information-sharing among authorities or organisations that hold relevant information on NPOs. • There are no points of contacts and procedures to respond to international requests for information regarding particular NPOs suspected of TF.

Recommendation	Rating	Factor(s) Underlying the Rating
9. Financial institution secrecy laws	C	• The Recommendation is fully met

10. Customer due diligence	LC	• The decision to undertake Simplified Due Dilligence measures by FIs is not supported by any underlying assessment or analysis of the associated risk • The NIC AML/CFT Guidelines for the insurance sector does not have any express provision(s) that cover circumstances where the beneficiary of a policy may be designated by characteristics or class or by other means.
11. Record keeping	C	• The Recommendation is fully met.
12. Politically exposed persons	C	• The Recommendation is fully met.
13. Correspondent banking	C	• The Recommendation is fully met.
14. Money or value transfer services	C	• The Recommendation is fully met.
15. New technologies	C	• The Recommendation is fully met.
16. Wire transfers	PC	• No express requirements for financial institutions, especially banks to obtain and maintain beneficiary information, and include beneficiary information on cross border wire transfers.
17. Reliance on third parties	PC	• Lack of requirement for financial institutions to have regard for a country's level of risk, in situation where the 3rd party they rely on is located in another country. • There is no specific requirement on the applicability of third party reliance involving FIs that are part of the same financial group
18. Internal controls and foreign branches and subsidiaries	LC	• Lack of requirement for financial groups to implement group-wide programmes against ML/TF.
19. Higher-risk countries	C	• The Recommendation is fully met.

Recommendation	Rating	Factor(s) Underlying the Rating
20. Reporting of suspicious transactions	C	• The Recommendation is fully met.
21. Tipping-off and confidentiality	C	• The Recommendation is fully met
22. DNFBPs: Customer due diligence	LC	• Lack of express requirement for DNFBPs to conduct ML/TF risk assessment prior to the launch or use of new products, business practices as well as new or developing technologies. • Lack of requirement for DNFBPs to have regard for a country's level of risk, in situation where the 3rd party they rely on is located in another country • There is no specific requirement on the applicability of third party reliance involving DNFBPs that are part of the same financial group.
23. DNFBPs: Other measures	LC	• Lack of requirement for implementation of group-wide programmes against ML/TF.
24. Transparency and beneficial ownership of legal persons	LC	• The ML/TF risks associated with the different types of legal persons created in Ghana has not been comprehensively assessed. • Legal persons are not expressly obliged to cooperate with competent authorities to the fullest extent possible in determining the beneficial owners of companies. • Inadequate mechanisms to monitor compliance with requirements to update information.
25. Transparency and beneficial ownership of legal arrangements	PC	• There is no obligation for trustees to maintain information required under this recommendation and ensure the information is accurate and up to date. • There is no legal obligation requiring trustees to disclose their status to FIs and DNFBPs when forming a business relationship or carrying out an occasional transaction above the threshold.

Recommendation	Rating	Factor(s) Underlying the Rating
26. Regulation and supervision of financial institutions		• AML/CFT supervision and monitoring of financial institutions, especially in the

	LC	insurance and securities sectors are not fully done on RBA. • Regulators do not have powers to undertake consolidated group supervision. • The RBA supervisory tools being used by NIC and SEC are not comprehensive and thus AML/CFT supervision are not largely determined on the basis of ML/TF risks within these sectors.
27. Powers of supervisors	LC	• The range of administrative sanctions available to supervisors for AML/CFT purposes is limited as supervisors cannot impose financial sanctions. • The role of the FIC to monitor and give guidance to Supervisory Bodies under the AML Act is ambiguous, given that it is not a supervisory body.
28. Regulation and supervision of DNFBPs	PC	• No sector specific AML/CFT guideline has been issued for the DNFBPs sector. • There are no robust regulatory measures to prevent criminals or their associates from infiltrating the DNFBPs sector, other than the measures in place for Casinos by the Games Commission, and the Minerals Commission in the case of the mining Sector. • No clear cut competent authority has been designated to supervise the DNFBPs. The role appears to fall on the GRA but it has no licensing powers over DNFBPs. This can limit its supervisory capabilities, especially its powers to effectively apply administrative sanctions for non-compliance.
29. Financial intelligence units	C	• The Recommendation is fully met.
30.Responsibilities of law enforcement and investigative authorities	C	• The Recommendation is fully met.

Recommendation	**Rating**	**Factor(s) Underlying the Rating**
31. Powers of law enforcement and investigative authorities	C	• The Recommendation is fully met.
32. Cash couriers	LC	• The declaration system does not extend to

		cross-border transportation of currency by mail and cargo.
33. Statistics	PC	• There is no legal obligation as such for the different competent authorities to maintain comprehensive statistics on matters relevant to the effectiveness of their AML/CFT system.
34. Guidance and feedback	LC	• The AML/CFT Guidelines by supervisors (BOG, SEC and NIC) were issued prior to the changes to the FATF standards and the National Risk Assessment and therefore needs to be updated to properly guide financial institutions. • There is no robust sector specific AML/CFT guidance for the DNFBPs sector. • Feedback mechanism within the DNFBPs sector is poor in the absence of a supervisor for the sector while feedback within the securities and insurance sector is weak.
35. Sanctions	PC	• Administrative sanctions appear limited as there are no clear provisions for financial sanctions. • Fines under Section 18 of Act 874 are not proportionate or dissuasive, as it sets a limit of $6,000 no matter the amount involved.
36. International instruments	C	• The Recommendation is fully met.
37. Mutual legal assistance	LC	• Ghana has not issued guidelines to provide for timely and efficient management of requests.
38. Mutual legal assistance: freezing and confiscation	LC	• There is no express provision to provide assistance on non-conviction based confiscation.

Recommendation	**Rating**	**Factor(s) Underlying the Rating**
39. Extradition	PC	• Ghanaian law is treaty based and is restrictive in terms of application. • There is no express provision that dual criminality is satisfied were both countries criminalise the conduct underlying the offence. • There is no express provision in the law for simplified mechanisms for extradition.

40. Other forms of international co-operation	LC	• There is no express provision that requires competent authorities to refuse to provide information if the requesting competent authority cannot protect the information effectively. • There is no express provision for competent authorities to provide feedback to foreign counterparts. • There is no express provision in law that allows financial supervisors to conduct inquiries on behalf of foreign counterparts. • There is no provision in law that permits competent authorities to exchange information indirectly with non-counterparts.

ANNEX II.