

**SPEECH DELIVERED BY MR S T ESSEL, AG. C.E.O OF THE FINANCIAL INTELLIGENCE CENTRE AT A PUBLIC LECTURE ON MONEY LAUNDERING & OFFSHORE BANKING AT THE BRITISH COUNCIL HALL ON 9<sup>TH</sup> MARCH 2010**

Mr. Chairman, Invited Guests, distinguished Ladies and Gentlemen, I deem it a great honour to be present at this public lecture to deliver a speech on the subject of money laundering and offshore banking. The Governor of the Bank of Ghana could not honour this invitation as he is engaged elsewhere on an equally important assignment and has remitted this assignment to the Financial Intelligence Centre. My delivery will attempt to touch briefly on the role of Bank of Ghana, but in a broader perspective what the Financial Intelligence Centre is mandated to protect Ghana and Ghana's emerging financial offshore centre status from money laundering.

The genesis of the concept of offshore banking, which I am persuaded that the main speaker will delve deeper, was associated more with the following characteristics:

- No or relatively low tax regimes available to entities that do not reside in specific jurisdictions

- Moderate to little regulation as wealthy people started looking for 'safer' places to keep their wealth without scrutiny
- The desire for asset protection which was also associated with anonymity
- Banking secrecy underpinned by utmost confidentiality.

The concept was shrouded in utmost secrecy and confidentiality which earned it a traditional perception and deep-seated suspicion of a haven for stolen money and a conduit for money laundering and terrorist financing. Countries that introduced offshore banking into their banking systems were labeled and given negative publicity. The term 'offshore' virtually became synonymous with undercover and fraudulent financial transactions. To stem this, there evolved new descriptions such as 'global banking' and 'international financial services centres' among others to create a better and acceptable image for the concept.

The concept has however gone through tremendous transformation since September 11, 2001. The day became a call to the world to wake up and take the fight against money laundering and terrorist

financing very seriously. In this regard, countries such as the United States of America took initiatives to relax the provisions in their laws on secrecy and confidentiality and also passed the PATRIOT Act. Thus regulation of offshore banking has been strengthened globally and absolute secrecy and confidentiality has become an unattractive motivator for offshore banking.

In Ghana, the idea to introduce international (offshore) banking was muted in June 2005, when Barclays Bank Ghana Limited (BBG) signed a memorandum of understanding with the Government of Ghana to set up an International Financial Services Centre. This was followed up with the Government signing an agreement with BBG and its consultants to initiate the legal framework for establishing international (offshore) banking in Ghana. The end result was to amend the Banking Act, 2004 (Act 673) which did not provide for offshore banking by passing the Banking (Amendment) Act, 2007 (Act 738) to incorporate specific provisions thereto. For instance, section 3 of the principal enactment was amended to permit bodies

corporate incorporated outside Ghana to carry on the business of banking within Ghana.

The Banking (Amendment) Act, 2007 (Act 738) also specified three categories of banking licences, namely;

1. Class I Banking Licence: which allows the holder to transact domestic banking business, hitherto described as Universal Banking Licence.
2. Class II Banking Licence: which allows the holder to conduct banking business or investment banking business with non-residents and other Class II banks in currencies other than the local currency, except as may be permitted by the Bank of Ghana for trading on the foreign exchange market of Ghana and investment in money market instruments (offshore Banking); and
3. The third category is the General Banking Licence: the holder of this licence is allowed to carry on the businesses of both Class I and Class II.

Barclays Bank Ghana Limited was the first bank to be issued with General Banking Licence under the amended Banking Act to undertake international (offshore) banking in 2007. The issuance of the licence was however not without conditions. It was a condition that Barclays Bank Plc, UK will takeover and review the daily transactions of the International Financial Services Centre. No other bank has been so licensed.

There are prospects and benefits that may inure to the economy through offshore banking. Generally, offshore centres provide access to politically and economically stable jurisdictions; they also provide access to offshore banks that operate with lower cost base and may therefore provide higher interest rates on deposits or investments than what prevails in the home country. Other benefits are:

- Rapid economic growth and employment by attracting massive foreign direct investments (FDIs).
- Improvement in physical infrastructure.
- Strengthening of human resource base through knowledge and skill transfers.

- They may help developing countries like Ghana to source investment and create growth in their economies, and help redistribute world finance from the developed to the developing world.
- Last but not the least, Ghana was expected to be placed on the international banking radar as the regional hub of banking in the West African sub-region and Africa as a whole.

Ladies and Gentlemen, besides these numerous prospects and benefits mentioned above, the Bank of Ghana is aware of the fact that a financial system that is not effectively regulated runs the risk of creating weak financial institutions with systemic ramifications. As the supervisor of the banking industry, the Bank has put in place the supervisory framework that will ensure an efficient and effective banking industry in accordance with Basel Core Principles, FATF Recommendations and other internationally acceptable best practices. It has increased the minimum capital levels of banks; ensuring good corporate governance practices; adopted risk-based approach to supervision; adherence to sound ethical principles;

entering into international cooperation and exchange of information with similar bodies in other jurisdictions, among others. The Bank is also in close collaboration with the Financial Intelligence Centre and the Commercial Crimes Unit of the Ghana Police Service and other stakeholders to mitigate the adverse effects of offshore banking.

The Bank of Ghana relies on its highly trained and resourced professional staff of the Banking Supervision Department in its supervisory activities. The Bank's supervision methodology is based on the risk focused approach for both onsite examination, which includes regular contact with the directors, management, external auditors and staff of banks, and offsite surveillance through the review and analysis of prudential returns which should flag any insipient risk. In addition, Bank of Ghana has also adopted home-host information sharing on subsidiaries of foreign banks and also engages in consolidated supervision.

A reflection on the topic will require an inquisition into why the organizers of this important lecture decided to juxtapose money

laundering to offshore banking in one topic. The answer may not be far fetched. As I observed earlier, utmost secrecy and confidentiality used to be key characteristics in offshore banking business. It is also important to note that money laundering thrives on secrecy through concealment and disguise of the unlawful origin of property. Money launderers can therefore leverage on offshore centres to carry on their nefarious activities if effective legal, regulatory and supervisory structures are not put in place.

The Government of Ghana and its agencies, guided by the adage that “good name is better than riches” have shown their unalloyed commitment to join the global fight against the twin-menace of money laundering and terrorist financing by enacting the Anti-money Laundering Act, 2008 (Act 749) and Anti-Terrorism Act, 2008 (Act 762) to further strengthen the existing legal framework governing other financial crimes particularly those related to financial and non-financial institutions.

Mr. Chairman, permit me to quote the definition of money laundering as provided in Act 749.

**“1. (1) A person commits an offence of money laundering if the person knows or ought to have known that property is or forms part of the proceeds of unlawful activity and the person**

**(a) converts, conceals, disguises or transfers the property,**

**(b) conceals or disguises the unlawful origin of the property,**

**or**

**(c) acquires, uses or takes possession of the property.**

**(2) For the purpose of this Act, unlawful activity means conduct which constitutes a serious offence, financing of a terrorist act or contravention of a law which occurs after the commencement of this Act whether the conduct occurs in this country or elsewhere.”**

Mr. Chairman, suffice to say that, before the passage of Act 749 and Act 762, Ghana’s efforts at fighting money laundering was provided, albeit limited in scope under the Narcotics Drug (Control) Enforcement and Sanctions Act, 1990 (PNDCL 236). Consequently, the country was perceived as a weak anti-money laundering

jurisdiction, which perception was fueled in the past by the increased incidence of drug trafficking.

Section 4 of the Anti-Money Laundering Act, 2008 (Act 749) requires that a Financial Intelligence Centre (FIC), with a legal personality and common seal be established. Distinguished audience, may I use this occasion to preempt arrangements being put in place by the Management of the FIC for its public launch to announce its establishment. The governing board of the FIC was inaugurated on 22<sup>nd</sup> February, 2010.

The FIC Ghana is currently located on the 10<sup>th</sup> Floor of Cedi House, Liberia Road. Government has released a property for the construction of an appropriate office facility to be used as the permanent office of the FIC Ghana.

The objects of the FIC Ghana are to: -

1. assist in the identification of proceeds of unlawful activity and the combat of money laundering;
2. make information available to investigating authorities, the intelligence agencies and revenue agencies to facilitate the administration and enforcement of the laws of the Republic; and

3. exchange information with similar bodies in other countries as regards money laundering activities and similar offences.

To achieve these objects, the FIC Ghana shall:

- (a) process, analyse, disseminate and interpret information disclosed to or obtained by the Centre in terms of the Act;
- (b) retain the information in the manner and for the period required under the Act;
- (c) inform, advise and co-operate with investigating authorities, supervisory bodies, the revenue agencies, the intelligence agencies and foreign counterparts; and
- (d) monitor and give guidance to accountable institutions, supervisory bodies and other persons on the discharge of their duties and in compliance with this Act.

Mr. Chairman, with or without the emerging international financial services centre, money laundering and terrorist financing are complex crimes that would require the concerted efforts of multiple national agencies to cooperate and coordinate with other international bodies, to tackle the various aspects of preventing, detecting, and prosecuting those found culpable. In this regard, the FIC Ghana will work to promote cooperation and collaboration with institutional, state and regional bodies to combat money laundering and terrorist financing. To begin with, and very soon, all supervisory bodies,

including the Bank of Ghana, shall be requested to furnish the FIC with lists of Accountable Institutions (AIs) which are registered with or licensed by them in accordance with section 22(1) of the Anti-Money Laundering Act, 2008 (Act 749).

Mr. Chairman, for the purposes of Act 749, Accountable Institutions (AIs) are those set out in the first schedule which include financial institutions (banks and non-bank financial institutions); auctioneers; lawyers; notaries; accountants; religious bodies; non-governmental organizations; dealers in precious metals and stones; dealers in motor vehicles and real estate developers, among others. I gathered from the invitation letter that a significant mix of this audience consists of lawyers, notaries and accountants. I wish to respectfully request them to take notice, and notice is hereby given, of the responsibilities imposed on them as Accountable Institutions and encourage them to rise up to the same.

The need for Accountable Institutions as well as Ministries, Departments and Agencies (MDAs) to join hands with the FIC in this discourse cannot be overemphasized. Our success will attest to the

world that Ghana does not condone and neither will it act as a willful collaborator to money laundering and terrorist financing.

Money laundering and terrorist financing undermine development. They corrupt the moral and social conscience of human capital, affect social and political stability, induce inflation, cause artificial rise in cost of business, and consequently drive away businesses and investments which in turn undermine the ability of the state to accelerate development.

**Ladies and Gentlemen, the FIC has taken** off is in full flight. On the foreign front, we are poised to cooperate and coordinate activities with regional and international bodies engaged in combating money laundering and terrorism financing. In the sub-region, the FIC will closely work with the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA). GIABA was established in 2006 and entrusted with the mandate to protect the West African States against abuse and misuse of their economies for the purposes of laundering the proceeds of crime.

Mr. Chairman, on the global platform, the FIC hopes to become a member of the Financial Action Task Force (FATF) in the near future. The FATF is a 36-member inter-governmental body established in 1989 by the G7 Summit and charged with the primary responsibility for developing worldwide standards for anti-money laundering and counter terrorism. The FATF has laid the legal framework for the fight against money laundering and financing of terrorism by issuing forty (40) Recommendations which set out the basic and universally applicable framework for combating money laundering, and issued out nine (9) special Recommendations on counter terrorist financing.

The FIC also intends to maintain a close collaborative relationship with the Financial Crimes Enforcement Network (FinCEN) of the USA, the FIU of Mauritius and similar bodies worldwide. The FinCEN recently published an advisory feature article drawing attention to possible criminal activities tied to trade. It cited instances of abuse in Central and South American trade between January 2004 and May 2009 where over 17,000 regulatory Suspicious Activity Reports (SARs) identified US\$276 billion in possible criminal transactions tied to trade.

At the domestic front, our immediate plan is to peruse the draft Regulations pursuant to Act 749 and present same to the Hon. Minister of Finance and Economic Planning for onward transmission to Parliament. Our ultimate goal is to work assiduously to get the FIC Ghana admitted into the prestigious EGMONT GROUP of Financial Intelligence Units in compliance with Regulation 26 of the FATF Regulations 40 + 9.

The protection of Ghana and its emerging financial status as a whole from money laundering and terrorist financing is our priority; for, the role of Ghana in the AML/CFT compliance cannot be underestimated. Ghana is not only the second biggest economy in the West African sub-region, it is often referred to as the oasis of peace, stability and hospitality. The economy is also growing and has the tendency to attract criminals who will creep in to undermine its progress. It is therefore imperative and incumbent upon all AIs and supervisory bodies not to renege on our common resolve to maintain the peace and stability that we have been enjoying by joining hands with the FIC, Ghana to ensure that the menace of money laundering and

terrorist financing does not gain any foothold in our country. We must change our perceptions now.

The FIC Ghana will collaborate with the Bank of Ghana to ensure that financial institutions, especially banks, will need to regularly review and implement their Customer Due Diligence policies and Know Your Customer procedures and guidelines by making reasonable efforts to determine the true identity of each customer. Financial institutions would be required to provide for independent testing of their compliance with anti-money laundering legislation, rules, regulations and guidelines, which should be conducted by their internal audit departments/units or by an outside independent party.

On-site examiners from Bank of Ghana should go through the internal audit file to ascertain whether specific tests have been conducted on the institution's anti-money laundering compliance, and whether the tests carried out are appropriate and effective. Examiners should note that subsequent evidence of violation of, or non-compliance with anti-money laundering legislation, rules,

regulations and guidelines may be indicative of a systemic failure of the internal audit program of a financial institution.

Mr. Chairman, external auditors of financial institutions also have significant roles to play in ensuring the institution's compliance with anti-money laundering requirements. External auditors are required to independently review and appraise the internal control function and accounting system in place at the institution during the course of their audit. They may also be required to certify that the institution has complied with all guidelines issued by the FIC and the Bank of Ghana. Accordingly, auditors would be required to appraise the anti-money laundering policies, procedures and controls to determine whether they are adequate, operational and in compliance with the FIC, Ghana and Bank of Ghana's anti-money laundering guidance notes.

Distinguished ladies and gentlemen, as you may not be aware, all of the banks have furnished the FIC, Ghana with the names of their anti-money laundering Compliance Officers. In December 2009, the FIC requested banks to submit their respective AML/CFT compliance

programmes and also in January 2010, they were requested to provide answers to certain pertinent matters involving wire transfers. These requests were made to elicit information from the banks regarding their preparedness to join hands with the FIC to combat ML/TF. And I must say the FIC is very comfortable for now that banks are determined to fight money laundering and terrorist financing.

Mr. Chairman, the above are all geared at identifying, detecting, monitoring and reporting suspicious transactions for investigation and possible prosecution. In this regard, institutions would be required to be on their guard and screen transactions that look suspicious, though suspicion is personal and subjective and may not be necessarily founded. A transaction may however give rise to reasonable suspicion if:

- the size of the transaction is not consistent with the normal activities of the customer; and
- the transaction is not in line with the customer's business.

A well and properly trained personnel and the availability of internal procedures will make the identification of unusual transactions very easy with very little subjectivity.

Mr. Chairman, effective monitoring, coordination and reporting of suspicious transactions would require an efficient and secure information transmission through the use of information technology. This brings to the fore the use of technological hardware and software which security, speed and safety will underscore the integrity of the information transmitted. Accountable institutions are therefore admonished that not only would IT provide efficiency in their operations, a good IT solution would enhance an institution's operational and analytical dexterity.

Mr. Chairman, I want to conclude by reiterating the dangers which the activities of money launderers pose to financial institutions. Proceeds which come from illicit activities that enter into the financial system as deposits are hot and fluid. They give a false sense of adequate liquidity but as a result of their extreme volatility can not be relied upon for operational and strategic planning. They corrupt

human capital (accomplices); and above all may do irreparable damage to the reputation of financial institutions.

Mr. Chairman, pursuant to Act 749, a draft Regulations which will give full effect to the Act is being perused by various stakeholders. Having regard to the emerging typologies in money laundering and terrorist financing, FIC Ghana will want to spearhead the protection of Ghana's economy and financial integrity by proposing an amendment to the first schedule of Act 749 to include freight forwarders, and operators of mining and oil and gas businesses. Accordingly, we also welcome recommendations from every Ghanaian in this discourse.

Thank you for your attention.