



JIMMA UNIVERSITY
COLLEGE OF LAW AND GOVERNANCE
SCHOOL OF LAW

**ANALYSIS OF THE ENFORCEMENT OF MONEY LAUNDERING LAWS IN
ETHIOPIA: SPECIAL EMPHASIS TO THE BANKING SECTOR**

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**SUBMITTED IN PARTIAL FULFILMENT OF REQUIREMENT OF MASTERS
OF COMMERCIAL AND INVESTMENT LAW**

JUNE /2017

JIMMA

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Approval Sheet

Analysis of the enforcement of Money Laundering Laws in Ethiopia: Special Emphasis to the Banking Sector

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DECLARATION

I, the undersigned, declare that this thesis is my original work and has not been presented for a Degree in any other university and that all sources of materials used in this thesis have been acknowledged.

Declared by:-Kedir Hassen

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Date _____

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Acronyms

AML: Anti Money Laundering Law

APG: Asia- Pacific Group on Money Laundering

ATM: Automated Teller Machine

CAP: Customer Acceptance Policy

CBE: Commercial Bank of Ethiopia

CBE: Commercial Bank of Ethiopia

CDD: Customer Due Diligence

CTR: Cash Transaction Report

ERCA: Ethiopian Revenue and Custom Authority

ESAAMILG: East and South Africa Anti Money Laundering Group

FATF: Financial Action Task Force

FDRE: Federal Democratic Republic of Ethiopia

FIC: Financial Intelligence Center

FIUs: Financial Intelligence Units

FSRBs: FATF Style Regional Bodies

GFI: Global Financial Integrity

IMF: International Monetary Fund

IFF: Illicit Financial Flow

KYC: Know Your Customer

ML/CFT: Money Laundering/ Counter Financing of Terrorist

ML: Money Laundering

MOFED: Ministry of Finance and Economic Development

NBE: National Bank of Ethiopia

OAS: Organization of American States

PEPs: Politically Exposed Persons

STR: Suspicious Transaction Report

UNDCP: United Nations Drug Control Program

WB: World Bank

ACKNOWLEDGMENT

Glory to Almighty God, for making true to reach at this day passing all the challenges.

Really this thesis would not have been completed without the constructive comments and encouragement of my advisor Mr. YOSEF ALEMU, Lecturer in Jimma University Law School and Head of the Legal Affairs of the University.

I would also like to express my gratitude to Ms. MULATUWA TSAGAYE, special adviser of the President of Commercial Bank of Ethiopia, for her unreserved support during my study.

My gratitude also goes to Commander, TASFAYE G/EGZI'ABIHER; Chief Investigator of Ethiopian Financial Center (FIC) and Mr. G/EGZI'ABIHER HAGOS, Vice Director of Compliance and Risk Management Directorate in CBE (Main Office); for their unreserved sharing of expertise knowledge and experiences.

Lastly my heartfelt thanks go to my Colleagues, Friends Family Mr. TOFIK KHALID, WUBALEM GETACHEW, MUKTAR KELIL, my mom and my lovely wife, AZIZA KELIL, who gave me spiritual, moral and material support during my study and to all persons who cooperated me during the interviews and focus discussions.

Abstract

Money laundering is a crime that committed to hide the origin of illegally obtained money. Such crime can be committed by political leaders, civil servants in government and business elites in the public sector of a country. As any crime affects the socio-economic well being of a nation; Money laundering has a major impact on a country's economy because it affects economic growth by weakening individual banks, and threatening country's overall financial sector reputation. So combating money laundering and terrorist financing is, therefore, a key element in promoting a strong and sound financial sector.

Ethiopia recently enacted a new law on money laundering and financing of terrorism, which is the second law that relatively fulfils internationally accepted standards of AML. But still there is problem in enforcing this law uniformly in all public and private banks in the Country. Especially the reporting and analysis of suspicious transactions is still a largely ineffective process. Although the formal banking sector made progress in tracking financial transactions connected with money laundering or terrorist financing, the informal financial services industry and the large numbers of underground banks make effective AML/ CTF a difficult endeavor in Ethiopia. Recommendation is given for further efforts to be made by the government.

The present study addresses the issue of the enforcement of Ethiopian Anti money laundering laws especially in the banking sector. It is intended to support competent authorities by showing the major problems seen in implementing the laws and to suggest ways of enhancing the effectiveness of the law in achieving its objective with specific reference to the banking sector.

Key words: - Money laundering, Crime, Ethiopia, Banking Sector

CHAPTER ONE

1. Introduction

1.1. Background of the Study

The international integration of capital, technology, and information which is the result of globalization enables individuals and corporations to reach around the world farther, faster, deeper, and cheaper than ever before and expanded opportunities for free-market capitalism that have resulted in new risks such as money laundering and terrorist financing.

Money laundering is the conversion or transfer of property, knowing that such property is derived from any [drug trafficking] offense or offenses or from an act of participation in such offense or offenses, for the purpose of concealing or disguising the illicit origin of the property.¹

Money laundering is mostly committed in financial institutions especially in the banking sector due to suitability of this domain for various forms of abuse related to money laundering.

In addition to the growth of financial sectors in dynamism and complexity to become very competitive, the economic changes associated with globalization tighten financial pressure on government to take care of these financial institutions.² So on the eve of liberalization and globalization for maintaining international financial relationship, Anti Money Laundering (AML) policies and procedures not only contributes to a bank's overall safety and soundness they also protect the integrity of the banking system by reducing the likelihood of banks becoming vehicles for money laundering, terrorist financing and other unlawful activities.³

In particular, banking involves a wide range of operations regulated by the system of legal acts at national and supranational level. These operations include: deposit, credit, foreign-currency and exchange operations, issuing, storing, buying and selling of securities, payment operations in the country (taking into account natural and legal persons, making invoice payments, receiving

¹Money laundering can be defined in a number of ways. Most countries subscribe to the definition adopted by the *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (1988) (*Vienna Convention*):

²Bulletin, Australian transaction reports and Analyses Center.) 12, December 2008.

³ Ibid p. 3-7

payments, issuing and paying with credit cards and other payment instruments), foreign payment transactions and others.⁴

Ethiopia, following the 1991 Revolution government of the country has re-introduced market led economic policy and implemented reform measures that have encouraged the creation of private companies in both the financial and the non-financial sectors of the country. The growth of private banking and insurer was tremendous. These and other factors made Ethiopia one of the fastest growing countries in Africa.⁵

So it will be logical for the country to enact new law of AML, as stated in its preamble money laundering and financing of terrorism not only threaten security but also compromise the stability, transparency soundness and efficiency of the financial system.⁶ In addition to this the customer due diligence of banks directive, which helps know your customer policies and procedures constitute an essential part of internal control and risk management aspects of banks.

1.2. Statement of the Problem

Money laundering and economic crimes can have devastating economic and social consequences for countries, especially those in the process of development and those with fragile financial systems especially the banks.

By some estimates, more than USD1.5 trillion of illegal funds are laundered worldwide each year! This is more than the total output of an economy the size of the United Kingdom. Of the world-wide total, an estimated USD200 billion is laundered in the Asia-Pacific region.⁷

According to Mr. B. Shiferaw, the negative economic effects of money laundering on economic development are difficult to quantify, yet it is clear that such activity damages the financial-sector institutions particularly banks that are critical to economic growth. It also reduces

⁴(Zeljko Dj. Bjelajacis Professor in the Law Faculty of Economics and Justice, University Economics Academy, Novi Sad, Serbia.) RESEARCH PAPER No. 151 JUNE 2011

⁵ Dr. Solomon Abay, Financial Market Development, Policy and Regulation; The International Experience and Ethiopia's Need for Further Reform, pp 47-59

⁶The preamble of the new Ethiopian Money laundering law, proclamation number 780/2013, stated as *money laundering and financing of terrorism not only threaten security but also compromise the stability, transparency soundness and efficiency of the financial system and to have a comprehensive legal framework to prevent and suppress money laundering and financing terrorism*;

⁷Jack A. Blum, et al., *A Financial Havens, Banking Secrecy and Money Laundering*, @*Crime Prevention and Criminal Justice News Letter* 8, no. 34/35 (1998)

productivity in the economy's real sector by diverting resources and encouraging crime and corruption, which slow economic growth, and can, distort the economy's external sector, international trade and capital flows to the detriment of long-term economic development.

At higher volumes of money-laundering activity, entire financial institutions in developing countries are vulnerable to corruption by criminal elements seeking to gain further influence over their money-laundering channels. Second, particularly in developing countries, customer trust is fundamental to the growth of sound financial institutions, and the perceived risk to depositors and investors from institutional fraud and corruption is an obstacle to such trust.⁸

According to The Global Money Laundering and Terrorist Financing Threat Assessment (“GTA”) undertaken under the auspices of FATF in 2009, use of false or stolen identity has become highly prevalent in the virtual world, which not only facilitates crime, particularly internet based frauds, but also enables criminals to move their ill-gotten gains quickly and anonymously- for example, via internet based payment methods.

In Ethiopia even though the degree of money laundering impact not as severe as the case in developed countries, it became burning issue here also. Different cases and allegations related to money laundering started to be heard here and there. Cases on contraband, tax evasion and corruption are increasing in the country. In addition to these the country becoming highly vulnerable to illegal or unlicensed banks service that encourage black markets and Haw alas. As B. Shiferaw said since capturing and monitoring cash transaction is difficult, money laundering is booming without being detected. This becomes a difficult challenge for law enforcement groups and regulators.

In fact, the economic progress of a country is impossible without a sound system of commercial banks. However, the banking sector inexorably raises concern about risk management. Unlike other sectors, banks face a wider range of complex risks in their day to day business including but not limited to money laundering risks.

One of the major problems of the country in combating Money Laundering as different Researchers and writers on the area argued, that the law was not fully-fledged and does not go in

⁸According to Mr. B. Shiferaw, discussed in his thesis: “Emerging market countries are particularly vulnerable to laundering as they begin to open their financial sectors, sell government owned assets, and establish fledgling securities markets”

line with some internationally accepted principles and the law was insufficient especially in relation to banking sector.

Whether all the gaps and uncovered area under proclamation number 657/2009, is fully addressed or not, Ethiopia has passed the second new law proclamation number 780/2013, proclamation on Prevention and Suppression of Money Laundering and Financing of Terrorism. The new AML of Ethiopia, which classified in to seven parts came with 31 additional Articles, (with total 58 Art) tried to fill some gaps that were in the previous AML.

Although it may be early to criticize the second AML for inefficiency, the recent condition and the problem I tried to mention it above implies that still there is problem of structuring and enforcement.

A country's effectiveness in the fight against money laundering is dependent upon the strength and weakness of its financial investigation authorities. The architecture of antimoney laundering means and measure will depend to a large extent on the type, structure and information available to the investigation units.

Normally, when we talk about enforcement of laws (Money laundering and terrorist financing) some actual conditions of the country such as Political ideologies, institutional arrangements, and social settings must be taken in to consideration. Because money laundering undermines the stability of financial systems, corrupts government officials, institutions and private sectors and it also undermines the rule of law, economy and national security.

1.3. Objective of the Study

Money laundering in its any stage and forms seriously harms the economic and human developments of the jurisdiction. Hence the study will have the following general and specific objectives.

General objective

As banking sectors are one the major financial institutions that money laundering occur so it is a fully justified perception that they will be on front line in battling of the financial system from money laundering. Taking this in to consideration the general objective of the study is to examine the implementation of AML the country particularly enforcement of the laws in the banking sector. Thus the study will primarily focus on the practical institutions of the country's law enforcement bodies.

Specific objectives

- ✓ Analyzing the effectiveness of money laundering laws of the country and the trends of law enforcement agencies; (particularly in the banking sector);
- ✓ Identify emerging trends areas of money laundering threats in the banking sector those are not covered by the laws;
- ✓ Suggest a way forward in enhancing the enforcement of money laundering laws.
- ✓ Exploring the new AML provisions on Financial Intelligence Center (FIC)
- ✓ Exploring the new law on regulatory organs in relation to money laundering from banking sectors perspective based on the policy objectives behind the law and the connection of money laundering with the society at large.

Assessing the money laundering vulnerabilities in banking sectors of Ethiopia and how it would affect financial systems.

1.4. Research Questions

- How much both banking sectors and the Financial Intelligence Center (FIC) are competent in enforcing the laws or in fighting money laundering? Can the recently existing institutional structure suitable to implement the new laws?
- Are the new laws Proclamation no. 780/2013 and Regulation no. 306/2014 covers areas of threats in money laundering or does it effectively addressed the associated threats?
- What are the major problems that associated with enforcement of Ethiopian AML laws?
- What are the current challenges for regulators?

1.5. Significance of the Study

The study will focus on the implementation problems of the Ethiopian laws of money laundering specifically enforcement problem in the banking sectors and try to come with recommended solution for the problems.

As to knowledge of the researcher, there are no similar assessments on the effectiveness of money laundering laws in Ethiopia. Hence, it may hopefully contribute much for the forthcoming issuance some essential regulations and Directives and institutional restructuring (reorganizations).

It will ring for the government as well as for the banking sectors by indicating advanced international issues on money laundering in order to consolidate the gaps and ensure stability, transparency, soundness and efficiency of the banking system and the current problems thereof in relation to enforcement of money laundering laws.

It will also have certain contributions for the legislative body, the judges, and the lawyers in creating awareness, and for those who are interested to do more in the area of money laundering. The study will also serve as a basis and may call the attention of those who want to conduct further research in the field. Finally, I hope that it may serve as a reference material in the academic sphere.

It may contribute by indicating to the problems that financial institutions such as banking sectors are facing in relation to money laundering and making the policy makers to think on ways or mechanisms to prevent money laundering.

1.6. Scope of the Study

The study is mainly focus on analyzing the implementation of Ethiopian AML laws, specifically the enforcement the laws in banking sector. In addition the analysis the effectiveness of money laundering laws of the country and the trends of law enforcement agencies; and emerging trends in areas of money laundering threats those are not covered by the laws will be identified.

So the study will cover touch in detail the terrorist financing part of the law, means it does not seek to examine the effectiveness of money laundering laws in its part of Terrorist Financing.

However, though not in detail, the study will also include some International, Regional organizations and the experience of some other countries. for the purpose of clarification, the nature and characteristics of laws of money laundering and financing of terrorist.

As far as geographical limit of the study is concerned, the information will be collected from The National Bank of Ethiopia and other related authorities if necessary as well.

1.7. Limitation of the Study

In the course of these study practical constraints that limited its scope and analysis is a time constraint. The time limit allowed for this study constrained to the extent that collection of data from related bodies.

The other major limitations to this study are the unavailability and near absence of the necessary data to back up the claims of the author. This is majorly due to the fact that firstly, by its very nature, money laundering occurs outside of the normal range of economic statistics. Secondly the sophisticated techniques used to launder money made difficult to gate the actual data and lastly the Ethiopian banking system mainly use cash transactions based which enable fraudsters and money launderers to raid as they wish and makes it difficult to keep well or easily available the data.

1.8 Research Methodology

The research is carried out mainly on the analysis of enforcement the current Ethiopian Anti money laundering laws. Using mainly qualitative research method, both primary and secondary sources used in the study.

Domestic laws, especially Ethiopian AML laws, Proclamation no. 780/2013, Regulation no. 306/2014, and Customer Due Diligence of Banks Directives no. SBB/46/2010; consulted as primary source materials. Books, journals, articles, very few cases and interviews with academics and law enforcement practitioners in the area used as secondary materials.

Nowadays there are 19 banks in Ethiopia, 3 public/government and 16 private banks. Out these I randomly selected five of them (1 from government and 4 from private banks.) Beside these I made discussions with some officials from different law enforcing institutions like Ethiopian Financial Intelligence Center (FIC) and NBE.

1.9 Organization of the study

The whole study will have four chapters. The first chapter, which is the introductory part, contains the general back ground of the study, main statement of the problem, objective, significance, limitations, and methodology of the research.

The second chapter which is the literature review part gives you the general concepts on money laundering. What money laundering is? How it processed and international and regional money laundering initiatives gone through?

The third chapter, which is the head of the study, is the Ethiopian Anti Money Laundering and the banking sector. This chapter gives you Ethiopian laws on money laundering and its enforcement in the banking sector. The last chapter contains the conclusion and recommendations.

CHAPTER TWO

Money Laundering: The International and Regional Legal Framework

2.1. What is Money Laundering?

Every year huge amount of money is generated from different illegal activities such as tax evasion drug trafficking, theft and corrupt activities. These people need to bring this money into legal financial system in an unsuspected manner; by converting the cash in to other forms, which is more useable. So, we can say that Money laundering is the name given to this process.

Although this is the general aspect of its definition, ML defined in different ways by different countries and organizations. Most countries subscribe to the definition adopted by the *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (1988) (*Vienna Convention*)⁹. According to this Convention ML is: The conversion or transfer of property, knowing that such property is derived from any [drug trafficking] offense or offenses or from an act of participation in such offense or offenses, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offense or offenses to evade the legal consequences of his actions.

Article 3(b) of same convention defined ML as: ‘*The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offense or offenses or from an act of participation in such an offense or offenses*’.¹⁰

In other way The Financial Action Task Force (FATF)¹¹, which is one of the leading international organizations for the prevention and fight against money laundering is a working group for the establishment of financial and regulatory measures against money laundering, (The Financial Action Task Force, FATF), which is recognized as the international standard setter for anti-money laundering (AML) efforts, defines the term money laundering succinctly as “the

⁹The International Bank for Reconstruction and Development/The World Bank, Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism, *Second Edition and Supplement on Special Recommendation IX*, © 2006 pp.20-22

¹⁰ The Vienna Convention, Article 3(b).

¹¹The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognized as the global anti-money laundering (AML) and counter-terrorist financing (CFT) standard. For more information about the FATF, please visit the website: www.fatf-gafi.org©.

processing of...criminal proceeds to disguise their illegal origin” in order to “legitimize” the ill-gotten gains of crime.¹² Thus it is the process by which proceeds from a criminal activity are disguised to conceal their illicit origins.

As money laundering basically involves the *proceeds* of criminally derived property rather than the property itself¹³; there is argument that Money laundering is a phenomenon resulting from the need of criminals and criminal organizations to minimize or completely exclude risks of seizure of illegally acquired funds, free of loss or punishment for the committed criminal acts.

The word “Laundering” is used to describe the investment of profits or transfers of funds made from criminal activities or illegal sources into legitimate or legal business, so that the original source becomes difficult to trace.¹⁴ Thus, to “launder money” that has been obtained illegally means to process it through a legitimate business or to send it abroad to a foreign bank; so that nobody knows that it was illegally obtained.¹⁵

In his view, Robert Powes opines that “Money Laundering simply means the use of money derived from illegal activities by concealing the identity of the individuals who obtained the money, converted it to assets that have come from a legitimate source.

Generally, money laundering is the process by which one conceals the existence, illegal source, or illegal application of income to make it appear legitimate.¹⁶ In other words, the processes used by criminals through which they make a dirty money appear a clean. Though initially considered an aspect integral to only drug trafficking, laundering represents a necessary step in almost every criminal activity that yields profits.

The Black’s Law Dictionary defines Money laundering as “*the act of transferring illegally obtained money through legitimate people or accounts so that its original source cannot be*

¹²FATF, *What is money laundering?*, *Basic Facts About Money Laundering*, www.oecd.org/fatf.

¹³Catherine Skipp, *Six Arrested in Global Fraud, Money-Laundering Case: Group Allegedly Bilked Victims of \$60 Million*, *Washington Post*, May 8, 1999, p.2-8.

¹⁴*Ibid*

¹⁵Article by IKPANG, Aniedi J. on *African Journal of Law and Criminology Volume 1 Number 1, (2011) And A. N.*, “Strategies in Combating Money Laundering in the Financial System” (National Seminar on Economic Crime, 22 July 2002), pp.1- 4.

¹⁶US, Commission on Organized Crime, Interim Report to the President and the Attorney General, *The Cash Connection: Organized Crime, Financial Institutions, and Money Laundering*(1984). By William R. Schroeder, *FBI Law Enforcement Bulletin*, May 2001, pp. 1 – 7.

traced". This means the transfer of money flowing from racketeering, drug transaction and other illegal sources into legitimate channels so that its original sources are concealed.

2.2. Impacts of Money Laundering

The consequences of money laundering are perceived in all spheres of society. Negative feedback affects each state's economic, political and social structures, diminishing the trust into financial markets and economic system, hindering economic growth and reputation. But in order to understand well what the consequence of Money Laundering herein after ML is, let us consider the question why launderers launder the money they got through different means?

Firstly the purpose of ML is to hide the illegally obtained wealth as Money laundering represents a derivate form of crime.¹⁷ This is because money represents the lifeblood¹⁸ of the organization that engages in criminal conduct for financial gain because it covers operating expenses, replenishes inventories, purchase the services of corrupt officials to escape detection and further the interests of the illegal enterprise, and pays for an extravagant lifestyle. To spend money in these ways, criminals must make the money they derived illegally appear legitimate.

Secondly laundering helps criminals in avoiding prosecutions by hiding or distancing the ill-gotten money from them.¹⁹ This is because criminals must obscure or hide the source of their wealth or alternatively disguise ownership or control to ensure that illicit proceeds are not used to prosecute them.

Thirdly laundering can be made for evading of taxes²⁰ and increasing their profit. As the proceeds from crime often become the target of investigation and seizure. To shield ill-gotten gains from suspicion and protects them from seizure, criminal must conceal their existence or, alternatively, make them look legitimate. By helping criminals to legitimize the business they built up by the ill-gotten money.

¹⁷Money laundering represents a derivate form of crime. That is, this phenomenon cannot be discussed, without the previous existence of another criminal act - primary criminal act, which created financial profit that has subsequently become the object of money laundering. (Australian Transaction Reports and analysis Center, 12 December 2008.) And Contemporary Tendencies In money laundering Methods: Review of the methods and the measures for its suppression [Zeljko Dj. Bjelajac](#), (Law Faculty of Economics and Justice, University Economics Academy, Novi Sad, Serbia)RESEARCH PAPER, No. 151, JUNE 2011. P.36

¹⁸ Supra. note 12

¹⁹Contemporary Tendencies In money laundering Methods: Review of the methods and the measures for its suppression [Zeljko Dj. Bjelajac](#), (Law Faculty of Economics and Justice, University Economics Academy, Novi Sad, Serbia)RESEARCH PAPER, No. 151, p.6

²⁰ Ibid. p3

If these are the reasons why launders run to launder the ill-gotten money (fund); one can imagine what can such criminal acts resulted to. Generally speaking the negative impacts of Money Laundering (ML) can be categorized as economic and social impacts of ML.

The Impacts of money laundering from economic points of view:-as ML is financial crime; it is obvious that the financial institutions are in front line for the damage. Thus it undermines financial system and expands the black economy.

Beside these currencies and interest rates can be distorted by money launderers' investment practice, base, as they are interested on other factors outside market returns.²¹ Financial Institutions that accept illegal funds cannot rely on those funds as a stable deposit base. Large amounts of laundered funds are likely to be suddenly wired out to other financial markets as part of the laundering process, threatening the institutions liquidity and solvency.²²

ML can expand crime by encouraging crime. According to Australian Transaction Report and Analysis Center (2008), Money laundering encourages crime because it enables criminals to effectively use and deploy their illegal funds. Criminalizing society; as criminals can increase profits by reinvesting the illegal funds in businesses. It reduces revenue and controlling power of the government. Generally money laundering diminishes government tax revenue and weakens government control over the economy.²³

As the social impacts, the government will be burdened by expense²⁴ in filling the gap made because of the crime. As Chidebe Bernard discussed in his research paper, money laundering can result in heavier government spending on enforcement of the law, health care and for rehabilitation.

²¹There are severe economic and social consequences of money laundering. These include: undermining financial systems: money laundering expands the black economy, undermines the financial system and raises questions of credibility and transparency.

²² CHIDEBE BERNARD, EFFECTS OF ECONOMIC CRIMES AND MONEY LAUNDERING IN THE NIGERIAN FINANCIAL SERVICES SECTOR , Thesis, July, 2004 pp. 36

²³. Supra.n.12. A financial institutions reputation and integrity can be irrevocably harmed if involved in money laundering of financing terrorism. Local merchants and business may find that they cannot compete with front companies organized to launder and conceal illicit funds.

²⁴Heavier government spending on law enforcement, health care for treatment of drug addicts as well as rehabilitation of victims of human trafficking and other money laundering related crimes. High potential of its corruptive influence on virtually all segments of society; as a result of sheer magnitude of the economic power of money launderers.

2.3. Money Laundering Process

As I tried to explain in my introduction part, Money is commonly laundered through the banking system operations, due to suitability of this domain for various forms of abuse related to money laundering. In particular, banking involves a wide range of operations regulated by the system of legal acts at national and supranational level.

According to William R. Schroeder, these operations include: deposit, credit, foreign-currency and exchange operations, issuing, storing, buying and selling of securities, payment operations in the country.²⁵

Taking into account a wide range of banking operations, it is a fully justified perception that the first defense system of the financial system from money laundering, is in fact well developed and regulated within the banking operations field. The objective of criminals' whether they are drug traffickers or illegal sellers of weapons or other was to convert typically small denominations of currency into legal bank accounts, financial instruments, or other assets.

Money Laundering in the process of turning illicit proceeds into legal monies or goods consists of three stages. These are placement, layering, and integration.

i. Placement

The initial stage of the process involves placement of illegally derived funds into the financial system, usually through a financial institution.²⁶ Placement is the movement of proceeds, frequently currency- from the scene of the crime to a place, or into a form, less suspicious and more convenient for the criminal.²⁷

This can be accomplished by depositing cash into a bank account. Large amounts of cash are broken into smaller, less conspicuous amounts and deposited over time in different offices of a single financial institution or in multiple financial institutions.²⁸

²⁵Supra n.12. These operations include: deposit, credit, foreign-currency and exchange operations, issuing, storing, buying and selling of securities, payment operations in the country (taking into account natural and legal persons, making invoice payments, receiving payments, issuing and paying with credit cards and other payment instruments), foreign payment transactions and others.

²⁶ Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism (Vito Tanzi, "Money Laundering and the International Finance System," IMF Working Paper No. 96/55 (May 1996), at 3 and 4)

²⁷ Ibid

²⁸ Ibid

The exchange of one currency into another one, as well as the conversion²⁹ of smaller notes into larger denominations, may occur at this stage. This stage involves the movements of currency from scene of crime to a place less suspicious.³⁰

Furthermore, illegal funds may be converted into financial instruments, such as money orders or checks, and commingled with legitimate funds to divert suspicion. Furthermore, placement may be accomplished by the cash purchases of a security or a form of an insurance contract.

At this stage, illegal funds or assets are first brought into the financial system. This ‘placement’ makes the funds more liquid.³¹ For example, if cash is converted into a bank deposit, it becomes easier to transfer and manipulate. Money launderers place illegal funds using a variety of techniques, which include depositing cash into bank accounts and using cash to purchase assets.

ii. Layering

The second money laundering stage is called layering. Layering helps criminals to conceal the illegal origin of the money.³² It is also known as the process of hiding the illegal money by distancing the placed funds from their illegal origin.³³

It occurs after the ill-gotten gains have entered the financial system, at which point the funds, security or insurance contract are converted or moved to other institutions further separating them from their criminal source.³⁴ This phase of the laundering process can include the transfer of money from one bank account to another account or from one bank to another bank and from one country to another country.

²⁹ Thomas L. Friedman, *The Lexus and the Olive Tree: Understanding Globalization* (New York, NY: Farrar, Straus, Giroux, 1999).

³⁰ William R. Schroeder: The first stage involves the placement of proceeds derived from illegal activities- the movement of proceeds, frequently currency- from the scene of the crime to a place, or into a form, less suspicious and more convenient for the criminal. For example, a government official may take a bribe in the form of cash and place it in a safe deposit box or bank account opened under the name of another individual to hide its existence or conceal the ownership.

³¹ Australian Transaction Reports and analysis Center, 12 December 2008.

³² Barry R. McCaffrey, A Efforts to Combat Money Laundering, @*Loyola of Los Angeles Intern, ional and Comparative Law Journal* 791, no.20 (1998).

³³ Ibid

³⁴ Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism (Vito Tanzi, “Money Laundering and the International Finance System,” IMF Working Paper No. 96/55 (May 1996), at 3 and 4)

Such funds could be used to purchase other securities, insurance contracts or other easily transferable investment instruments and then sold through yet another institution. The funds could also be transferred by any form of negotiable instrument³⁵ such as check, money order or bearer bond, or transferred electronically to other accounts in various jurisdictions. The launderer may also disguise the transfer as a payment for goods or services or transfer the funds to a shell corporation.

This phase of the laundering process can include the transfer of money from one bank account to another, from one bank to another, from one country to another or any combination thereof.³⁶

iii. Integration

The third stage involves the integration of funds into the legitimate economy. Integration represents the conversion of illegal proceeds into apparently legitimate business earnings through normal financial or commercial operations.³⁷

Integration creates the illusion of a legitimate source for criminally derived funds and involves techniques as numerous and creative as those used by legitimate businesses to increase profit and reduce tax liability.³⁸ This is accomplished through the purchase of assets, such as real estate, securities or other financial assets, or luxury goods.

Once the funds are layered and distanced from their origins, they are made available to criminals to use and control as apparently legitimate funds. The laundered funds are made available for activities such as investment³⁹ in legitimate or illegitimate businesses, or spent to promote the criminal's lifestyle. At this stage, the illegal money has achieved the appearance of legitimacy. It should be noted that not all money laundering transactions go through all these three-stage process.

³⁵ Jack A. Blum, et al. A Financial Havens, Banking Secrecy and Money Laundering & Crime Prevention and Criminal Justice, News Letter 8, no. 34/35 (1998).

³⁶ Criminals layer transactions to increase the difficulty of tracing the proceeds back to its illegal source. They frequently use shell corporations and offshore banks at this stage because of the difficulty in obtaining information to identify ownership interests and acquiring necessary account information from them.

³⁷ Ibid

³⁸ A Global Threat and the International Community Response, By William R. Schroeder, FBI Law Enforcement Bulletin, May 2001, p.2

³⁹ Australian Transaction Reports and analysis Center, 12 December 2008.

2.4. International and Regional Standard Setters In Combating Money Laundering

2.4.1. International Standard Setters

Money laundering methods and techniques change as there are changes in developing counter-measures. In addition to this as countries have diverse legal and financial systems and so all cannot take identical measures to achieve the common objective, especially over matters of detail. In response to the growing concern about money laundering and terrorist activities, the international community has acted on many different forms such as notifying the timely changing characteristics of ML/CFT and ways to combat it.

The international response is, in large part, recognition of the fact that money laundering and terrorist financing take advantage of high speed international transfer mechanisms, such as wire transfers, to accomplish their goals.⁴⁰ Therefore, concerted cross-border cooperation and coordination are needed to thwart the efforts of criminals and terrorists.

In recent years, the Financial Action Task Force (FATF) has noted in its forty recommendations the increasingly sophisticated combinations of techniques in money laundering, such as the increased use of legal persons to disguise the true ownership and control of illegal proceeds, and an increased use of professionals to provide advice and assistance in laundering criminal funds.

A. United Nations

The United Nations is one of the most experienced and strong International organization that deals with different issues those are global in their nature. As it is international organization with broadest membership and has the ability to adopt treaties or conventions that can have the effect of law in a country that signed and ratified that treaty, treaties those adopted by UN can surely implemented.

In certain cases, the UN Security Council has the authority to bind all member countries through a Security Council Resolution, regardless of other action on the part of an individual country.⁴¹ When we come to the issue of ML, the United Nations (UN) was the first international organization to undertake significant action to fight money laundering on a truly world-wide basis. These now include; The UN Convention against Traffic in Narcotic Drugs and

⁴⁰The International Bank for Reconstruction and Development/The World Bank, Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism, Second Edition and Supplement on Special Recommendation IX, © 2006 pp.39

⁴¹Ibid p.40

Psychotropic Substances (the 1988 Vienna Convention), The UN International Convention for the Suppression of the Financing of Terrorism (the 1999 Convention), the UN Convention against Transnational Organized Crime (the 2000 Palermo Convention), and the UN Convention against Corruption (the 2003 Merida Convention).⁴² Among these the two widely used and relevant for my discussion are the Vienna Convention of 1988 and the Palermo Convention of 2000 discussed under the next subtopic.

➤ **Vienna Convention of 1988**

Due to growing concern about increased international drug trafficking and the tremendous amounts of related money entering the banking system, the UN, through the United Nations Drug Control Program (UNDCP) initiated an international agreement to combat drug trafficking and money laundering.⁴³ The Vienna Convention represents the first concerted effort to influence the international community response to drug money laundering.

While the Vienna Convention remains a benchmark in identifying counter-laundering measures on an international level, it does not criminalize laundering. Rather, it obligates the parties to adopt domestic legislation that makes laundering drug proceeds a crime. In fact although the convention doesn't use the term money laundering, it defines the concept.

The convention requires that each member countries to take some specific actions such as to enact domestic laws criminalizing laundering of money that derived from drug trafficking. The treaty also promotes international cooperation as a key to reducing the global threat of money laundering and requires states to provide assistance in obtaining the relevant financial records when requested to do so without regard to domestic bank secrecy laws.

➤ **Palermo Convention of 2000**

In order to expand the effort to fight international organized crime, the UN adopted *The International Convention against Transnational Organized Crime (2000) (Palermo Convention)*.⁴⁴ Unlike the Vienna Convention, Palermo Convention specifically obliges each

⁴² Ibid p. 41

⁴³ The Vienna Convention, which was named for the city in which it was signed, deals primarily with provisions to fight the illicit drug trade and related law enforcement issues; 169 countries are party to the convention.

⁴⁴ Palermo Convention, which get its name from the place (city) it adopted in is concerned on international organized crime. This is accessed on <http://www.undcp.org/adhoc/palermo/convmain.html>.

ratifying member countries to criminalize and all serious crimes as predicate offence of Money Laundering. It also obliges the member state to establish regulatory regimes to deter and detect all forms of money laundering, including customer identification, record-keeping and reporting of suspicious transactions.⁴⁵

B. Financial Action Task Force (FATF)

The Financial Action Task Force (FATF)⁴⁶ is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering and terrorist financing as well as other organized crime such as the financing of proliferation of weapons of mass destruction.

FATF the result of the increasing concerns of the Group of Seven (G-7)⁴⁷, industrialized countries established the Financial Action Task Force on Money Laundering (FATF) in 1989 as an intergovernmental body to develop and promote policies to combat money laundering.

It is one of the leading international organizations for the prevention and fight against money laundering is a working group for the establishment of financial and regulatory measures against money laundering (*Financial Action Task Force on Money Laundering, FATF*). This organization cooperates closely with the World Bank and International Monetary Fund. Members of the FATF include 26 countries and jurisdictions – including the major financial Centre countries of Europe, North America and Asia – as well as the European Commission and the Gulf Co-operation Council.⁴⁸

The FATF works closely with other international bodies involved in combating money laundering. While its secretariat is housed by the OECD, the FATF is not part of the Organization. However, where the efforts of the OECD and FATF complement each other, such as on bribery and corruption or the functioning of the international financial system, the two

⁴⁵ Ibid, Article 7 (1) (b)

⁴⁶In response to mounting concern over money laundering, the Financial Action Task Force on money laundering (FATF) was established by the G-7 Summit in Paris in 1989 to develop a coordinated international response. One of the first tasks of the FATF was to develop Recommendations, 40 in all, which set out the measures national governments should take to implement effective anti-money laundering program.

⁴⁷For example, representatives of the "G-7" (now referred to as the "G-8"), seven major industrial countries in the world, including the United States, the United Kingdom, France, Germany, and Japan, who formed the Financial Action Task Force (FATF); the Organization of American States (OAS); the Council of Europe; The United Nations (UN); the Asian Pacific Group on Money Laundering; and the European Union.

⁴⁸Policy Brief, Organization for Economic Co-operation and Development July 1999, Financial Action Task Force on Money Laundering FATF – OECD © OECD 1999

secretariats consult with each other and exchange information.⁴⁹ One of the guiding principles of the FATF is that money laundering constitutes a complex economic crime, which conventional law enforcement methods cannot control effectively. Therefore, law enforcement must work closely with financial institution managers and regulators. The FATF Recommendations are recognized as the global anti-money laundering (AML) and counter-terrorist financing (CFT) standard.

In April 1990, the FATF issued a report containing recommended counter-measures to money laundering. Commonly known as the Forty Recommendations,⁵⁰ the FATF designed these counter-measures to provide governments with a comprehensive framework for anti-money laundering action focused around the criminal justice system and law enforcement, the role of the financial sector and government regulators in combating money laundering, and the need for international cooperation.

The Forty Recommendations, revised and updated in 1996, encourage the full implementation of the Vienna and Strasbourg Conventions and the lifting of bank secrecy laws.⁵¹ Strategies encouraged the FATF include the criminalization of the laundering of the proceeds derived from all serious crime, the forfeiture of property connected with a laundering offense or its corresponding value, the establishment of customer identification and record keeping rule, and the creation of financial intelligence units.

Generally FATF has three primary functions regarding ML. These are:-

1. monitoring members' progress in implementing anti-money laundering measures;
2. reviewing and reporting on laundering trends, techniques and countermeasures; and
3. Promoting the adoption and implementation of FATF anti-money laundering standards globally.⁵²
 - The Forty Recommendations

⁴⁹ Ibid

⁵⁰ Financial Action Task Force on Money Laundering: The Forty Recommendations of the Financial Task Force on Money Laundering with Interpretative Notes, WL 35 I.L.M. 1291 (1996).

⁵¹ The FATF report, adopted on June 22, 2000,

⁵² Supra, n. 32, pp. 46

One of the most popular works done by FATF was the adoption of the Forty Recommendations on Money Laundering.

The Forty Recommendations set out principles for action; they permit country flexibility in implementing the principles according to the country's own particular circumstances and constitutional requirements.⁵³ Even though the Recommendations not used as binding law on a country, the international community had been using it as the international standards for AML.

The Forty Recommendations in general focused on the following issues:-

- Improvements in the national legal system;
- Enhancement of the role of the financial system and
- Strengthening of the International cooperation.

Some of the Recommendations, those specifically related to banking will be discussed in detail in the following chapters.

C. Basel Committee on Banking supervision

In response to the financial market crises and The Bretton Woods break down, which resulted to banks' loss of foreign currency, The Basel Committee on Banking Supervision was established by the central bank Governors of the G10 countries in 1974.⁵⁴

Although the Committee's decisions have no legal force, it had undergone different activities that strengthen banking supervisory frameworks. Beside this The Basel Committee had formulated three core supervisory standards and guidelines that directly related to ML as well as, which help banks to have appropriate policies and processes. These are Statement of Principles on Money Laundering; and Core principles for banking; customer Due Diligence.

1. Statement of Principles on Money Laundering

In 1988, the Basel Committee issued its *Statement on Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering (Statement on Prevention)*.⁵⁵ The statement outlines basic policies and procedures that bank management should ensure in their institutions to prevent ML domestically as well as internationally.

⁵³FATF Annual Report, 2009-2010, Accessed, Oct. 10/2010

⁵⁴© Bank for International Settlements 2014. This publication is available on the BIS website (www.bis.org).

⁵⁵United States Department of State Bureau for International Narcotics and Law Enforcement Affairs International Narcotics Control Strategy Report Volume II. P.4

As banks can be used unwittingly as intermediary by launderers, the Statement strongly noted that the integrity of banks own management and their vigilant determination to prevent their institution from becoming associated with criminals (launderers).

Proper customer Identification (KYC), High Ethical standards and compliance with law, Cooperation with law enforcement authorities, and Policies and procedures to adhere to the statement are the four principles addressed under Statement of principles on Money Laundering.

2. Core Principles for Banking

In 1997, the Basel Committee issued its *Core Principles for Effective Banking Supervision (Core Principles)*,⁵⁶ which provides a comprehensive blueprint for an effective bank supervisory system and covers a wide range of topics.

Tough totally the core principles are 25 in number; it is core principle 15 that directly related with ML. and it reads as:-

Banking supervisors must determine that banks have adequate policies, practices and procedures in place, including strict “know your customer” rules, that promote high ethical and professional standards in the financial sector and prevent the bank from being used; intentionally or unintentionally, by criminal elements.

3. Customer Due Diligence

In October of 2001, the Basel Committee issued an extensive paper on KYC principles entitled, *Customer due diligence for banks (Customer Due Diligence)*.⁵⁷

The Basel Committee on Banking Supervision recently updated its Core Principles to place greater responsibility for managing risk on senior management. As indicated in the Core Principles methodology, “*the supervisor applies penalties and sanctions not only to the bank but, when and if necessary, also to management and/or the Board, or individuals therein.*”⁵⁸

D. International Association of Insurance Supervisors (IAIS)

⁵⁶Supra n. 52 and <http://www.bis.org/publ/bcbs>

⁵⁷Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism, The International Bank for Reconstruction and Development/The World Bank/The International Monetary Fund. *Second Edition and Supplement on Special Recommendation IX* © 2006, pp. 51-53

⁵⁸According to Pierre & J. McDowell, The Basel Committee on Banking Supervision (Basel Committee) has issued a set of principles on bank supervision, *Core Principles for Effective Banking Supervision (BCP)*, and an ancillary document, the Core Principles Methodology. The Core Principles require a bank to have appropriate policies and processes in place. These include strict “know-your-customer” rules that promote high ethical and professional standards in the financial sector and that prevent the bank from being used, intentionally or unintentionally, for criminal activities.

The International Association of Insurance Supervisors (IAIS), established in 1994, is an organization of insurance supervisors from more than 100 different countries and jurisdictions.⁵⁹ Promoting cooperation among insurance regulators, setting international standards for insurance; and coordinating insurance regulators with other financial sectors are its primary objectives of the Association.

In January 2002, the association issued Guidance Paper No.5, *Anti-Money Laundering Guidance Notes for Insurance Supervisors and Insurance Entities (AML Guidance Notes)*.⁶⁰ It is a comprehensive discussion on money laundering in the context of the insurance industry.

E. The Egmont Group of Financial Intelligence Unit

The Egmont Group Financial Intelligence Unit can be taken as part of the effort of government to fight money laundering. Governments have created such agencies to analyze information submitted by covered entities and persons pursuant to money laundering reporting requirements. Such agencies are commonly referred to as financial intelligent units (FIUs),⁶¹ serve as the focal point for national AML programs, because they provide for the exchange of information between financial institutions and law enforcement. Because money laundering is practiced on a worldwide scale, there has also been the need to share information on a cross-border basis.

The purpose of the group is to provide a forum for FIUs to improve support for each of their national AML programs and to coordinate AML initiatives.⁶² The support includes systematizing the exchange of financial intelligence information, improving expertise and capabilities of personnel, and fostering better communication among FIUs through technology.

2.4.2. Regional Bodies and Relevant Groups

1. In addition to the International standard AML initiatives discussed above, there are other International organizations those played crucial role in combating ML and CFT. These groups organized based on their geographic regions or by the special purpose of the organization. These are: FATF style Regional bodies (FSRBs; Wolfsburg groups of

⁵⁹ Jeffrey Lowell Quillen, *The international Attack on Money Laundering: European Initiatives*, *Journal of Comparative and International Law* 213 (1991).

⁶⁰ *Supra* n.50, p. 55

⁶¹ *Ibid.* p.56

⁶² *Ibid* ,pp. 57-58

banks; The Commonwealth Secretariat; Organization of American States (OAS) and Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG).

i. FATF Style Regional Bodies (FSRBs)

The FATF-style regional bodies have similar form and functions to those of the FATF, though on a regional basis. FSRBs, however, do not set international standards, unlike the FATF but some FATF members are also members of these bodies.

FSRBs are voluntary and cooperative organizations⁶³ that administer mutual evaluation of their members so that they can identify their weaknesses and take remedies accordingly. Further, FSRBs provide information to their members about trends, techniques and other development in the money laundering arena in their typology reports with special emphasis to their respective regions.⁶⁴

They encourage implementation and enforcement of FATF's *The Forty Recommendations on Money Laundering (The Forty Recommendations)* and the nine *Special Recommendations on Terrorist Financing (Special Recommendations)*. They also administer mutual evaluations of their members, which are intended to identify weaknesses so that the member may take remedial action.

According to The International Bank for Reconstruction and Development/World Bank, the FSRB that are currently recognized by FATF are:

2. Asia/Pacific Group on Money Laundering (APG)
3. Caribbean Financial Action Task Force (CFATF)
4. Council of Europe–MONEYVAL
5. Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG)
6. Financial Action Task Force on Money Laundering in South America (GAFISUD)

ii. Wolfsburg Group of Banks

⁶³ According to Mr. B. Shiferaw, FATF style regional Bodies (FSRBs) are groups organized according to geographical regions. These groups are very important in the promotion and implementation of anti-money laundering laws and combating the financing of terrorism in their respective regions. In the same token, their primary objective is to facilitate the adoption of universal standards as set out by the FATF and how the 40+9 recommendation can be effectively implemented in their regions.

⁶⁴ Preventing Money Laundering and Terrorist Financing, A Practical Guide for Bank Supervisors, By Pierre-Laurent Chatain & John McDowell. 2009. P.47

The Wolfsberg⁶⁵ Group is an association of 12 global banks, representing primarily international private banking concerns. The banks that were eventually to form the Wolfsberg Group first came together in 1999 to address antimoney laundering in private banking.⁶⁶

Although the Wolfsberg Group has neither a written constitution nor any formalized set of rules or statutes; It has developed its practices and procedures over the course of its existence, although it has not put in place a monitoring mechanism or sanctions for omissions by its members.

In the course of discussions, they articulated principles that reflected uniformly high standards for this client segment, which carries an increased degree of risk from a money laundering perspective.⁶⁷

The group has established four sets of principles for private banking, which three of them are directly related with AML and discussed as follows.

- Anti-Money Laundering Principle for Private Banking;
- Anti-Money Laundering Principles for Correspondent Banking; and
- Monitoring Screening and Searching⁶⁸

The Group has adopted a set of 14 principles such as principle that prohibits international banks to run business with shell banks; the requirement to be considered by correspondent banks in evaluating prospective risks; Statement on international wire transfer transparency 2007-2009; and Trade finance principle.

iii. Commonwealth Secretariat

The Commonwealth Secretariat is a voluntary association of 53 sovereign states that consult and cooperate in the common interest of their peoples on a broad range of topics, including the promotion of international understanding and world peace.⁶⁹

With regard to AML and CFT, the Commonwealth Secretariat provides assistance to countries to implement *The Forty Recommendations* and *Special Recommendations*.⁷⁰ It works with national

⁶⁵ Wolfsberg is the location in Switzerland where an important working session to formulate the group and the guide line was held.

⁶⁶ Supra n. 50 p.62

⁶⁷ Mark Pieth, *International Standards Against Money Laundering*, 2004. Pp 5-12

⁶⁸ <http://www.wolfsberg-principles.com/corresp-banking.html>.

⁶⁹ Supra note 50 at pp. 68-70.

⁷⁰ Ibid

and international organizations and assists governments in the implementation of the FATF recommendations.

It also assists member countries to implement the forty recommendations and Special Recommendations.

iv. Organization of American States (OAS)

The Organization of American States (OAS) is the regional body for security and diplomacy in the Western Hemisphere. All 35 countries of the Americas have ratified the OAS charter.⁷¹ Although the OAS was firstly created the Inter-American Drug Abuse Control Commission to fight the drug-trafficking in the region by 1986; lastly it included the issue of ML of the region in 1994.

v. ESAAMLG: (Eastern and Southern Africa Anti-Money Laundering Group)

In addition, the establishment of three other FSRBs is either under consideration or actively underway. The three new geographic areas would be for: The Middle East and North Africa (MENA); Central and Western Africa (GIABA); and Eurasia.

In addition, the establishment of three other FSRBs is either under consideration or actively underway. The three new geographic areas would be for The Middle East and North Africa (MENA); Central and Western Africa (GIABA); and Eurasia.⁷² These are some of groups those organized based on their geographic regions or by the special purpose of the organization, and those played crucial role in combating ML and CFT.

The next chapter will focus on the banking service in Ethiopia; the technological advancement in the banking sector and payment system in Ethiopia. Alongside the general overview of banking and financial institutions development is narrowly discussed.

CHAPTER THREE

3 Ethiopian Anti Money Laundering Laws and its enforcement in the Banking Sector

⁷¹<http://www.org/main/english> accessed on, Aug.20/2010

⁷²FATF, Annual Report, 2003-2004, p.15

3.1. Introduction: is money laundering really a problem in Ethiopia?

Although Ethiopia is one of low income developing country among the Sub-Saharan African Countries, its economy became growing following the economic policy reform made by the Regime.⁷³ The Country's first five-year development plan (2010/11-2014/15), the Growth and Transformation Plan (GTP), is geared towards fostering broad-based development in a sustainable manner with a focus on rapid economic growth, the doubling of agricultural production and increase in foreign exchange reserves, among other goals.⁷⁴

Around 20 sub-Saharan Africa countries are estimated to have lost more than 10pc of their gross domestic products (GDP) since 1980, while Africa as a whole is still estimated to be losing 3.4pc of GDP, that is, 76 billion dollars each year. The Washington-based think tank, Global Financial Integrity (GFI), estimates illicit flows to total ten-times the current level of international aid.⁷⁵ According to African Development Bank (AfDB), between 1980 and 2009, Africa lost up to 1.3 trillion dollars due to illicit flows, with Nigeria, South Africa and Egypt topping the list.

According to a recent GFI report, Ethiopia lost an estimated 11.7 billion dollars due to IFF in the short span between 2000 and 2011. For comparison, the study estimates, in 2009, Ethiopia lost 3.26 billion dollars to capital flight, which greatly exceeds the two billion dollars value of its total exports the same year.⁷⁶

In parallel either because of the under development of the banking service in the rural area of the country or because of limited controlling mechanisms the traditional financial flows through informal financial networks such as offenses of illegal hawalla and foreign currency smuggling became growing.

When we look at the banking industries of the country, which as general comprise one state-owned development bank and 18 commercial banks, two of which are state-owned by comparing the level of access to financial services in a neighboring country such as Kenya, it can be deduced that there is considerable room for expansion of these services in Ethiopia.

⁷³ Ministry of Finance and Economic development, MoFeD Report, 2015

⁷⁴ Ibid

⁷⁵ Addis Fortune News paper, vol.16, September, 2015

⁷⁶ Illicit Financial Flows, Report of the High level Panel on Illicit Financial Flows From Africa, January 2015 p.23

Kenya has 5.2 commercial bank branches and 9.5 ATMs per 100,000 adults, in contrast with Ethiopia's 2.0 and 0.3, respectively.⁷⁷ This lack of financial access extends to Ethiopian businesses. The 2012 Ethiopia Enterprise Survey highlights access to finance as the major developmental constraint for small (38 percent of those surveyed) and medium-sized (30 percent) businesses. This compares to a sub-Saharan African average of 21 percent and 15 percent, respectively.⁷⁸

This shows us that Ethiopia's vulnerabilities to such financial crimes became fare from doubt. As shown by different literature the risks of ML in the Country include high level of serious crimes such as corruption, tax evasion, human trafficking and illicit financial flows. The limited control mechanism over cash flows and instability of the Region (Horn of Africa) can make things more serious than estimated.⁷⁹

3.2 The Banking services in Ethiopia visa-a vise The Technological advancement in the Banking sector

The history of formal financial system in Ethiopia is attached to the establishment of Bank of Abyssinia just a century back. Modern banking in Ethiopia began in 1905 with the Bank of Abyssinia, a private company controlled by the Bank of Egypt. In 1931 it was liquidated and replaced by the Bank of Ethiopia which was the bank of issue until the Italian invasion of 1936.⁸⁰ Currently, the number of private commercial banks in Ethiopia reached nineteen, 16 private and 3 public/government banks (including Construction & Business Bank that going to be merged under CBE). Compared to most countries, Ethiopia has taken a cautious approach toward the liberalization of its banking industry. For all intents and purposes, its industry is closed and generally less developed than its regional peers. The industry comprises one state-owned development bank and 18 commercial banks, two of which are state-owned, including the dominant Commercial Bank of Ethiopia (CBE), with assets accounting for approximately 70 percent of the industry's total holdings.⁸¹

⁷⁷Global Center on cooperative Security, The Role of Public and Private Sector Banking in Ethiopia's Future Economic Growth, September 2014, p7-13

⁷⁸ Ibid

⁷⁹ Ibid

⁸⁰Bekezela Ncube, & Financial Standards Forum, Standards Forum, Country Brief: Ethiopia, March 24, 2008. P. 3-4

⁸¹ Ibid

Thus, although mismanaged financial development can lead to financial crises, forming policies that promote successful financial development can greatly improve the environment for economic growth. Ethiopia would gain security benefits in addition to economic benefits from the development of private sector banking. The current foreign exchange control regime means that illicit finance, such as the proceeds of smuggling or currency brought into the country by immigrant workers, most likely uses transference channels that are outside the regulated banking system.

With these money flows occurring outside the narrow banking system, it is more difficult for Ethiopian authorities to regulate and disrupt these flows because the criminals are using methods that are inevitably more opaque than those that are closely and transparently regulated in the formal banking industry.

Although the Ethiopian government is believed to have shut down some networks that were operating illegally, monitoring their usage would be challenging for any government.

By allowing private sector banking to expand in conjunction with the relaxation of the current foreign exchange control regime and the continued rise of AML/CFT compliance standards driven by the Financial Intelligence Centre (FIC), the government would likely improve the extent to which the financial system can be used to combat money laundering, terrorism financing, and other forms of illicit finance.

To ensure that private sector banking growth does not expose AML/CFT efforts to greater vulnerability, the FIC will need to maintain the improved standards of training and reporting that it is instilling in banks and their employees.

In addition, the FIC must increase its capacity to deal with the inevitable increase in cash transaction and suspicious transaction reports.

The expansion of the Ethiopian banking sector in support of economic development will inevitably involve greater international connections, bringing with them new and expanded correspondent banking relationships. These correspondent relationships are valuable for supporting international trade but are generally recognized as a weak link in the international financial transmission system and will present potential AML/CFT vulnerabilities for Ethiopia.⁸² The AML/CFT proclamation 780/2013 highlights the importance of maintaining tight control

⁸²Global Center on cooperative Security, The Role of Public and Private Sector Banking in Ethiopia's Future Economic Growth, September 2014. Pp 2-8

over and knowledge of correspondent banking relationships, and a close focus on this area of development will be an important task for the FIC and other Ethiopian authorities.

One of the main objectives of financial institutions is mobilizing resources (in particular domestic saving) and channeling them to the would-be investors. This intermediation role of financial institutions takes different forms in different economic systems.

This new change in policy brought about a significant change in the functioning of the financial sector. Not only is the financial sector is going to serve the private sector, which hitherto had been demonized, but also new private financial institutions were emerging. Equally the role of the Ethiopia's central bank (named National Bank of Ethiopia, NBE henceforth) was also reformulated.⁸³ Thus, financial sector reconstruction was the top item in the government's agenda.

Currently the financial system of Ethiopia is very underdeveloped. There is no stock exchange and of the total nineteen banks that exist, sixteen are private banks the rest three are state owned and dominate the sector. There are no foreign banks in the country, and the system remains isolated from the effects of globalization while policy-makers fear that liberalization will lead to loss of control over the economy.

Although Ethiopia is a country in which the adoption and diffusion of modern banking system is yet not well developed; no doubt that the currently practicing technology can have its own negative effects. Thus there are some adverse effects of the electronic banking system particularly in combating money laundering in Ethiopia.

Globalization involves the international integration of capital, technology, and information in a manner resulting in a single global market and, to some degree, a global village.⁸⁴ This integration enables individuals and corporations to reach around the world faster than before so banks could offer telephone banking facilities for financial services and reach with further advancements in technology, banks were able to offer services, through electronic instrument through the use of intranet propriety software.

⁸³ Alemayehu Geda (1999a) 'A Consistent Macro Database of Ethiopia' (Background Paper Prepared for Ethiopian Economic Association, Addis Ababa).

⁸⁴Thomas L. Friedman, The Lexus and the Olive Tree: Understanding Globalization(New York, NY: Farrar, Straus, Giroux, 1999).

However, the same aspects of globalization that have expanded opportunities for free-market capitalism as well as the technological advancement in modernizing the banking services also have resulted in different risks such as regulatory risk, operational risk, and reputational risk.

Money Laundering techniques have become so complex and fluid that the perpetrators are always very cunning in circumventing the laws. They avail themselves of information/communication technology such as internet connectivity to perpetrate the crime.

Money laundering is an age-old criminal activity that has been greatly facilitated by electronic banking because of the anonymity it affords. Once a customer opens an account, it is impossible for banks to identify whether the nominal account holder is conducting a transaction or even where the transaction is taking place. To combat money laundering, many countries have issued specific guidelines on identifying customers. They typically comprise recommendations for verifying an individual's identity and address before a customer account is opened and for monitoring online transactions, which requires great vigilance.

3.3 The Revised Ethiopian AML Law and the FATF Approach

Ethiopia's efforts to combat money laundering and terrorist financing are relatively recent. It was in 2009 that a first comprehensive law was adopted but the implementation of a preventive system for money laundering and terrorist financing was started in 2012.⁸⁵ Truly speaking the first Ethiopian AML law, this was enacted in 2009, used to show the country's commitment to combat Money Laundering and Terrorist Financing (ML and CFT). But the law did not fully address all the basic issues according to the International standards. The writer does not want to discuss the gaps of the former law further.

It was in 2013 that this first and historical law on the area replaced by the revised law, The Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation No. 780/2013, was more or less tried to fill the gaps of the first law, proclamation No.657/2009. Even though there are some issues that need to be clearly addressed by the proclamation, that to be discussed in the next section, generally the law was comprehensive.

The revised law, The Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation No. 780/2013, which classified in to seven parts came with 31 additional

⁸⁵ Ibid

Articles, (with total 58 Art) repealed the Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation No. 657/2009 and Article 684 of the Criminal Code.

Beside this the Regulation that facilitates the implementation of the Proclamation, Regulation No. 171/2009 was issued as stated under Article 21(1) of Proc. No. 657/2009. The National Bank of Ethiopia (NBE) has introduced and applied directive on Customer due Diligence of Banks Directive No SBB/46/2010, customer due diligence (CDD) standards across all banks and supervises the financial sector's compliance activities as required by the AML law and related legislation.

Recently The Council of Ministers issued Regulation No 306/2014 to implement the Revised Proc. No. 780/2013 and Article 37 of the same proclamation. This regulation published in the Federal Negarit Gazeta on June 3, 2014. This was another effort made in strengthens the legal system.⁸⁶

Ethiopia has other National laws that can directly or indirectly contribute to the AML legal regime. Some of these are:-

- Both Anticorruption laws (Proclamation No. 433/2005), The procedure and rules of evidence on corruption cases, (Proclamation No. 434/2005), and their subsequent regulations;
- Antiterrorism Proclamation No. 652;
- Laws on disclosure and registration of assets of government officials (Proclamation No. 668/2010);
- Proclamation No. 731/2012, Banking and insurance proclamations, regulations, and directives.
- The new Ethiopian Criminal Code, proclamation no. 414/2004
- The Ethiopian Criminal Procedure Code, proclamation no.185/1961
- Commercial Registration and Business Licensing Proclamation No. 731/2012;
- Payment System Proclamation No. 718/2011 Authentication and Registration of Documents Proclamation No. 467/2005

Actually until the end of 2012, Ethiopia was not member of international organization such as FATF. But Ethiopia recently joined the regional FSRB, the Eastern and Southern Africa Anti-

⁸⁶Council of Ministers issued regulations on January 24, 2014; to provide "Procedures for Freezing of Terrorist's Assets"

Money Laundering Group (ESAAMLG) in August 2013, and it believed that it can have great impacts in strengthening Ethiopia's regional cooperation on AML-issues and beginning the process to submit a membership application to Egmont.

Beside these Ethiopia has ratified a number of regional and international instruments that directly support its AML/CFT regime such as:-

- the UN transnational organized crime convention,
- the UN Vienna convention against drugs and psychotropic substances and related Protocols
- Organization of African Unity anticorruption conventions,
- The IGAD mutual legal assistance convention,
- The IGAD extradition convention, and
- The UN action plan that committed Ethiopia to implement UN Security Council Resolutions 1267 and 1373.⁸⁷

Although the country's effort in strengthening its AML/CFT legal system shows some improvement, there are areas on which more attention should be given and remain works to be accomplished. For instance strategic planning in combating ML, if we sorely examine the first five years plan (GTP) of the Country which was expired in 2015, it more focused on adequate food, health and basic education. The issue of illegal financial flows not clearly mentioned or covered. The same is true in the second GTP plan. I believe that by leaving aside such few shortcomings, one can conclude that the Ethiopia's AML/CFT system is generally solid.

Countries need to check whether their AML institutional framework meets international standards. Especially the eight requirements those are categorized as legal system requirement can be taken as basic principles that the law of a country refer it as model law made by international standard setters. Among these principles I want to focus on Criminalization of Money laundering in accordance with the Vienna and Palermo Conventions; Laws for seizure, confiscation and forfeiture and illegal proceeds; the types of entities and persons to be covered by AML laws; and about Investigations of money laundering.

As Ethiopia follow the civil law practice, has codified laws those are emanated from the constitution, proclamations and decisions of the Federal Supreme Court as case law. AML laws

⁸⁷ Baseline Study on Anti-Money Laundering and Countering the Financing of Terrorism in the IGAD sub Region, May 2012 , Report

as criminal law solely enacted by the Federal Government and the cases that related with ML fall under its jurisdiction. Although The Directorate of Public Prosecutions under Ministry of Justice is responsible for the investigation and prosecution of all criminal cases those falls under its jurisdiction including the ML/FT cases, The Financial Intelligence Center (FIC) that established by the Council of Ministers Regulation No. 171/2009; and other competent⁸⁸ authority will take the responsibility to investigate offences, institute criminal proceedings and prosecute cases in court.

Under this sub section the Ethiopian AML laws especially the new proclamation for Prevention and Suppression of Money Laundering and Financing of Terrorism will be discussed in comparison with FATF and other international laws.

A. Criminalization of Money laundering

The starting place for a country to establish or improve its AML framework is by making money laundering a crime within that country. The criminalization of money laundering should be done in accordance with the *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (1988) (*Vienna Convention*) and the *United Nations Convention against Transnational Organized Crime* (2000) (*Palermo Convention*).⁸⁹

When we compare this principle with the Ethiopian AML especially the revised proclamation No. 780/2013 (Prevention and Suppression of Money Laundering and Financing of Terrorism), adopted in 2013 and which repealed the previous money laundering statutes, Proc. No. 657/2009 and Article 684 of the Criminal Code. The Revised law includes detailed provisions that adequately criminalize money laundering and terrorist financing under Article 29 (1), (a), (b) and (c) and Article 31 (1) of Proc. No. 780/2013 respectively.

What we understand from this provision is that firstly, this provision able to fulfill all material elements of the Palermo and Vienna Conventions. Secondly, Ethiopia takes a threshold approach to predicate offences by defining predicate offences as any offence capable of generating proceeds of crime and punishable at least with imprisonment for one year,⁹⁰ which means that

⁸⁸Competent authority means the Center, National Intelligence and Security Service, the police, public prosecutor or other investigative body, the Ethiopian Revenue and Customs Authority or any concerned regulatory authority.

⁸⁹The relevant provisions of these conventions are Articles 3 (1) (b) and (c) of the *Vienna Convention* and Article (6) (1) of the *Palermo Convention*. Criminalization of money laundering according to those articles is the first recommendation of FATF.

⁹⁰Recommendation 1, the 1996 version of the 40 Recommendations those countries should apply the crime of money laundering to all serious offenses, with a view to including the widest range of offenses as money laundering

any offense that is not on the designated categories of offenses list, but that is defined by the country as a “serious offense” or punished by a maximum prison term exceeding one year would also have to be designated as money laundering predicate offense by that country.

The other basic point to be raised in criminalizing ML is the issue of state of mind. According to Article 29 (1) of the revised proclamation no. 780/2013, one who suspected or accused of ML assumed to have knowledge that the property constitutes proceeds of a criminal activity, or expected that he/she should have known that the property was obtained with the proceeds of criminal activity. Similarly according to the Vienna Convention, the perpetrator’s state of mind his or her intent or purpose in committing the money laundering offense means “knowing” that the proceeds are the product of the predicate offense. Countries may extend the scope of liability, however, to “negligent money laundering,” where the perpetrator should have known that the property was, or was obtained with, the proceeds of a criminal act.⁹¹ This means the legislature of a country may decide that actual knowledge about the illicit origin of property, or that mere suspicion about that illicit origin, constitutes the requisite state of mind or mental element for obtaining convictions for money laundering. The legislature may also accept a “should have known” standard of culpability.

B. Seizure and Confiscation

Confiscation of Direct and Indirect Proceeds of Crime FATF encourages countries to adopt laws permitting a broad interpretation of the confiscation of proceeds of crime, in accordance with the *Vienna and Palermo Conventions*.⁹² In case of Ethiopia, Article 35 of the revised proclamation In the event of a conviction for money laundering or a predicate offence, or financing of terrorism, an order shall be issued by the court for the confiscation of: a) funds or property constituting the proceeds of crime, including property intermingled with or exchanged for

predicate offenses. Where countries apply a threshold approach, predicate offenses must, at a minimum, cover all offenses that are designated “serious offenses” under national law or offenses punishable by a maximum penalty of more than one year’s imprisonment (for countries with minimum penalties, more than six months).

⁹¹ *Infra n.--*, pp, 86

⁹² Paul Allan Schott. *Reference Guide to Anti Money Laundering and Combating the Financing of Terrorism, 2nd edition*. Washington DC: IMF and the World Bank, 2008. Pp 19-26

FATF encourages countries to adopt laws that permit the confiscation of the laundered property, the proceeds of laundering and predicate offenses, the instrumentalities used, or intended for use in, laundering, and property of corresponding value.⁹³

The effective enforcement of confiscation orders requires that the relevant authorities possess the powers necessary to identify, trace and evaluate property that could be subject to confiscation. This in turn requires that such authorities have the power to require disclosure or to seize commercial and financial records.⁹⁴ FATF specifically recommends that banking secrecy laws, or other privacy protection statutes, for example, should be designed so that they do not create barriers to such disclosure or seizure for these purposes.

Criminal liability and sanctions can be applied to legal persons, and persons seeking civil damages against a legal person may join their civil claim to a criminal case.

C. Types of Covered Persons and Entities

The person or entities covered under the AML laws can be seen broadly as the Financial Institution and the non financial business.

The new law, not only adequately criminalizing money laundering and terrorist financing it also includes detailed provisions on procedures to identify, freeze, and confiscate terrorist assets; issues related to DNFBPs; preventive measures such as customer identification and CDD provisions and about Politically Exposed Persons.

Under FATF recommendations, the term, “financial institutions,” is defined as “any person or entity who conducts as a business one or more of the following activities, or operations on behalf of a customer”: Acceptance of deposits and other repayable funds from the public (including private banking); Lending (including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting).⁹⁵ This is actually a functional definition rather than an institutional or designation one. The test is whether an entity or individual carries out any of the above functions or activities for customers

- a. Designated Non-Financial Business and Professions:** - The FATF recommendations were revised in 2003 to include certain designated non-financial businesses and

⁹³*Vienna Convention*, article 5; Council of Europe, Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990), article 2.

⁹⁴The Forty Recommendations, Rec. 3.

⁹⁵ Biniam Shiferaw Money Laundering and Countermeasures: A Critical Analysis of Ethiopian Law with Specific Reference to the Banking Sector. Ethiopia: AAU Law Department, 2011.

professions within coverage of *The Forty Recommendations* for the first time. The requirements applicable to these entities and professionals are more limited and apply in more limited circumstances than financial institutions.

- b. Other Potential Covered Entities and Persons:** - Finally, in a separate, and all-embracing recommendation, FATF states that countries should consider applying the recommendations to businesses and professions, other than those listed above, that pose a money laundering or terrorist financing risk. It is a matter for each country to consider which businesses or professions would be included and to determine what the appropriate response to the risk is. Examples could include dealers in high value and luxury goods (antiques, automobiles, boats, etc.), pawnshops, auction houses and investment advisers.⁹⁶

FATF recommendations impose numerous requirements upon financial institutions and non-financial businesses and professions to prevent money laundering and terrorist financing. A crucial decision for a country is to determine which entities and persons should be covered by which requirements. In this regard, all of the preventative measures apply to “financial institutions,” while certain of the preventive measures apply to certain “designated non-financial businesses and professions” on a more limited basis.⁹⁷

Corporate Liability- Money laundering often takes place through corporate entities. The concept of corporate criminal liability, however, varies greatly among different countries. Some countries, mainly those with a common law tradition, subject corporations to criminal liability laws. In countries with a tradition of civil law, corporations may not be covered by criminal laws. FATF recommends that corporations, not only their employees, be subject to criminal liability whenever possible under the general principles of a country’s legal system.³⁹ Significant civil or administrative sanctions could be a sufficient substitute in cases where the legal or constitutional framework does not subject corporations to criminal liability.

the new law, not only adequately criminalizing money laundering and terrorist financing it also includes detailed provisions on procedures to identify, freeze, and confiscate terrorist assets; issues related to DNFBPs; preventive measures such as customer identification and CDD provisions and about Politically Exposed Persons.

⁹⁶Yalemie Temesgen Demeke, Anti Money Laundering Software Framework for Ethiopian Banks and Financial Agents, Ethiopia: AAU, Department of Computer Science, June 2014

⁹⁷The Forty Recommendations see generally Recs. 5–25.

3.4 The Role of the Banking Sector vs. The new laws

Banks as financial institutions shall oblige to carry out or take some steps that stated by the new laws. For instance identification of customers; their duty to report suspicious transactions; and the duty to keep all the necessary records are some of the obligation of banks that the new laws need to be fulfilled as its preventive objective.

i. Know Your Customer (KYC) and Customer Due Diligence (CDD)

Know your customer KYC and customer due diligence can be taken as basic principles that serve as tools in fighting money laundering and CFT in all anti money laundering legislations and regulations of any country over the world. KYC helps to identify the true identity and beneficial ownership of accounts, source of funds, the nature of customer's business and reasonableness of operations in the account of one's business by doing these banks able to know the customer with whom they are dealing and minimize the risk of money laundering and financing of terrorism. We can say that know your customer, KYC is all about standards set out in Customer due diligence thus intended to benefit banks beyond the fight against money laundering by protecting the safety and soundness of banks and the integrity of banking systems.

The Financial Action Task Force (FATF) obliges financial institutions to undertake customer due diligence measures, including identifying and verifying the identity of their customers, when establishing business relations; carrying out occasional transactions; there is a suspicion of money laundering or terrorist financing; or the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.⁹⁸ This means the AML legislations of any country in whatever way must able to oblige their banks to identify their customers before making business relations with them.

Similarly the new Ethiopian AML law, proclamation no. 780/2013 under its Article 6 (1) and (3) obliges the financial institutions and designated nonfinancial businesses and professions to take appropriate steps to identify and assess their risks of money laundering and financing of terrorism as well as to carry out customer due diligence measures before establishing business relations with or opening an account for a customer.

⁹⁸Recommendation 5, of the Forty Recommendations of the Financial Action Task Force (FATF), accessed on www.fatf.org.com.

Financial institutions and designated nonfinancial businesses and professions shall take appropriate steps to identify and assess their risks of money laundering and financing of terrorism. When conducting this risk assessment, any information provided by the Center under Article 13 (1) of this Proclamation shall be fully taken into account.⁹⁹When elaborated further, a financial institution or a designated nonfinancial business or profession shall carry out customer due diligence measures before establishing business relations with or opening an account for a customer as well as before carrying out a transaction for a customer who does not have an account or is not in an established business relationship with the financial institution or designated non-financial business or profession.

Financial institutions and designated nonfinancial businesses and professions shall take appropriate steps to identify and assess their risks of money laundering and terrorist financing. When conducting this risk assessment, any information provided by the Center under Article 13 (1) of this Proclamation shall be fully taken into account.

Article 11 of the same proclamation obliges financial institutions to establish and implement internal policies and controls against money laundering and financing of terrorism that manage and mitigate effectively the risks identified under Article 6(1) or by the Center under Article 13(1) of this Proclamation, and monitor the implementation of such policies and controls and if necessary enhance them.

ii. Suspicious and Cash Transaction Reports (STR) and (CTR)

Reporting of suspicious transaction is one of the major duties given to financial institutions especially banks. It is also a fundamental element of international anti-money laundering systems that require financial institutions including banks to report their suspicion to the concerned authority.

Reporting suspicious transactions would obviously facilitate the detection of predicate offences, increase the costs of money laundering and consequently prevent and/or reduce crime, So Banks in Ethiopia are required to report to the Financial Intelligence Center (FIC) when they suspect or have reasonable ground to suspect that funds are proceeds of crime and all suspicious transactions regardless of the amount of transactions including attempts. Article 2 (23) of proclamation no. 780/2013 defines "suspicious transaction" as a transaction referred to in Article

⁹⁹ Article 6 (1) and (3), FDRE, Proclamation no. 780/2013

17(1) of this Proclamation.¹⁰⁰ All Ethiopian Banks are responsible for transferring cash and suspicious transactional data within the limit to EFIC. In some situations they drop transactions without reporting so that it needs the data validation for the already sent data to FIC.

Regarding duty of banks in reporting cash transactions, the new proclamation states financial institutions and designated nonfinancial businesses and professions shall report to the Center cash transactions above the amount fixed by the Center, whether conducted as a single transaction or several transactions that appear to be linked.¹⁰¹

The new Ethiopian AML laws, (Proc. No. 780/2013 and FIC Directive No. 01/2014) impose a direct obligation on all covered financial institutions to submit suspicious transaction reports to the FIC, including attempted transactions regardless of the amount involved.

Although the Proclamation does not mention a threshold as a condition to file an STR, Art. No 39 of FIC Directive No. 01/2014 elaborates that the reporting obligations apply irrespective of the amount involved. It also provides guidance on detecting suspicious transactions and handling of STRs within a financial institution and further provides that an STR must be submitted within 24 hours of forming a suspicion. Failure to submit an STR attracts administrative and/or criminal sanctions¹⁰² (Art. 30(1)(i) of Proc. No. 780/2013).

Further, the law does not contain exemptions from CTRs. There could be millions of legitimate transactions above the threshold and consequently would increase the burden of identifying illegal transactions. However, there are certain entities including the government that needs to be exempted despite their involvement above the threshold.

iii. Record Keeping Requirements

Keeping all the necessary records and document is other duty of banks. By doing this, banks made substantiate the proper identification of customers and documenting their transactions in order to provide both an audit trail and adequate evidence for the appropriate authorities. This means a potential customer may not be as likely to try to use banks for illegal purpose if he knows that records are being maintained.

The Financial Action Task Force (FATF) recommends that financial institutions should maintain all necessary records on transactions for at least five years, both domestic and international to

¹⁰⁰ Article 2 (23) of FDRE Proclamation no, 780/2013

¹⁰¹ Article 18 of FDRE, Proclamation no. 780/2013

¹⁰² Ibid Article 30 (1) (i)

enable them to comply swiftly with information requests from the competent authorities.¹⁰³ Thus financial institutions should keep records on customer identification, account file and business correspondence for at least five years after the business relationship is ended and in case of one off transaction, it runs from the date of completion.

In case Ethiopia Article 2 (20) proclamation no. 780/2013 defines the word "record" or "document" as information of any kind, including anything on which there is a writing; a mark, figure, symbol or perforation having meaning for persons qualified to interpret it; anything from which a sound, an image or a writing can be 'produced, with or without the aid of anything else; a map, plan, drawing, photograph or similar thing; an electronic document ;any material on which data is recorded or marked and which is capable of being read or understood by a person, a computer or other device; any information stored in a computer, disc or cassette .or on microfilm or preserved by any mechanical or electronic device.¹⁰⁴

According to Article 10 (1) (a) and (b) of Proclamation no. 780/2013 Financial institutions and designated nonfinancial businesses and professions obliged to keep copies of all records obtained through the customer due diligence measures and account files and business correspondence, including the results of any analysis undertaken, for at least ten years after the business relationship has ended.¹⁰⁵ In other way banks are obliged to keep all the documents those collected to fulfill the necessary process of customer identification under KYC and CDD are needed to be gathered or documented.

Banks shall maintain all necessary records on transactions, both domestic and international, as stipulated in Ethiopian National Archives and Library Proclamation No. 179/1999.¹⁰⁶

3.5 The roles of Financial Intelligence Center (FIC) and other law enforcing agents

In previous chapter of my paper I have tried to discuss the history of formal financial system in Ethiopia, starting from the time when Modern banking system began in Ethiopia and situations in which Ethiopia can be vulnerable to ML/CFT. Obviously a lot of activities have been done by

¹⁰³ According to Recommendation 10 of the FATF, Such records must be sufficient to permit reconstruction of individual transactions (including the amounts and types of currency involved if any) so as to provide, if necessary, evidence for prosecution of criminal activity.

¹⁰⁴ Article 2(20), FDRE, Proclamation no. 780/2013

¹⁰⁵ Financial institutions and designated nonfinancial businesses and professions shall maintain copies of all records obtained through the customer due diligence measures provided under **Article 6 to 9** of this Proclamation, proclamation no. 780/2013.

¹⁰⁶ Article 9 (1) NBE, Customer Due Diligence of Banks, Directives No. SBB/46/2010

the Regime for implementations of the laws of money laundering and terrorist financing. The effort made in strengthening its legal framework, and the establishment of the Financial Intelligence Centre among those activities.

Under this section of work the role and major function of the financial intelligence center (FIC); the National Bank of Ethiopia (NBE) and other core law enforcing agents such as Ethiopian Revenue and Custom Authority, the Federal Police, Federal ethics and Anticorruption commission will be discussed. Generally their regulatory and monitoring role will be analyzed.

A. The Financial Intelligence Center (FIC)

No matter the difference in structural frame working developed among countries, the Financial Intelligence Center (FIC) is the main body that the lion share of the power in combating Money Laundering and Financing of Terrorism is given.

In general the FIC has given the following major power and functions under both the new AML, proclamations number 780/2013 and its establishment regulation. These are collection and centralization of Information, investigation and regulation function, national and international information exchange and awareness creation.¹⁰⁷

Firstly the FIC's power to collect information related to ML/CFT is used in gathering/collecting and centralizing dispersed information then disseminating such information will make data accessible and create suitable condition to detect money laundering activities. Secondly Investigation and regulation function the FIC is empowered to investigate cases that related with money laundering and terrorist financing based on the information acquired from the concerned body. Further, the Centre will play a pivotal role in filtering and analysis of the information obtained from responsible persons as a repository organ.

Thirdly the FIC has the power to share financial intelligence with other financial intelligence units or concerned organs in order to be effective in the fight against money laundering both at national and international level.¹⁰⁸The AML law provided the FIC with the right to enter into memoranda of understanding (MOUs) with government agencies and other FIUs to facilitate information sharing and technical assistance.

Lastly the FIC is responsible for problems that can be created because of lack of awareness. Since it is possible to prevent or reduce crime with the help of society. Money laundering in the

¹⁰⁷FIC Establishment Regulation No 171/2009, Art 3(1) and Art 13

¹⁰⁸ Article 14 (1), FDRE Proclamation No. 780/2013

country is a recent phenomenon which is new to professionals let alone the layman. So the FIC is expected to create awareness about money laundering.¹⁰⁹

The legal provisions with respect to the establishment, powers and functions of the Financial Intelligence Center (FIC) are set out in Proclamations No. 780/2013 and the Council of Ministers Regulation No. 171/2009. The FIC was established in 2009 as an autonomous government body (having its own legal personality) under Article 3 of the Financial Intelligence Center Regulation No. 171/2009 which was issued under Article 21(1) of Proc. No. 657/2009.¹¹⁰

Article 8 of Proc. No. 780/2013 and Article 35 of FIC Directive No. 01/2014 clarify that intermediary financial institutions are required to keep a record, for at least five years, of all the information received from the ordering financial institution or another intermediary financial institution. This is because the applicability of the Directive to intermediary financial institutions has been specifically clarified elsewhere in other requirements of the Directive.

Article 25 (1) of the proclamation states that the judicial organs may authorize crime investigation authorities for a specific period for the purpose of obtaining evidence of money laundering or financing of terrorism or tracing proceeds of crime, in this case the law does not designate any specific investigative authorities. One may argue that this is obvious for the reason that the Federal police authorized to investigate crimes under jurisdiction of federal courts based on Article 6 of Proc. No. 720/2013.

Even though different legislations gave some power or authority to the Federal Ethics and Anti Corruption (FEACC) as well as to The Ethiopian Revenue and Customs Authority to investigate and prosecute corruption under Article 6(3) of Proc. No. 433/2005) and to investigate and prosecute violations of customs and tax laws under Article 16 of Proc. No.587/2008) respectively; it seems that the responsibilities and powers of law enforcement and investigative authorities those are set out in Articles 25 and 26 of the same Proclamation gave a broad authority for investigation of ML/TF offenses to these unclearly pointed specified bodies. But it clearly contradicts with the recent proclamation that going to give all the investigation power the public prosecutor of the Federal Government.

¹⁰⁹Article 13 (1) and (2) of FDRE Proclamation No. 780/2013

¹¹⁰Article 5 of the Council of Ministers Regulation 171/2009 In addition it has been given the responsibility to supervise “independently or in collaboration with regulatory authorities” financial institutions and DNFBPs, to supervise NPOs and to receive MLA and extradition requests.

Generally the limited use of financial intelligence and limited extent to which competent authorities are requesting information from the FIC is likely impacted by types of STRs being received, analyzed and disseminated to law enforcement.

Currently the Center, (FIC) is trying to perform its duty with very little man power, during my discussion with its officers there were only six experts in general. Thus the center as regulatory and coordinating entity, it did not fully structured and not got enough attention of high government authorities. However with all these and other problems, the center has been doing a lot of activities. The FIC started to receive STRs and CTRs of all transactions above the threshold of 300,000 birr, which is (equivalent to about 15,000 US Dollar) in hard copy from banks only. For WT (wire transfer) the threshold is above 1000 US Dollars or above 20,000 birr. Reportedly, some participants in the banking sector complained that the threshold of 200,000 birr for a CTR is not practical because the Ethiopian business community, being cash intensive, regularly handles transactions exceeding that amount.¹¹¹

Since 2012-2016 the Center had received more than 9,074 suspicious transactions from different financial institutions (from public and private banks). The center has investigated more than 500 cases during same period. From these 318 cases sent to related body (authority) such as EEAACC and Ethiopian Revenue and Customs Authority (ERCA). It made charge on 98 cases and brought to court, 46 of these cases got last decision the rest 52 cases are pending. The Center has other many cases yet under investigation.¹¹²

B. The National Bank of Ethiopia

The National Bank of Ethiopia (NBE) has introduced and applied customer due diligence (CDD) standards across all banks and supervises the financial sector's compliance activities as required by the AML law and related legislation. NBE, as Central bank of the Country it had a great responsibility in regulation as well as monitoring the banking business as a whole. Accordingly it expected to launch operation that makes sound use of guidelines set according to the principles of Know Your Customer, Suspicious Transaction Report and Cash Transaction Report requirements.

¹¹¹ Interview made with The Officer of Ethiopian Financial Intelligence Center (FIC) chief investigator, Vice Commander Tasfaye G/ Igziabiher on 30, September/2016.

¹¹² Ibid

NBE is responsible for controlling the banks and financial agents how to process banking activities. There are transactions which needs restructuring and validating the transactions data send to Financial Intelligence Center by banks or agents.¹¹³

As KYC and CDD policy is an integral and prerequisite part for the business and activities of Banks and Financial Agents as well as it is most closely associated with the fight against money laundering, the anti money laundering proclamation of Ethiopia recognizes the role to be played by financial institutions using the KYC and CDD standards in fighting money laundering. Based on this the NBE has issued a directive on Customer Due Diligence of Banks Directive, which is highly focused on KYC policy.

National Bank of Ethiopia should monitor and validate the data which is transferred to FIC. This is because the money launderer can perform remittances in different agents and with a multiple incoming messages under the amount limit which affect the country by money laundering.

C. Other core law enforcing agents

The Role and Responsibility of other Core Law enforcing Agents such as Ethiopian Revenue and Custom Authority; Other law enforcing agents of The Federal Government.

Other than the FIC, some of the main institutions responsible for the implementation of the AML/CFT regime are the Ministry of Finance and Economic Development, the Ministry of Justice, the National Bank of Ethiopia, the Federal Ethics and Anti-Corruption Commission, the Federal Police Commission, the Ethiopian Revenue and Customs Authority and the National Intelligence and Security Service.

The Federal Police and the Federal State Prosecutor have investigated and prosecuted cases of terrorism financing and money laundering. Statistical reports from the Ministry of Justice revealed that, 89 cases of terrorism financing have been investigated or are in the process of being prosecuted since 2012- 2014. During the same period, 141 cases of money laundering have been investigated and prosecuted. Most of these cases are pursued under the 2009 AML and antiterrorism laws.¹¹⁴

The FEACC investigated 45 corruption cases for ML between July 2010 and March 2014, despite receiving only 2 disseminations from the FIC. On the other hand, corruption is not the

¹¹³ National Bank of Ethiopia , annual report 2014/15

¹¹⁴The Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG),Mutual Evaluation Report Anti Money Laundering and Combating of Terrorism, May/2015, p. 20

only risk: other significant risks include tax fraud/evasion, human trafficking and migrant smuggling, arms trafficking and smuggling of contraband and the profit made from providing illicit financial services. The fact that these other risks have not been addressed at all (or to a limited extent), weighs heavily to limit the overall effectiveness of Ethiopia.¹¹⁵

The federal prosecutor has filed a charge document to the federal high court on September 9, 2014 on Seventeen foreigners and Ethiopians suspected of tax and VAT evasion, money laundering and false accounting charges. The suspects are charged of tax and VAT evasions that amounts in excess of 95 million birr. This case was pending till my last reporting.

3.6 The Experience of Selected Public and Private Banks

In my discussion under previous chapter I have tried to show how and where ML processed as well as the preventive role of the AML laws.

Under this subsection the experiences of selected government and private banks discussed. Currently there are 19 banks in Ethiopia; 3 government/ public (including Construction & Business Bank, that going to be merged under CBE) and the rest 16 are private banks.

I made my discussion with some selected government and private banks' higher officials of the Head office especially with Compliance and Risk management Directorate of the banks on the enforcement of AML laws. Similar discussions made with higher officials of Financial Intelligence Center (FIC) and National Bank of Ethiopia. The overall points of discussion or the focus area is attached as annex.

Commercial bank of Ethiopia (CBE) is one of the oldest government/public banks has around 9000 branches under its 15 Districts over the country.¹¹⁶ The bank has been doing a lot of activities in implementing AML laws. Since 2012-2016 it had reported to FIC more than 6000 suspicious transactions that came from its Districts. But the basic mater which to be raised together the identification of customers and suspicious transactions as prerequisite part for the business and activities of Banks and Financial Agents. This is either improperly gathered and reported, or not given enough attention. For my discussion in 2014 the total Number of STRS received from Financial Institutions was 490 while the total Number of CTRs received from Financial Institutions was only 849,338.

¹¹⁵Ethiopian Federal ethics and Anti corruption Commission (FEACC), 2014 Report.

¹¹⁶ An Interview made with Mr. Gebre igzabiher Hagos, Vice Director of Compliance and Risk Management Directorate of CBE Head Office on 1st October, 2016 Addis Ababa

Wegagen bank, one of private banks in Ethiopia told us that various IT projects have also been actively running to enable and realize the Bank's planned businesses such as Agency Banking, Messaging as well as Interest Free Banking.¹¹⁷ The bank is preparing different programs including anti money laundering modules in order to fully complete the setting-up of a Disaster Recovery System. This system will enhance the stability, security and functionality of the CORE-Banking system.

The Bank's Risk and Compliance Management Directorate, as a functional organ that has been independently organized in accordance with national and international standards, basically stands to ensure that the Bank's strategic directions are pursued in due manner. The risk management framework of Wegagen Bank basically encompasses the identification, measurement, control and monitoring of major types of risk including credit, liquidity, market, strategic, and operational risk.¹¹⁸

Generally Financial and nonfinancial institutions shall carry out customer due diligence measures: Article 6 (6) Financial institutions and designated nonfinancial businesses and professions shall exercise ongoing due diligence with respect to each business relationship and closely examine the transactions carried out to ensure that the transactions are consistent with the knowledge of their customer, the customer's commercial' activities and risk profile and, where required, the sources of the customer's funds. But the core of the CDD requirements are laid out in Proc. No. 780/2013 and DNFBPs are obliged under that law. However, as noted, the FIC Directive on customer due diligence is applicable only to financial institutions and not to DNFBPs.

Neither the FIC and NBE as the regulator, nor law enforcement authorities in Ethiopia, have prioritized taking action to prohibit these service providers, nor has a plan been created to incorporate these service providers to the formal system. Anyhow during my interview with the officers of both the NBE and CBE they told me that they are giving continues training on Customer Identification and Due Diligence and Training to employees (for their staff) in order to create awareness on the policy. In addition I observed their effort in implementing the policy on Anti- Money laundering which focus on the core activities under the policy that includes: Establishment of reliable information system and database for customer profiles and other

¹¹⁷ Wogagen Bank Annual Report of 2015

¹¹⁸ Ibid

relevant information centrally stored and accessed; Cooperation with other institutions such as city, sub-city, town and kebele administration offices.

3.7 Major Problems Associated with the enforcement of AML in Ethiopian Banking sector

1. In the previous chapters I've tried to discuss the general concepts of ML and the process in which the crime is committed, taking some main predicate offences such as drug trafficking, corruption, tax evasion, human trafficking, and others. As Money laundering is group and trans-boundary crime, it can occur in any country at any time. However there are some people including law students (lawyers) who argue that such crime is not that much threat for Ethiopia, so having such laws i.e. AML laws is not necessary at this economic development stage of the country, unless to satisfy the need of International organizations like IMF and WB.

But when the current condition of the country is examined, no doubt such argument will be baseless. If we take *tax evasion* as one of the predicate offences; that can directly or indirectly related with corruption (*abuse of power*) especially when it is related with hiding and/or fledging of foreign currency, it will be easy to understand the current conditions in the country. From the whale cases those brought to the FIC since 2014-2016, more than 20 cases are fall under tax evasion that related to hiding and/or fledging of foreign currency.

2. Either because of low level of financial sector development or/and lack of trained man power there are serious problem in gathering and transmitting information. I have tried to visit some public (government) and private banks unfortunately; as there is no centralized and collected statistics on ML/CTF; I could not get enough information that directly related with my study. Surprisingly, one private bank had sent me back without getting any information from some banks even from their front line staff.
3. The FIC, which is one of the main institutions responsible for the implementation of the AML/CFT regime, is not yet well organized with networked IT and trained man power. Just on the day I made discussion with officials of the Center they have only 2 investigator 2 cars ,of which one is old. Less than 10 supporting staff. Because of this and possibly other shortcomings the FIC and other responsible institutions can be forced to rely heavily on information provided through other means or by citizens. Although the FIC had responsibility for Training and awareness rising on more effective uses of the ML offences

among relevant agencies; it cannot sell itself to others or it cannot be well known even by some public and private bank staffs. As a result cannot be effectively used by competent authorities in Ethiopia in their investigations.

4. Again at the operational level the power given to the FIC and other authority which are set out under Articles 25-28 of Proc. No. 780/2013, in investigations and prosecution of ML as criminal act may contradict with the recent restructuring of the Ministry of Justice in to Federal Supreme Prosecutor by intending that all the investigation and prosecution of any crime to be administered by this newly organized institution. This means according to this restructuring any other governmental offices cannot investigate money laundering or other offences, institute criminal proceedings and prosecute cases in court, as previously did by some Federal government offices such as the Federal Ethics and Anti-corruption Commission to investigate and prosecute corruption offenses and the Revenue and Customs Authority to investigate and prosecute tax and customs offenses.
5. Actually any natural or legal person who wishes to provide money or value transfer services in Ethiopia is required to be licensed. But even though it is difficult to get any credible estimates on the volume of illegal (or unlicensed) MVTs activity occurring in Ethiopia; while the law obliges that all providers of money or value transfer services are covered under Proc. No. 780/2013 as reporting institutions for AML/CFT purposes still there are some criminal actions have been taken to deal with unlicensed MVTs providers. This shows that to the absence of government action to identify those and bring them within the purview of government supervision.
6. Article 6 (8) states that Financial institutions and designated non financial businesses and professions shall have appropriate risk management systems to determine if a customer or a beneficial owner is a politically exposed person, and, if so obtain approval from senior management before establishing a business relationship with the customer. Again it obliges the financial institutions to take all reasonable measures to identify the source of wealth and funds of the customer; and provide increased and ongoing monitoring of the business relationship with the customer.
7. The predominant feedback of both the public (commercial banks) and some private banks in Ethiopia was that they regard AML mainly either as a means of risk management, as a waste of time and resources, or as a major cost driver. Some of the banks even perceive it as

negatively affecting profits as it scares away customers due to more complicated and comprehensive KYC procedures, and because clients are afraid of a softening of bank secrecy.

From my discussion with some banks' management I understand that they think more rigid AML specifications have the potential to limit business opportunities. For example, often when you believe that a person is involved in money laundering activities and you refuse to provide services to him, you lose some business such as profits from transaction settlement, commission, etc.

8. Manual documentation is adding to the woes for cash transactions. Our AML systems are connected to retail debt systems or cash transactions, which make up for 90% of Ethiopian banks total transactions, cannot be monitored automatically.¹¹⁹ Beside this as e-banking is more spreading, the frontline-based suspicious transaction monitoring system becomes even more insufficient, as bank staff has less face-to face contact with customers. Thus suspicious transactions are still mainly identified by frontline staff of the bank that perform AML on top of their regular tasks.

¹¹⁹ The Federal Democratic Republic OF Ethiopia Detailed Assessment Report On Anti- Money Laundering And Combating The Financing Of Terrorism, Report. May 2015

CHAPTER FOUR

4. Conclusion and Recommendations

4.1. Conclusion

Obviously, the country has made considerable regulatory progress in developing its AML and CTF regime in the last few years. This includes legislative reform, the strengthening of enforcement mechanisms, and implementing international cooperation initiatives. But still the main enforcing and regulatory institutions such as FIC, are not well structured and organized. In the last four years the FIC had received more than 9,074 suspicious transactions while it has investigated not more than 500 of those suspected transactions. Lastly cases that brought to court were only 98.¹²⁰ I did not come across a case that brought against financial or non financial institutions for non-compliance with customer due diligence (CDD) requirements. This is not because of the absence of regulation, but rather the problem of enforcing body/enforcement of law.

Banking service such as unlicensed money or value transfer or/and Offenses of illegal hawalla and foreign currency smuggling are likely to become increasing, especially in border area of the country. More should be done by the government of Ethiopia to assess and make the people to understand the risks of illegal (or unlicensed) MVTs providers and address the issue.

Now a day corruption and corruption related crimes highly increasing. Among these corruption that related with land is become very serious problem in the country. In contrary financial and non financial institutions especially banks, are not at position to exercise all their power in taking different reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as politically exposed persons as stated in the new ML proclamation as well as in related banking regulations. In the contrary there are lower investigative efforts by law enforcement agencies, despite a falling number of suspicious transactions in general.

The other main point I got in the feedback of both the public (commercial banks) and some private banks in Ethiopia was that they regard AML mainly either as a means of risk

¹²⁰ supra, n. 112

management, as a waste of time and resources, or as a major cost driver. Some of the banks even perceive it as negatively affecting profits as it scares away customers due to more complicated and comprehensive KYC procedures, and because clients are afraid of a softening of bank secrecy.

4.2. Recommendations

1. Having good laws can't guaranty its enforcement; there should be well structured and organized institutions. The FIC which currently working with a few man power must get attention and restructured with all necessary well trained man power, logistics and finance. Next supporting the staff in capacity building by giving continues on job training for senior AML experts and assisting its leadership in laying a solid foundation for capacity building going forward.
2. The people factor is aggravated by the high attrition rate of counter staff, quitting the FIC/bank or being transferred internally. Senior AML experts are usually rare, and not all staff assigned to AML duties receives proper training.
3. Assisting the Center as well as the banks to use technological or advanced IT networking system for both customer due diligence measures and for suspected transactions.
4. There should be clear regulations or guide line that helps for the application of the law that recently issued on relationships between the NBE and FIC, as well as the their relations with other banks.
5. More should be done by the government of Ethiopia to understand the risks of illegal (or unlicensed) MVTS providers and address the issue. Ethiopia must able to take action to identify persons who could be carrying out these services without a license and apply proportionate sanctions to them.
6. The designated non financial institutions and professions seem as being neglected in applying the KYC and even in reporting suspected transactions. So The NBE should also issue guidelines on Know Your Customer, Suspicious Transaction Report and Cash Transaction Report requirements in order that the non financial business and professions shall carry out both the KYC and customer due diligence measures with respect to each

business relationship and closely examine the transactions carried out as the financial institutions like banks doing.

7. There should be adequate internal control mechanisms and administrative rules, beyond regulatory requirements, have to be established.
8. Mechanisms should be established to control the Non Designated business, such as auditors, lawyers and other private organizations dealing or handing their clients financial matters.
9. For an effective combating of money laundering, banks need to take AML away from the frontline. Since identification of suspicious transactions that are mainly done by the frontline staff, which is mainly using manual documentation is not enough and/or fruit-full. Computerized way of controlling will widen the task to other staff other than the front line.

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