



**IN THE THIRD SESSION OF THE EIGHTH  
PARLIAMENT OF THE FOURTH REPUBLIC OF  
GHANA**

**REPORT OF THE  
COMMITTEE ON CONSTITUTIONAL, LEGAL  
AND PARLIAMNETARY AFFAIRS**

**ON THE**

**CONTRACTS (AMENDMENT) BILL, 2022**

***JUNE, 2023***

PARLIAMENT OF GHANA LIBRARY  
PARLIAMENT HOUSE  
OSU - ACCRA

**REPORT OF THE SELECT COMMITTEE ON CONSTITUTIONAL,  
LEGAL AND PARLIAMENTARY AFFAIRS ON CONTRACTS  
(AMENDMENT) BILL, 2022**

**1.0 INTRODUCTION**

- 1.1 The Contracts (Amendment) Bill 2022 was laid in Parliament on 17<sup>th</sup> February, 2023 by Hon. Minister for Justice and Attorney-General, Mr. Godfred Yeboah Dame, pursuant to Article 106 (1) of the 1992 Constitution.
- 1.2 The Bill was subsequently referred by the Rt. Hon. Speaker to the Committee on Constitutional, Legal and Parliamentary Affairs for consideration and report pursuant to Article 106 (4) of the 1992 Constitution and
- 1.3 Order 179 of the Standing Orders of Parliament.

**2.0 DELIBERATIONS**

- 2.1 In attendance at the meeting to assist the Committee in its deliberations were Justice Dennis Adjei (Justice of the Court of Appeal), Hon Diana Asonaba Dapaah (Deputy Attorney-General and Minister of Justice), and officials from the Office of the Attorney-General's Department.
- 2.2 The Committee is grateful to all the invited participants for their invaluable contributions.

### **3.0 REFERENCE DOCUMENTS**

The Committee referred to the following documents during its deliberations:

The 1992 Constitution of the Republic of Ghana;

The Standing Orders of Parliament; and

The Contract Act, 1960 (Act 25).

### **4.0 BACKGROUND AND JUSTIFICATION FOR THE BILL**

The Contracts Act, 1960 (Act 25) came into force on 22<sup>nd</sup> December, 1960.

- 4.1 Act 25 did not make explicit provision regarding persons authorised to enter into contract on behalf of the State. There were also no provisions on a common pathway for the calculation of interest due on Government contracts.
- 4.2 The lack of restrictions on persons qualified to enter into contract has the tendency to allow any persons in Authority to enter into contract without the knowledge or authorisation of the sector Ministers who are vested with the overall responsibility and executive mandate over the administration of their sector.
- 4.3 The liberalisation regarding mode of calculation of interest due parties in Government contracts also have the tendency for abuse of discretionary powers by persons who enter into contract on behalf of the State.
- 4.4 The Bill, therefore, makes explicit provisions for persons who are authorised to enter into a contract or transaction on behalf of the Government.
- 4.5 The Bill further provides for the payment of interest on any sum of money due under a contract or a transaction entered into on behalf of the Government to be calculated at simple interest

- 4.6 The overarching policy intention is to protect the interest of the State with regard to interest payment and effectively reduce the cost of engaging in a contract or transaction by the State.

## **5.0 OBJECT OF THE BILL**

- 5.1 The object of the Bill is to amend the Contracts Act, 1960 (Act 25) to provide for the type of interest to be paid on a sum of money due to a party of a contract or transaction entered into on behalf of the Government.
- 5.2 It is also meant to provide for persons authorised to enter into contract or transaction on behalf of the State.

## **6.0 OBSERVATIONS**

### **6.1 Seemingly imposition of restriction on Freedom of Contract**

In explaining the reasons for the proposed amendment, the Deputy Attorney-General indicated that a need has arisen to have consistency in all State contracts with respect to payment of any interest due parties in the contract or transaction. The policy rationale is to regulate the discretionary powers of Ministers and other persons authorised by law to enter into contract on behalf of the State by limiting them to a standardised mode with respect to payment of interest. The overarching goal is to protect the interest of the State with regard to interest payment and effectively reduce the cost of engaging in a contract or transaction by the State.

The Committee however expressed concern that the proposed amendment appears to violate the principle of freedom of contract

which enjoins all parties in a contract to bargain and create the terms of their agreement, devoid of outside interference, such as State regulations. The Deputy Attorney-General, however, held contrary view. She explained that the amendment is only seeking to create a similar condition as provided under Article 181 of the 1992 Constitution, regarding prior approval of Parliament for all international transactions entered into by the Government on behalf of the State. The Deputy Attorney-General added that the proposed amendment will serve as a prior knowledge and a guide to all State authorities, as well as, other contracting parties under Government contracts regarding decisions on payment of any possible interest by the State.

## **6.2 Persons authorised to enter into Contracts**

The Committee noted that the proposed amendment is seeking to authorise only Ministers of State or persons authorised by Ministers to enter into contract on behalf of the State. The mischief the amendment is trying to cure, according to the Deputy Attorney-General, is to avoid a situation where it may be possible for persons in authority to enter into a contract on behalf of the State without the knowledge or authorisation of the Sector Minister who is vested with the overall responsibility over the administration of the Sector by the President.

The Committee however observed that the proposed amendment appears to be applicable only to the Executive Arm of Government to the exclusion of the other two Organs of Government. The Legislature and Judiciary arms of Government are not headed by Ministers and are allowed by law to enter into contract. Accordingly, further amendment has been proffered to allow other

persons authorised by law to enter into contracts on behalf of the State.

## 7.0 PROPOSED AMENDMENTS

- i. Clause 17 - **Amendment proposed**  
Subclause (1), line 2, *delete* “Government” and *replace* with “Republic”
- ii. Clause 17 - **Amendment proposed**  
Subclause (2), line 2, *delete* “Government” and *replace* with “Republic”
- iii. Clause 17 - **Amendment proposed**  
Subclause (2), (a) line 3, *delete* “or”
- iv. Clause 17 - **Amendment proposed**
- v. Subclause (2), (b) line 3, after concluding phrase *add* “or”
- vi. Clause 17 - **Amendment proposed**  
Subclause (2), add the following new paragraph  
(c) any other person authorised duly by law
- vii. Clause 17 - **Amendment proposed**

insert new subclause (6) as follows:

“A person who wilfully enters into a contract contrary to this section commits an offence and is liable on summary conviction to a fine of not less than five thousand penalty units and not more than ten thousand penalty units or to a term of imprisonment of not less than ten years and not more than fifteen years or to both”.

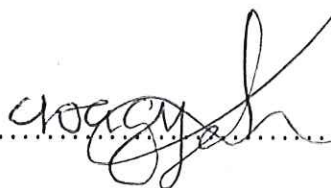
## 8.0 CONCLUSION

- 8.1 The Committee, after extensive deliberations on the Bill, is of the view that the introduction of controls into Government contracts with respect to persons authorised to enter into a contract on behalf of the State, as well as, mode of calculating interest payments due other parties in the contract is a right approach.
- 8.2 The Committee accordingly recommends to the House to adopt its report and pass The Contract (Amendment) Bill 2022 into law in accordance with Article 106 of the 1992 Constitution.

Respectfully submitted.



**HON. KWAME ANYIMADU-ANTWI**  
**(CHAIRMAN, COMMITTEE ON CONSTITUTIONAL, LEGAL AND**  
**PARLIAMENTARY AFFAIRS)**



**AKUA DUROWAA OWUSU-AGYEKUM (MRS)**  
**(HEAD, LEGAL COMMITTEES CLUSTER)**

*June, 2023*