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REPORT OF THE FINANCE COMMITTEE

ON

THE BANKS AND SPECIALISED DEPOSIT- TAKING INSTITUTIONS BILL, 2015

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**REPORT OF THE FINANCE COMMITTEE ON THE BANKS AND SPECIALISED
DEPOSIT-TAKING INSTITUTIONS BILL, 2015**

1.0 INTRODUCTION

The Banks and Specialised Deposit-Taking Institutions Bill, 2015 was presented to Parliament and read for the first time on behalf of the Minister for Finance by the Hon. Deputy Minister of Finance Mr. Cassiel Ato Baah Forson on Tuesday, 12th May, 2015. The Rt. Hon. Speaker referred the Bill to the Finance Committee for consideration and report in accordance with Article 174(1) of the 1992 Constitution and Order 169 of the Standing Orders of the Parliament of Ghana.

The Committee was assisted in its deliberations by the Hon. Minister of Finance, Deputy Ministers of Finance, the Governor of the Bank of Ghana (BoG) and his deputies and Officials from the Ministry of Finance, Attorney-General's Department and BoG. The Committee is grateful to the Hon. Minister, Deputy Ministers and Officials from the Ministry of Finance, Attorney-General's Department and the BoG for the assistance.

2.0 REFERENCE

The Committee referred to the following additional documents during its deliberations:

- The 1992 Constitution of Ghana;
- The Standing Orders of the Parliament of Ghana;
- The Banking Act, 2004 (Act 673); and
- The Banking (Amendment) Act, 2007 (Act 738)

3.0 BACKGROUND

The financial sector reforms pursued by the Government over the years have begun yielding positive results. The financial system is now relatively diversified and the number of financial intermediaries and their scale of operations have increased notably in the banking sector. Currently, the banking sector constitutes over seventy percent of financial sector assets and fifty-five percent of the banking sector is competitive, and has grown rapidly in recent years, particularly with respect to domestic banks, the banking system is fragmented, and concentration of banking assets is relatively low.

An efficient and effective banking industry is critical for the development process of the country. Generally, banks take deposits and use them to finance firms, governments and individuals. Banks provide a safe place for economic agents such as firms, organizations, and individuals to save money that is not immediately needed by their owners. In this way, banks intermediate between depositors and borrowers and transform short-term deposits into long term loans. Banks also play an important role in ensuring an efficient and effective payment system and transaction processing.

To ensure that banks are able to play their requisite role in the development process of the country, Government has taken steps to enhance the performance of the banking system. Key policies have been implemented over the past years to improve the banking sector especially in the area of banking supervision. It has consequently become necessary to focus on addressing gaps and inconsistencies in the banking laws, and deepening cooperation with regional counterparts to improve the regulation and supervision of foreign banks that are active in the country.

In addition, Government also needs to provide appropriate mechanisms to minimize financial system stability and address emerging risks anchored on effective supervisory and regulatory measures as well as the introduction of new schemes. The Bill therefore seeks to address these gaps and inconsistencies in the banking laws as well as the emerging risks.

4.0 PURPOSE OF THE BILL

The purpose of the Bill is to amend and consolidate the laws relating to deposit taking, and to regulate institutions which carry out deposit taking business.

5.0 DIVISIONS OF THE BILL

The Bill is divided into eleven (11) parts with one hundred and sixty (160) clauses and three (3) Schedules.

Clause 1 provides for the application of the Bill whiles clause 2 provides for the application of the companies Act, 1963 (Act 179).

The supervisory and regulatory authority of the Bank of Ghana is set out in clause 3 of the Bill.

Eligibility to carry on deposit-taking business is provided for in clause 4 whiles clause 5 gives the Bank of Ghana, the licensing authority.

Clause 6 prohibits a person from accepting a deposit from the general public or carrying on a deposit-taking business in or from within the country unless by or under the authority of a license issued in accordance with the Bill.

Clause 7 empowers a person who seeks to carry on a deposit-taking business to apply in writing to the Bank of Ghana for a license whiles *Clause 8* deals with the type of licenses that can be applied for.

Clause 9 provides for the pre-requisites for a license and clause 10 empowers the Bank of Ghana to issue a provisional approval for a specified license to an applicant on the terms and conditions that the Bank of Ghana considers appropriate.

Circumstances under which an invitation to the public to subscribe to shares is provided for under clause 11.

Clause 12 provides for the final approval and issuance of a banking specialized deposit-taking institution license whereas clause 13 prohibits a person from transferring or assigning a license granted by the Bank of Ghana.

Clause 14 provides for the conditions for the issuance of a license and the conditions under which an application for a license may be refused is specified under clause 15.

Revocation of a license is provided for under clause 16 and the Bank of Ghana is required under clause 17 to keep and maintain a register known as the “Central Register”.

The activities that are permissible under a banking license or a specialized deposit-taking license are set out under clause 18.

Clause 19 deals with restrictions on commercial, agricultural activities and immovable property.

Clause 20 provides for the powers of the Bank of Ghana regarding unauthorized deposit-taking business.

Clause 21 empowers the Bank of Ghana to cause the repayment of moneys by unauthorized persons and clause 22 deals with penalties for unauthorized deposit-taking business.

Under clause 23, restrictive use of a “bank” is provided for.

Clause 24, 25 and 26 provide for display of license, places of business to be licensed and representative offices of foreign banks respectively.

Under *clause 27*, a bank or specialized deposit-taking institution is required, prior to an amendment to the company name, Regulations or other instruments under which the bank or specialized deposit-taking institution was established, to furnish the particulars of the proposed amendment to the Bank of Ghana for approval.

Clause 28 to 35 deals with matters of capital and reserves of a bank or specialized deposit-taking institution. The requirement of minimum paid-up capital and capital adequacy and other capital requirements are set out under clauses 28 and 29. The

additional capital requirement in respect of special risks is set out in *clause 30* whilst clause 31 deals with capital adequacy requirements on a consolidated basis.

Notification of non-compliance with capital requirement is provided for in Clause 32 whereas Clause 33 provides a penalty for non-compliance with capital requirements.

A bank or specialized deposit-taking institution is obliged under *clause 34* to establish and maintain a Reserve Fund and clause 35 places a restriction on declaration and payment of interim or final dividend.

Clause 36 to 41 provide for the critical issue of liquidity in the deposit-taking business. Liquidity requirements is specified under clause 36.

Clause 37 empowers the Bank of Ghana to prescribe liquidity requirements under clause 36 that are to be applied on a consolidated basis.

Clause 38 gives the Bank of Ghana the discretion to impose a higher liquidity requirement than that prescribed under clause 36.

Clauses 39, 40 and 41 provide for notification of non-compliance with minimum liquidity requirements, penalties for non-compliance with liquidity requirements and maintenance of Net Open Position respectively.

Clauses 42 to 60 deal with matters of ownership and control.

Clause 42 provides for the reporting of group structures. *Clause 43* deals with registration requirement for financial holding companies while application for registration is handled under clause 44.

Clause 45 imposes a duty on a financial holding company to display at its head office a copy of the certificate for the information of the public.

Clause 46 places a restriction on the activities of financial holding companies.

Clause 47 empowers the Bank of Ghana to require the restructuring of the ownership of a bank or specialized deposit-taking institution where the bank or specialized deposit-taking institution is controlled by two or more persons.

The Bank of Ghana is also empowered to withdraw the registration of a financial holding company and require the divestiture of a bank or specialized deposit-taking institution licensed under the Bill, clause 48.

Clause 49 deals with transfer of shares affecting significant shareholding.

Clauses 50 and 51 provide for disapproval of transfer of shares and restriction or cap on ownership respectively.

Clause 52 provides for sale of businesses, mergers and amalgamations and reconstructions while consideration and review of application for approval of sale of businesses, mergers, amalgamations or reconstructions respectively are handled in clauses 53 and 54.

Penalties for non-compliance with clause 49 or 52 are set out in clause 55. Matters of corporate governance of a bank, specialized deposit-taking institution or financial holding company are provided for under clause 56.

Clause 57 imposes a duty on the board of directors or a director of a bank, specialized deposit-taking institution or a financial holding company to report of the entity's inability to meet its obligations under this Act.

Clause 58 provides for the disqualification of a director and key management personnel whereas the standard provision on disclosure of interest is set out in clause 59.

The Bank of Ghana is given the power under clause 60 to intervene in the appointment of the key management personnel of banks and specialized deposit-taking institutions.

Clauses 61 to 77 deal with restrictions on lending and investments.

Clause 61 prohibits a bank or specialized deposit-taking institution from granting advances, loans or credit facilities including guarantees against the security of the shares.

Clauses 62 and 63 deal with limits on financial exposures and financial exposure limits on a consolidated basis.

Clause 64 and clause 65 respectively places restrictions on transactions with an affiliate and purchase or transfer of certain assets from an affiliate and insider.

Clause 66 also provides for restrictions on inter-institutional placements and loans.

Clauses 67 and 68 deal with restrictions on financial exposures to insiders and their related interests and limits on financial exposures to related parties on a consolidated basis respectively.

Under clause 69, any lending on preferential terms to employees of a bank or specialized deposit-taking institution must be part of a formally-approved employment package or employee benefits plan.

Clause 70 sets out matters that a bank, specialized deposit-taking institution or financial holding company should satisfy itself of in considering the approval of credit facilities under clause 67.

A bank, specialized deposit-taking institution, or financial holding company is prohibited under clause 71 from establishing a subsidiary company without the prior written approval of the Bank of Ghana.

Clause 72 places a limit on investment in respect of a subsidiary company of a bank or specialized deposit-taking institution.

Limits on investment in respect of other institutions is provided for under clause 73.

Clause 74 imposes an obligation on a bank, specialized deposit-taking institution or financial holding company to report to the Bank of Ghana, the particulars of each large exposure, particulars of all lending to related interests, and all investment under clause 73.

Each bank and specialized deposit-taking institution has an obligation under clause 75 to maintain and implement a proper policy of non-accrual of interest on non-performing loans and provisioning for bad debts and other exposures.

With respect to the limits on foreign exchange businesses, the Bank of Ghana is empowered under clause 76 to prescribe restrictions on any foreign exchange business of a bank or financial holding company.

In furtherance of prudential limits under the Bill, the Bank of Ghana is empowered under clause 77 to impose stricter limits for all the banks or specialized deposit-taking institutions or financial holding companies for classes of specialized deposit-taking institutions.

Clauses 78 to 90 deal with accounts and audit. Guidelines on accounting standards and disclosures in financial statements is provided for under clause 78 while preparation and keeping of accounting records and financial statements are respectively catered for under clauses 79 and 80.

The appointment of an auditor by a bank or specialized deposit-taking institution is set out in clause 81 and the Bank of Ghana is required under clause 82 to appoint an auditor for a bank or specialized deposit-taking institution where the bank or specialized deposit-taking institution is without an auditor for a continuous period for three months.

The remuneration of an auditor is provided for under clause 83. Clause 84 and clause 85 respectively deals with right of an auditor to access information and the submission of auditor's report to the Bank of Ghana.

Clause 86 empowers the Bank of Ghana to periodically arrange meetings with a bank or specialized deposit-taking institution in respect of the statutory audit of the bank or specialised deposit-taking institution.

The duties of an auditor to the Bank of Ghana are dealt with under clause 87. The Bank of Ghana may require an auditor to undertake special audit or obtain additional information under clause 88. The appointment of an auditor may be terminated under clause 89.

A bank or specialized deposit-taking institution is required under clause 90 to exhibit at each of its branches or agencies in a conspicuous place throughout the year, a copy of the last audited financial statements in respect of its operations.

Clauses 91 to 106 deal with the powers of the Bank of Ghana in respect of supervision and control. The Bank of Ghana may supervise banks and specialized deposit-taking institution on a solo basis, financial holding companies on a solo basis and financial groups on a consolidated basis, clause 91.

Further to its supervisory role, the Bank of Ghana may issue directives under clause 92.

A bank, specialized deposit-taking institution, financial holding company or a member of a financial group may be required under clause 93 to submit information or data relating to assets, liabilities, income, expenditure, affairs or any other matter.

The Bank of Ghana may, under clauses 94 and 95, authorise a person to examine, investigate and scrutinise the affairs of a bank, specialized deposit-taking institution. Financial holding company or a member of a financial group and may take custody of the records *clauses* 96 and 97 respectively. The information obtained may be verified under clause 98 and an examination report submitted to the entity examined under clause 99.

Follow-up action on examination and other supervisory reports are set out in clause 100.

The Bank of Ghana is respectively empowered under clauses 101 and 102 to appoint an advisor for the chief executive and also take remedial actions where necessary against bank, specialized deposit-taking institution or financial holding company.

Under clause 103, the Bank of Ghana may require that a director, key management personnel and significant shareholder undertake remedial actions where necessary.

Clauses 104, 105 and 106 empower the Bank of Ghana to take prompt corrective actions in respect of adequately capitalized banks, specialized deposit-taking institutions or financial holding companies.

Matters of official administration are indicated in clauses 107 to 122. The grounds for appointing an official administrator as well as his powers are set out in clauses 107 and 108 respectively.

The Bank of Ghana's oversight of the official administrator is provided for under clause 109 *and* Clause 110 obliges the official administrator to suspend payment of any

dividend or other form of capital distribution to the shareholders and any payment to directors except for salaries or services provided to the bank or specialized deposit-taking institution.

Moratorium and effect of official administration on proceedings and suspension of right of termination are respectively dealt with under clauses 111 and 112.

Clauses 113 and 114 impose an obligation on the official administrator to take control of a bank or specialized deposit-taking institution and prepare and deliver to the Bank of Ghana an inventory of the assets and liabilities of the bank or specialized deposit-taking institution and plan of action on the bank or specialized deposit-taking institution.

The official administrator may, on the basis of a report and with the approval of the Bank of Ghana, take steps to increase the capital of the bank or specialized deposit-taking institution by issuing new shares to existing shareholders under clause 115, issuing shares to new shareholders under clause 116 or undertake mergers, sales and other restructurings under clause 117.

The official administrator is also mandated under clause 118 to restructure the liabilities of the bank or specialized deposit-taking institution.

The directors and key management personnel of a bank or specialized deposit-taking institution may be removed or replaced with the approval of the Bank of Ghana under clause 119 and clause 120 obliges the official administrator to notify the Bank of Ghana and initiate civil action against shareholders, directors, key management personnel, attorneys and other professionals if the administrator has sufficient reason to believe that they have engaged or are engaging in fraudulent activities.

Expenses of the official administration as well as termination of the official administration are provided for under clauses 121 and 122 respectively.

Clauses 123 and 139 are on matters of receivership and liquidation.

Conditions for mandatory revocation of license and initiation of receivership are set out in clause 123 whereas qualifications and compensation of a receiver are provided for under clause 124.

Notice and registration of the receivership and oversight of Bank of Ghana over the receiver are respectively dealt with under clauses 125 and 126.

The general powers of the receiver and the effects of the receivership are set out in clauses 127 and 128.

Clause 129 empowers the receiver to have unrestricted access to and control over the offices, books of account, records, and other assets of the bank or specialized deposit-taking institution.

The receiver has a duty under clause 130 to establish a new financial position for the bank or specialized deposit-taking institution, based on a determination of liquidation values of the assets of the bank or specialized deposit-taking institution.

The receiver is empowered to repudiate contracts entered into by the bank or specialized deposit-taking institution based on conditions set out under clause 131 or to set aside pre-receivership transactions entered into by the bank, or specialized deposit-taking institution, clause 132.

Clause 133 empowers the Bank of Ghana to prescribe the procedure for determining the validity and priority of a claim.

Claims relating to eligible financial contract and the determination of priorities in payment of claims are provided for under clauses 134 and 135 respectively.

Termination of receivership and final reporting to the Bank of Ghana are dealt with under clause 136.

Clause 137 deals with miscellaneous receivership provisions whereas relationship with other enactments are provided for under clause 138.

Clause 139 set out the conditions for a voluntary wind-up.

Clauses 140 to 160 deal with miscellaneous provisions.

A person who is aggrieved with a decision of the Bank of Ghana in respect of issuance of a license may petition the Bank of Ghana for a review under clause 140.

Clauses 141 and 142 provide for the implication of an arbitration proceeding on an action of the Bank of Ghana and the consideration for determining whether a defendant acted unlawfully or in an arbitrary or capricious manner respectively.

Clause 143 provides for the transfer of a current or savings account which has not been operated for a period of two years to a separate register of dormant accounts. A bank or specialized deposit-taking institution is prohibited under clause 144 from creating a floating charge on an undertaking or property of the bank or specialized deposit-taking institution.

Clause 145 imposes a duty of confidentiality on the officials and employees of the Bank of Ghana and a person with access to the books, accounts, records financial statements or other documents, electronically or otherwise, of a bank or specialized deposit-taking institution is required to take the oath of secrecy under clause 146.

The Bank of Ghana may enter an agreement or arrangement for coordination and the exchange of information with the Ghana Deposit Protection Corporation, clause 147. The Bank of Ghana may disclose information relating to banks, specialized deposit-taking institutions or financial holding companies under circumstances specified under clause 148.

A duty is imposed on the Bank of Ghana under clause 149 to submit a report on the trend and progress of the business of deposit-taking in the country. The Attorney-General, the Bank of Ghana, an officer of the Bank of Ghana, or any other person acting under the direction of the Bank of Ghana is protected from liability and indemnified under clause 150.

An administrative penalty imposed under the Bill is to be considered as debt due to the Bank of Ghana and is recoverable under *clause 151*. Clauses 152, 153 and 154 deal with the prosecution of offences and joinder of offences and general penalties respectively. Clause 155 deals with Regulations. Words and expressions used in the Bill have been interpreted under clause 156.

The Banking Act, 2004 (Act 673) and Banking (Amendment) Act, 2007 (Act 738) have been repealed under clause 157. *Clauses 158 and 159* provide for the validity of existing licenses and provisions respectively.

Clause 160 requires a bank or specialized deposit-taking institution that owns a subsidiary company engaged in agricultural, commercial or industrial activity or investment activities or properties in breach of *clause 19* of the Bill to divest itself of the subsidiaries, investment activities or properties not later than one year after the coming into force of the Bill.

6.0 OBSERVATIONS

Application of the Bill

The Committee noted that the Bill applies to all banks, specialized deposit-taking institutions, financial holding companies, and affiliates of banks, specialized deposit-taking institutions, and financial holding companies. It however, does not apply to credit unions which are subject to licensing, and supervision under the Non-Bank Financial Institutions Act, 2008 (Act 774).

Relevance of the Bill

Highlighting on the importance of the Bill, the Deputy Minister of Finance indicated that the provisions of the Bill is in line with the vision of Government financial sector reform policies which seek to make the financial sector of the country the preferred source of finance for domestic companies, promote efficient savings mobilization, enhance the competitiveness of the country's financial institutions, ensure a stronger and user-friendly

regulatory regime, as well as achieving a deepened and a diversified domestic financial sector.

The Deputy Minister intimated that as the country transitions to a full middle income economy, there was the need to scale up the financial markets, particularly, banking to effectively mobilize financial resources from domestic and international markets to finance the accelerated growth process.

The Deputy Minister was certain that enactment of the Act will also benchmark the legal and regulatory frameworks set out in the Bill with international principles and standard practices recognised by leading international financial standard setters including the Basel Committee of Banking Supervisors (BCBS). This, the Deputy Minister believes will help develop further, the banking industry and the entire financial services sector.

It was further indicated that there are currently distinctive gaps in the frameworks for bank resolution or insolvency and the regulatory and supervisory oversight of the financial system which undermine the capacity of the Bank of Ghana to deal with potential crisis. It was for instance cited that banks' conglomerates in the country's financial sector have been identified to have subsidiary security firms, industrial and insurance companies. And since the banks are not adequately supervised on a consolidated basis, it was possible that related intra party lending leak out unnoticed and the potential risks resulting from the inter-linkages may lead to systematic effect. The passage of the Bill the Deputy Minister hopes will help address these challenges.

Expanded role of the Bank of Ghana

The Committee observed that the Bank of Ghana is empowered with overall supervisory and regulatory authority in all matters relating to deposit-taking business. The Bank of Ghana is also responsible, among others, for the promotion of the safety and soundness of banks and specialized deposit-taking institutions, consideration and proposal of reforms of the laws relating to deposit-taking business, and for dealing with unlawful or improper practices of banks and specialized deposit-taking institutions. It is worth mentioning that the role of the Bank of Ghana indicated under the Banking Act, 2004 (Act 673) has been

expanded under the Bill for purposes of clarity, consumer protection and an increase in the supervisory powers of the Bank of Ghana. Thus the Bank of Ghana has the sole responsibility to license banks and specialized deposit-taking institutions, to grant approval to foreign banks with respect to the establishment of representative offices, and to register financial holding companies.

The Committee considers this positive and hopes the BoG would take advantage of the provisions and improve on its monitory and supervisory roles in order to curb unlawful and improper banking practices emerging in the industry. This the Committee believes will help protect unsuspecting clients and customers from being victims of such unlawful and improper practices.

7.0 AMENDMENTS PROPOSED

The Committee after its consideration of the Bill proposes the following amendments for the consideration of the House:

- i. **Clause 3 Amendment proposed** – Headnote, delete “Functions” and insert “Role”
- ii. **Clause 4 Amendment proposed** –
 - a. Headnote, delete and insert the following “Deposit-taking business”
 - b. provide a new sub-clause (1) to read
“(1) For the purpose of this Act, deposit-taking business means the business of
 - (a) taking money on deposit and making loans or other advances of money; and
 - (b) financial activities prescribed by the Bank of Ghana for purposes of this definition”
 - c. renumber the subsequent sub-clauses accordingly.
 - d. sub-clause (4) line 1, delete “may” and insert “shall” and line 2, delete (2) and insert (3)
- iii. **Clause 7 Amendment proposed** – sub-clause (2)

- a. paragraph (d) delete “or” and insert “and”
- b. paragraph (e) line 1 delete “reports” and insert “report” and line 2, delete “projection” and insert “projections”
- c. paragraph (i) line 2, delete “or” and insert “and”
- iv. **Clause 8 Amendment proposed –**
 - a. Sub-clause (4) line 2, delete “following” after “the” and line 3, insert the phrase “specified in the First Schedule” after “institution”.
 - b. Sub-clause (4) delete paragraphs (a) to (e)
 - c. renumber the second sub-clause (4) as (5) and sub-clause (5) as (6)
- v. **Clause 10 Amendment proposed –** sub-clause (3) line 2, delete “(1)” and insert “(2)”.
- vi. **Clause 11 Amendment proposed –** sub-clause (3) line 2, delete “not more than”
- vii. **Clause 17 Amendment proposed –** sub-clause (2) (a) line 2, delete “bank” and “institution” and insert “banks” and “institutions” respectively.
- viii. **Clause 19 Amendment proposed –** sub-clause (6) line 5, delete “not more than”
- ix. **Clause 20 Amendment proposed –** sub-clause (3)
 - a. paragraph (b) line 5, delete “the” after “pending”
 - b. paragraph (c) line 3, delete “the” before “investigation”
- x. **Clause 21 Amendment proposed –** sub-clause (1) (a) delete all words after “profits” and insert “accrued”
- xi. **Clause 23 Amendment proposed –** sub-clause (7) line 2 delete “not more than”
- xii. **Clause 24 Amendment proposed –** sub-clause (2) line 2 delete “not more than”
- xiii. **Clause 25 Amendment proposed –** add new sub-clause (4) as follows:

“(4) in addition to the penalty prescribed in sub-section (3), the Bank of Ghana may suspend the operations of the branch, agency, mobilisation centre, head office or other operational or support centre of the bank or specialised deposit-taking institution involved until the bank or specialised deposit-taking institution obtains approval from the Bank of Ghana”
- xiv. **Clause 27 Amendment proposed –** sub-clause (3) line 3, “not more than”
- xv. **Clause 29 Amendment proposed –** sub-clause (6) line 5, delete “143” and insert “139”

- xvi. Clause 32 - **Amendment proposed** – sub-clause (2) line 4, delete “not more than”
- xvii. Clause 33 - **Amendment proposed** – sub-clause (2) line 4, delete “not more than”
- xviii. Clause 34 - **Amendment proposed** – sub-clause (3) line 3, delete “not more than”
- xix. Clause 35 - **Amendment proposed** –
 - a. sub-clause (3) lines 4 and 5, delete “not more than”
 - b. Sub-clause 5 line 3, delete “not more than”
- xx. Clause 36 - **Amendment proposed** – sub-clause (6) lines 4 and 5, delete all word after “deficiency” and insert “for each day that the deficiency persists”
- xxi. Clause 39 - **Amendment proposed** – sub-clause 2 line 3, delete “not more than”
- xxii. Clause 40 - **Amendment proposed** –
 - a. Sub-clause (3) line 5 delete “not more than”
 - b. sub-clause (4) line 4, delete “not less than”
 - c. sub-clause (6) line 6, delete all words after “deficiency” and insert “for each day that the deficiency persists”
- xxiii. Clause 41 – **Amendment proposed** – sub-clause (4) line 4, delete “which exists on that day”
- xxiv. Clause 44 - **Amendment proposed** – sub-clause (2) (v) line 1, delete “reports” and insert “report” and sub-clause (4) (b) line 1, delete “the” before “key” and also delete “is” and insert “are”
- xxv. Clause 53 – **Amendment proposed** – sub-clause 2 line 4, delete “51” and insert “52”
- xxvi. Clause 54 – **Amendment proposed** – sub-clause (6) delete and insert the following:

“An acquisition of shares of a bank or specialised deposit-taking institution in connection with a takeover, merger or amalgamation of a bank or specialised deposit-taking institution shall meet the requirement of this Act before applying for a review and approval of such takeover, merger or amalgamation under the Securities Industry Act, 1993 PNDCL 333)”
- xxvii. Clause 58 - **Amendment proposed** – sub-clause (1) (g) line 1, insert “written” after “prior”

- xxviii. Clause 59 - **Amendment proposed** – sub-clause (1) (b) line 2, delete “and” and insert “or”
- xxix. Clause 60 - **Amendment proposed** –
- a. insert a new sub-clause (3) as follows:
“(3) despite sub-clause (2), where the Bank of Ghana is satisfied that exceptional circumstances exist, the Bank of Ghana may approve the appointment of a Chief Executive or Deputy Chief Executive who is not ordinarily resident in the country.”
 - b. renumber the subsequent sub-clauses accordingly.
 - c. sub-clause (12) line 3, delete “not more than”
- xxx. Clause 61 - **Amendment proposed** – sub-clause (4) line 3 delete “not more than”
- xxxi. Clause 62 - **Amendment proposed** –
- a. Sub-clause (10) line 4, delete “percent” and insert “percentage point”
 - b. sub-clause (11) line 3 delete “not more than” and after “two thousand” delete “and”
- xxxii. Clause 64 - **Amendment proposed** – sub-clauses (4) and (5) line 3, delete “not more than” respectively.
- xxxiii. Clause 65 - **Amendment proposed** – sub-clause (2) line 3, delete “not more than”
- xxxiv. Clause 67 - **Amendment proposed** – sub-clause (8) line 3, delete “not more than”
- xxxv. Clause 69 - **Amendment proposed** –
- a. Sub-clause (3) line 3, delete “an employee” and insert “employees”
 - b. sub-clause (4) (a) line 2 delete all words after “over exposure and insert “for each day that the over-exposure persists”
 - c. sub-clause (b) line 1, delete “not more than”
- xxxvi. Clause 70 - **Amendment proposed** – sub-clause (6) line 3, delete “not more than”
- xxxvii. Clause 71 - **Amendment proposed** – sub-clause (3) line 3, delete “not more than”
- xxxviii. Clause 72 - **Amendment proposed** – sub-clause (3) (b) line 1, insert “of” after “case” and sub-clause (4) line 3, delete “not more than”
- xxxix. Clause 73 - **Amendment proposed** –
- a. Sub-clause (2) line 1, delete the phrase “a body” and insert “two or more bodies”

- b. sub-clause (7) lines 2 and 3, delete “a fine of not more than” and insert “an administrative penalty of”
- xl. Clause 74 - **Amendment proposed** – sub-clause (2) insert”,” and in sub-clause (4) line 3, delete “not more than”
- xli. Clause 75 - **Amendment proposed** – sub-clause (4) line 3,delete “not more than”
- xlii. Clause 76 – **Amendment proposed** – sub-clause (2) line 3, delete “not more than”
- xliii. Clause 77- **Amendment proposed** – add two new sub-clauses as follow:
 - “(2) Despite sub-section (1), the Bank of Ghana may by directives vary any of the limits under sections 62 to 69 and sections 71 to 73 in cases of emergency for the period that the Bank of Ghana considers appropriate
 - (3)For the purposes of this section, a case of emergency is any situation that may pose a threat to the stability of the financial system.”
- xliv. Clause 78 - **Amendment proposed** –
 - a. sub-clause (1) delete and insert the following:
 - “(1) a bank, specialised deposit-taking institution or financial holding company shall prepare accounts and financial statements in the form and provide details in accordance with
 - (a) internationally-accepted accounting standards; and
 - (b) rules or standards based on the Basel Core principles as prescribed by the Bank of Ghana.”
 - b. Sub-clause (2) line 3, delete “not more than”
- xlv. Clause 79 - **Amendment proposed** – sub-clause (2) line 3, insert “of operations” after “results” and sub-clause (4) lines 3 and 4, delete “not more than”
- xlvi. Clause 80 - **Amendment proposed** – sub-clause (5) line 4, delete “not more than”
- xlvii. Clause 81 - **Amendment proposed** –
 - a. sub-clause (1) line 4, insert the words “and be” before the word “approved”
 - b. sub-clause (6) line 3, delete “not more than”
- xlviii. Clause 82 - **Amendment proposed** – sub-clause (3) line 3, delete ”not more than”
- xlix. Clause 85 - **Amendment proposed** – sub-clause (2)
 - a. paragraph (a) line 3, insert the words “of operations” after “results”

- b. paragraph (d) line 4, delete “or” and insert “and”
- i. **Clause 87 - Amendment proposed –**
 - a. sub-clause (2) delete and insert the following: “(2) The auditor shall review and report on compliance with anti-money laundering and counter terrorist financing activities”
 - b. sub-clause (6) line 2, after “auditor” insert “for the purposes of this Act”
- li. **Clause 90 – Amendment proposed –** sub-clause (3) line 3, delete “not more than”
- lii. **Clause 91 - Amendment proposed –** sub-clause (1) line 2, delete the word “Act” after “Ghana”
- liii. **Clause 92 - Amendment proposed –**
 - a. Sub-clause (1) (c) line 1 delete “for”
 - b. Sub-clause (2) line 1, insert (,) after (1) and renumber the second (a) (i) as (ii) and renumber subsequent sub-paragraphs accordingly.
 - c. Sub-clause (2) paragraph (xi) line 2, delete “for”
 - d. Sub-clause (8) line 4, delete “ten” and insert “two” and in line 5, delete “two” and insert “ten”
- liv. **Clause 93 - Amendment proposed –** sub-clause (3) line 2, delete “not more than” and concluding paragraph, line 2, delete “continues” and insert “persists”
- lv. **Clause 96 - Amendment proposed –** sub-clause (2) lines 2 and 3, delete the phrase “of the bank” and sub-clause (7) lines 2 and 3, delete “not more than”
- lvi. **Clause 98 – Amendment proposed –** sub-clause (2) line 1, delete “The” and insert “A”
- lvii. **Clause 99 - Amendment proposed –** sub-clause (4) line 3, delete “not more than”
- lviii. **Clause 100 - Amendment proposed –** sub-clause (3) line 3, delete “not more than”
- lix. **Clause 101 - Amendment proposed –** sub-clause (1) line 4, delete “the chief executive ” and insert “management”
- lx. **Clause 102 - Amendment proposed –**
 - a. sub-clause (2) (f) line 3,delete “not more than”

- b. the second sub-clauses (3) and (4) should read (4) and (5) respectively
- lxi. **Clause 103 - Amendment proposed –**
 - a. sub-clause (1) (e) line 1, delete “not more than five” and insert “one”
 - b. Sub-clause (2) (c) line 1, delete “has”
 - c. Sub-clause (2),), renumber paragraphs (d) to (g) as sub-paragraphs (i), (ii), (iii) and (iv) respectively
 - d. Sub-clause (5) (b) line 4, delete all words after “person”
- lxii. **Clause 105 - Amendment proposed –** sub-clause (5) line 1, insert (,) after “bank”
- lxiii. **Clause 107 – Amendment proposed –**
 - a. sub-clause (1) paragraph (a), delete and insert the following:
 - “(a) the Bank of Ghana determines that that bank or specialised deposit-taking institution has
 - (i) contravened a provision of this Act, the Regulations, directives or orders issued under this Act,
 - (ii) engaged in any unsafe or unsound practice in a manner as to weaken the condition of the bank or specialised deposit taking-taking institution, or
 - (iii) seriously jeopardised the interest of depositors or dissipated assets of the bank or specialised deposit-taking institution;”
 - b. sub-clause (9) line 1, delete “an” and insert “the”
- lxiv. **Clause 108 - Amendment proposed-**
 - a. Sub-clause (4) line 3, delete “Regulations”
 - b. insert a new sub-clause as follows:
 - “The official administrator may delegate powers or duties to another person in accordance with the instructions issued by the Bank of Ghana.”
- lxv. **Clause 109 - Amendment proposed –**
 - a. Headnote, delete and insert the following:
 - “Oversight of the official administrator by the Bank of Ghana”

- b. Sub-clause (1) delete and insert “The official administrator shall act in accordance with the instructions and guidance given by the Bank of Ghana at any time and shall be accountable only to the Bank of Ghana”
 - c. Sub-clause (2), delete
- lxvi. Clause 113 – Amendment proposed –
 - a. Headnote, delete and insert the following:

“Control of the bank or specialised deposit-taking institution by official administrator”
 - b. Sub-clause (5) line 4, insert the word “to” after “conviction”
- lxvii. Clause 115 – **Amendment proposed** – sub-clause (2) delete and insert the following:

“(2) where any existing shareholder of a bank or specialised deposit-taking institution is unable to subscribe and purchase additional shares as provided under sub-section (1), the official administrator shall have the right to invite other person or persons to subscribe and purchase the unsubscribed additional shares”
- lxviii. Clause 116 - **Amendment proposed** – sub-clause (3), delete
- lxix. Clause 117 - **Amendment proposed** – sub-clause (2) (b) deferred for further consultation with the Minister
- lxx. Clause 124 - **Amendment proposed** –
 - a. sub-clauses (1) delete and insert the following:

“(1) a person shall not be appointed a receiver unless that person satisfies the qualifications prescribed by the Bank of Ghana”
 - b. sub-clause (4) , delete and insert the following:

“(4) the following payments shall be made from the assets of the bank or specialised deposit-taking institution involved in the receivership:

 - (a) the compensation of a receiver and an expert engaged by the receiver; and
 - (b) the reimbursement of expenses incurred by the receiver and the expert for the purpose of the receivership”

- lxxi. Clause 125 - **Amendment proposed** – sub-clause (5) (c) delete the words “where necessary”
- lxxii. Clause 126- **Amendment proposed** – sub-clause (1) line 1, delete ”Regulations”
- lxxiii. Clause 127- **Amendment proposed** –
- a. sub-clause (3) (f) after “basis” insert the phrase “with the approval of Bank of Ghana”
 - b. sub-clause (12) line 6, delete “53”and insert “52”
- lxxiv. Clause 129 - **Amendment proposed** –
- a. Headnote delete and insert the following:
“Control of the bank or specialised deposit-taking institution by receiver”
 - b. Sub-clause (5) insert a new paragraph (g) as follows:
“(g) any action necessary for the efficient exercise of the powers of the receiver”
 - c. Delete (4) after sub-clause (5) (f) and insert (6) and in line 5,insert “a” before “fine”, line 6, delete “for each day but” before “not” and insert “and”
 - d. Sub-clause (6) lines 3 and 4, delete the words “with the approval of the Bank of Ghana”
 - e. renumber the subsequent sub-clauses accordingly
- lxxv. Clause 130 **Amendment proposed** – sub-clause (5) delete and insert “the Bank of Ghana shall publish the inventory report in two daily newspapers of national circulation”
- lxxvi. Clause 140 - **Amendment proposed**-
- a. sub-clause (1) line 2, delete “ten” and insert “thirty”
 - b. sub-clause (2) delete and insert new rendition as follows:
“(2) where the person is dissatisfied with the outcome of the review under subsection (1), the person may within thirty days from the date of the decision in writing, appeal to the Adjudicative Panel established under section 141, against the decision”

c. sub-clauses (3) to (8), delete and insert a new clause after Clause (140) as follows:

“(1) there is established an Adjudicative Panel consisting of

- (a) A chairperson who is a Justice of the High Court nominated by the Chief Justice;
- (b) One person with knowledge in banking and finance and with not less than ten years experience in banking and finance nominated by the Chartered Institute of Bankers; and
- (c) One member of the Institute of Chartered Accountants, Ghana who has been in practice for not less than ten years, nominated by the Institute of Chartered Accountants, Ghana.

(2) The Chief Justice shall appoint members of the Adjudicative Panel.

(3) The Adjudicative Panel shall adopt its own rules of procedure.

(4) The Adjudicative Panel shall communicate its decision to the applicant within thirty days of receipt of the appeal made to it in writing under subsection (2) of section 140.

(5) A person dissatisfied with the decision of the Adjudicative Panel may appeal to the court of Appeal.

(6) The expenses of the Adjudicative Panel including allowances of members of the Adjudicative Panel shall be borne by the Bank of Ghana.

lxxvii. Clause 141 - **Amendment proposed** – delete and insert the following:

“141. (1) Where a person is aggrieved with a decision of the Bank of Ghana in respect of

- (a) An official administration, a receivership or liquidation,
- (b) The revocation of the licence of a bank or specialised deposit-taking institution on grounds related to the condition of that bank or specialised deposit institution, or

(c) An action under sections 103 to 106 and the Bank of Ghana determines that there is a serious risk to financial stability or of a material loss to that bank or specialised deposit-taking institution, that person shall resort to arbitration for redress in accordance with the Alternative Dispute Resolution Act, 2010 (Act 798).

(2) For the purpose of subsection (1), the arbitration panel shall consist of experts in banking, finance, accounting, law, administration, liquidation and receivership.

(3) Where arbitration proceedings are initiated pursuant to subsection (1),

(a) the action instituted shall continue without restriction during the period of the review and further appeal or other judicial proceedings, and

(b) the arbitration panel may, in appropriate cases, award monetary damages to injured parties but shall not order an injunction against the Bank of Ghana, suspend or set aside the actions of the Bank of Ghana.”

lxxviii. Clause 142 - **Amendment proposed** –

- a. Headnote delete “by court or”
- b. line 1, delete “a court or” and insert “an”
- c. line 3, delete “court or”

lxxix. Clause 143 - **Amendment proposed** – sub-clause (3) line 2, insert after “service charge” the phrase “or is an interest bearing account”

lxxx. Clause 144 - **Amendment proposed** –

- a. Sub-clause (3) line 3, delete “not more than”
- b. sub-clause (4) line 3, delete “not more than”

lxxxi. Clause 146 - **Amendment proposed** –

- a. sub-clause (3), paragraph (d) delete and insert the following: “(d) to the Collateral Registry set-up under the Borrowers and Lenders Act, 2008 (Act 773)”
- b. insert a new paragraph (g) to read:

“(g) Securities and Exchange Commission”

- lxxxii. Clause 147- **Amendment proposed** – sub-clause (2) line 3, delete “Act, 2015 (Act.....).”
- lxxxiii. Clause 151 – Amendment proposed – paragraph (b) lines 2 and 3, delete the phrase” if the debt is not paid within sixty days after demand”
- lxxxiv. Clause 152 - **Amendment proposed** – sub-clause (1) line 1, insert “and Minister for Justice” after “Attorney-General”
- lxxxv. Clause 155 - **Amendment proposed** –
- a. sub-clause (1) line 1, delete “after” and insert “in”
 - b. sub-clause (2) paragraph (a) delete “and” and insert a new paragraph (b) as follows:
“(b) for the amendment of the schedules: and”
- lxxxvi. Clause 156 - **Amendment proposed** – Interpretation
- a. replace the definition for “deposit-taking business” with “ ‘deposit-taking business’ has the definition as assigned in clause 141”
 - b. “Purchase on Assumption” should be replaced with “Purchase and Assumption”
 - c. Insert a definition for “net open position” as follows:
“net open position means the sum of the foreign currency exposure of a bank expressed as a percentage of that bank’s net own funds taking into consideration the following:
(i) The net position of its total foreign currency assets and liabilities’

(ii) the position of spot and forward foreign exchange transactions on the reporting date, and

(iii) the sum of all off-balance sheet obligations maturing within two working days of the reporting date or any other period as may be prescribed by the Bank of Ghana”
 - d. definition of “net own funds” delete and insert the following”
“net own funds” includes the sum total of share capital that has been paid-up, free reserves but excludes revaluation reserves on Property, Plant and

- Equipment, other non—distributable reserves unless with the approval of the Bank of Ghana, other than the Reserve Fund established under section 34, subject to netting out accumulated losses, goodwill and unwritten of capitalised expenditure including pre-operating expenses and deferred tax”
- e. definition of “related interest” delete (c) and
 - f. insert definition for “related persons” as ““related persons” in relation to an insider means a spouse, son, daughter, step son, step daughter, brother, sister, father, mother, cousin, nephew, niece, aunt, uncle, step sister and step brother of an insider”
 - g. insert a definition for “supervisory structures” as “supervisory structures include units, offices, departments or other outfits within the Bank of Ghana authorised by the Bank of Ghana to supervise banks and SDIs”

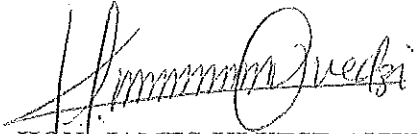
lxxxvii. First Schedule - **Amendment proposed** –

- a. Insert after “section 8”, subsections “(3) and (4)
- b. First column row 1, delete “licence” and insert “licences”
- c. Second column row 1, delete “institution” and insert “institutions” and row 3, delete “institutions specified in section 8(4)” and insert the following:
 - “(a) rural or community banks;
 - (b) savings and loans companies
 - (c) finance houses;
 - (d) deposit-taking micro finance institutions; and
 - (e) any other specialised deposit-taking or class of deposit-taking institutions that may be prescribed by the Bank of Ghana.”

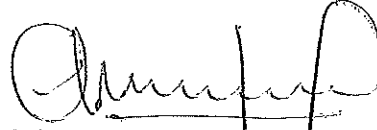
8.0 CONCLUSION AND RECOMMENDATION

The Committee upon a thorough examination of the Bill recommends to the House to adopt its report and take the Banks and Specialised Deposit-Taking Institutions Bill, 2015 through the second reading.

Respectfully submitted.



HON. JAMES KLUTSE AVEDZI
(CHAIRMAN, FINANCE COMMITTEE)



ROSEMARY ARTHUR SARKODIE (MRS)
(CLERK, FINANCE COMMITTEE)

March, 2016

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