

IN THE FOURTH SESSION OF THE SIXTH PARLIAMENT OF THE FOURTH REPUBLIC OF GHANA

REPORT OF THE FINANCE COMMITTEE

ON THE

BANK OF GHANA (AMENDMENT) BILL, 2016

JULY, 2016

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1.0 INTRODUCTION

The Bank of Ghana (Amendment) Bill, 2016 was presented to Parliament and read the first time by the Hon. Minister for Finance, Mr. Seth Emmanuel Terkper on Wednesday, 29th June, 2016 in accordance with Article 108 of the 1992 Constitution. Pursuant to Order 169 of the Standing Orders of the Parliament of Ghana, the Rt. Hon. Speaker referred the Bill to the Finance Committee for consideration and report.

The Committee was assisted in its deliberations by the Hon. Deputy Ministers for Finance, Mr. Casiel Ato Baah Forson and Mrs. Monah Quartey, a Deputy Governor of the Bank of Ghana and officials from the Ministry of Finance, Bank of Ghana and the Attorney-General's Department.

The Committee expresses its gratitude to the Hon. Deputy Ministers, the Deputy Governor and officials for assisting in the deliberations.

2.0 REFERENCE

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

- The 1992 Constitution of Ghana.
- The Standing Orders of the Parliament of Ghana.
- The Interpretations Act, 1960 (CA4)
- Bank of Ghana Act, 2002 (Act 612).

3.0 **BACKGROUND**

As part of the structural reforms to strengthen public finances and fiscal discipline, the Government of Ghana together with Bank of Ghana have realized the need to amend the Bank of Ghana Act, 2002 (Act 612) to bring it in line with international best practices. The Bill seeks to plug the loopholes identified in Act 612 to allow the Bank of Ghana prepare its financial statements in accordance with good corporate financial reporting standards. With technical assistance from the development partners, these loopholes were identified in consequences of an examination of current international trends and what pertains in other jurisdictions.

To significantly strengthen the Central Bank's functional autonomy, governance and ability to respond to banking sector crisis, the amendment seeks to separate the autonomy provisions from other objectives of the Bank to strengthen the autonomy of Bank of Ghana in the performance of its functions. Furthermore, the amendment provides for the preparation of the financial statements of the Bank in compliance with international accounting standards.

4.0 **PURPOSE OF THE BILL**

The purpose of the Bill is to amend the Bank of Ghana Act, 2002 (Act 612) to strengthen the autonomy of the Bank in the performance of its functions as a central bank and to strengthen the financial reporting system of the Bank of Ghana.

5.0 **DIVISION OF THE BILL**

The Bill is divided in Twenty-five (25) Clauses amending various section of Act 612 and introducing new provisions aimed at improving the financial reporting system in the Bank of Ghana.

Clause 1 amends section 3 of Act 612 by obliging the Bank to support the general economic policy of the Government and to contribute to the promotion and maintenance of financial stability in the country.

Clause 2 introduces a new section 3A which permits the Bank to establish departments and other administrative structures while clause 3 guarantees the independence of the Bank of Ghana with respect to the performance of its functions.

Clause 4 amends section 7 of Act 612 by requiring Bank of Ghana to establish a Revaluation Account to manage unrealized profit and unrealized loss of the Bank.

Clause 5 increases the number of appointees of the President on the Board from eight to nine. The rationale is to have an odd number for membership of the Board for purposes of decision making.

Clause 6 seeks to increase the tenure of office of Board members other than the Governor and Deputy Governors from three to four years. The clause further limits the tenor of members excluding the Governor and Deputy Governors to two terms only while clause 7 introduces a new qualification criterion for Board members.

Clause 8 introduces a new section 11A on the grounds for the disqualification for members of the Board and Clause 9 amends section 12 of Act 612 by narrowing the grounds for the removal of a member of the Board. The amendment in clause 10 relates to disclosure of interest by members of the Board and the penalty for failure to disclose interest and participation in a matter before the Board for which a member has an interest.

Clause 11 amends section 14 of Act 612 to mandate the Board to hold meetings at least once every two months rather than once every month as provided for in Act 612.

Clause 12 seeks to clarify the position on the tenure of office of the Governor and Deputy Governors. Clause 13 introduces new sections 20A and 20B which deal with removal of the Governor and Deputy Governors respectively. The grounds and procedure for the removal of a Justice of the Superior Court of Judicature other than the Chief Justice should be applicable to the Governor. The clause further provides for the procedures for removal of Deputy Governors

Clause 14 amends section 22 of Act 612. to provide for the appointment and the functions of the Chief Internal Auditor of the Bank whilst clause 15 substitutes section 27 of Act 612 by providing for additional members of the Monetary Policy Committee. The clause makes provision for a representative of the Ministry responsible for Finance not below the rank of a Director to be appointed to the Committee as an observer.

Clause 16 amends section 30 of Act 612 by enumerating transactions which the Bank is prohibited from engaging in. These include making an advance, a loan or an overdraft in any form to the Government or an agency or enterprise of the Government and purchasing Government treasury bills, cash management notes or any other form of securities that represent the obligation of the Government of any kind. Sub-clause (2), however, permits the Bank, during a period of war, natural disaster or seasonal shortfall in Government revenue, to make short term advances, loans or overdraft or in any other form determined by the Board to the Government.

Clause 17 amends paragraph (c) of section 34 of Act 612 to limit the power granted to the Bank to buy or sell commercial bills, Government bonds and securities or bonds and securities guaranteed by the Government to buying or selling in the secondary market and at commercial rates.

Clause 18 introduces a new section 46A to permit the Bank to provide emergency liquidity assistance to a bank or non-bank financial institution which is illiquid but solvent. The Bank is mandated to prescribe the terms and conditions for the grant of emergency liquidity assistance. Clause 19 amends section 49 (1) by prohibiting the Bank of Ghana from granting loans upon the security of shares or purchasing the shares of a company. The amendment introduces a grace period of nine years or such other period that the Board may determine within which the Bank is to divest itself of any previously acquired shares in a financial institution.

Clause 20 amends section 50 of Act 612 by the deletion of “silver” and “platinum” in paragraph (d) of subsection (1). The amendment to section 54 on the Bank Supervision

Department under clause 21 is to create the supervisory structure necessary for the effective performance of the functions of the Department.

A new section 57A which deals with financial statements is introduced under clause 22 to oblige the Bank to prepare its financial statements in accordance with the international accounting standards approved by the Board.

Clause 23 seeks to amend Act 612 to make it superior to all enactment relating to Banking, Finance and related matters while clause 24 amends section 69 of Act 612 by providing the interpretation of words used in the Bill.

Clause 25 introduces a consequential amendments relating to the use of the words “Authority” and “Board”. The rationale for this provision is to clarify that a reference to the terminologies “Authority” and “Authority of Directors” in Act 612 is to be read as a reference to “Board” and “Board of Directors” respectively.

6.0 OBSERVATIONS

Central Bank Autonomy

The Committee noted that the Bill seeks among others to guarantee the independence of the Bank with respect to the performance of its functions. To this end, the Bank shall not in the performance of its functions and duties be subjected to the direction or control of any person or authority. The Committee agrees that the more independent a central bank is, the lower the inflation it allows without injuring growth and employment goals. It is therefore important to insulate the central bank monetary policy decision making from short term political pressure to guarantee financial system stability.

However, considering the sovereignty of Ghana and the need to ensure accountability, there would be the need for the Bank to be transparent in its operation and be subjected to the sovereignty of the nation. The Committee accordingly proposes an amendment to the provision to reflect this reality.

Temporary Advance

The Committee noted that Section 30 of the Bank of Ghana Act, which among others, allows the Bank to make advances and loans to Government as well as make direct purchase from the Government of treasury bills or securities is being amended under clause 16 of the Bill to prohibit the Bank to make such advances henceforth. Presently the law allows Government to borrow from the Bank together with the public and other banking institutions loans, advances, purchase of securities and treasury bills not exceeding ten percent of the total revenue of the fiscal year in which the advances were made.

The Committee therefore view the proposed amendment which seeks to prohibit the Bank from making any advances to the Government too drastic and unacceptable. To the Committee, the practice does not happen anywhere on the globe and that even in the most developed market economies, Central Banks do advance monies to the Government in times of need. Mention can be made of the United States during the economic crunch and recently the United Kingdom. Also in the Sub-region, all central banks make advances to the Government in time of need particularly, to smooth out tax revenue fluctuations. Furthermore, as part of moves to get a common currency for the Anglo ECOWAS sub-region, a convergence criteria of five percent (5%) borrowing limit of tax revenue has been set for all countries.

Though the Committee admits that the current cap of ten percent (10%) may be on the high side, considering the under-developed nature of capital market of the country, and the sub-region, zero percent (0%) advance to the Government would be detrimental to the nation. The Committee is of the view that for a start, the country should stay within the convergence criteria of five percent (5%) borrowing limit of tax revenue set for the Anglo ECOWAS countries.

Again to ensure financial discipline and responsibility, the Bank of Ghana should notify the Minister and Parliament of the attainment of the limit. An amendment reflecting the Committee's view has accordingly been proposed for the consideration of the House.

6.2 *Submission of Foreign Exchange Receipts and Payments*

The Committee noted that Article 184 (1) of the 1992 Constitution imposes a responsibility on the Finance Committee to monitor the foreign exchange receipts and payments or transfers of the Bank of Ghana in and outside Ghana and report to the House every six months. However, the provisions as provided under Section 53 of the Bank of Ghana Act, 2002 (Act 612) does not explicitly oblige the Bank to report on the foreign exchange receipts and payments or transfers of the Bank of Ghana in and outside Ghana to Parliament to enable the Finance Committee perform this important constitutional mandate. The Committee accordingly proposes an amendment to enable it play its oversight as required under Article 184 (1) of the Constitution.

7.0 **PROPOSED AMENDMENTS**

The Committee having carefully scrutinized the Bill proposes the following amendments for the consideration of the House:

1. Clause 1 – **Amendment proposed** – Sub-clause (1), paragraph (b), after “growth”, insert “and development”.
2. Clause 2 – **Amendment proposed** – Headnote, delete “Section 3A” and insert “Section 2A”.
3. Clause 2 – **Amendment proposed** – Opening phrase, *delete* “Section 3” and insert “Section 2”. Renumber “3A” as “2A”
4. Clause 3 – **Amendment proposed** – paragraph (a), *Delete*.
5. Clause 3 – **Amendment proposed** – paragraph (b), *Delete* and insert the following:

“(b) by the insertion of a new subsection (1A)

“(1A) Except as provided in the Constitution, the Bank of Ghana in the performance of its functions under this Act, shall not be subject to direction or control of any person or authority”.

6. Clause 4– **Amendment proposed**- delete
7. Clause 5 – **Amendment proposed** – paragraph (d), after “Chartered Account” *insert* “with relevant experience”.

8. Clause 6 – **Amendment proposed** – Sub-clause (1), line 2, *delete* “Governor” and insert “Governors”.
9. Clause 6 – **Amendment proposed** – sub-clause (3) line 2, *delete* “Governor” and insert “Governors”.
10. Clause 6 – **Amendment proposed** – *Add* the following new sub-clause:

“(7) The members, other than the Governor and the two Deputy Governors shall be paid appropriate allowances to be determined by the Board in consultation with the Minister”.
11. Clause 11 – **Amendment proposed** – Sub-clause (3), line 1, *delete* “six” and insert “seven”.
12. Clause 13 – **Amendment proposed** – Sub-clause 20B, paragraph (5), *delete* “shall” and insert “may”.
13. Clause 14 – **Amendment proposed** – sub-clause (3) paragraph (a) *delete*
14. Clause 14 – **Amendment proposed** - Sub-clause 9, paragraph (c) lines 1 and 2, *delete* all words after “body”.
15. Clause 14 – **Amendment proposed** – *Add* the following new Sub-clause:

“(4) The Chief Internal Auditor shall be an employee of the Bank”.
16. Clause 15 – **Amendment proposed** – Sub-clause (3), paragraph (e), line 2, *delete* “nominated by the Bank and appointed by the Minister” and *insert* “appointed by the Board”.
17. Clause 15 – **Amendment proposed** – Sub-clause (3), paragraph (c), line 2, *delete* “research or economics” and *insert* “economic research”.
18. **Clause 15** – **Amendment proposed** – Sub-clause (4) lines 1 and 2, *delete* “full time members” and *insert* “employees of the Bank”.
19. **Clause 15** – **Amendment proposed** – sub-clause (5) *delete*
20. **Clause 16** – **Amendment proposed** –
 - A. *Delete* and *insert* the following:

“16 The principal enactment is amended by the substitution for section 30 (2) of:
“**Temporary advances**

30 (2) the total loans advances, purchase of treasury bills and securities made under sub-section (1) shall not at any time exceed five percent (5%) of the total revenue of the previous fiscal year”

B. Section 30 is further amended by the addition of new sub-section (7) to read:

“(7) where the total of loans, advances, purchases of treasury bills and securities made under sub-section (1) is 5% of the previous fiscal year’s total revenue, the Governor shall notify the Minister and Parliament of the attainment of the limit under sub-section (2) and the Minister upon the notification shall report to Parliament on the remedial measures to be taken”.

21. Clause 17 – **Amendment proposed** – *Delete*.
22. Clause 18 – **Amendment proposed** – Sub-clause (1), line 1, *delete* “non-bank financial institutions” and *insert* “specialised deposit-taking institutions”.
23. Clause 18 – **Amendment proposed** – Sub-clause (3), paragraph (a), line 1, *delete* “non-bank financial institutions” and *insert* “specialised deposit-taking institutions”.
24. Clause 18 – **Amendment proposed** – Sub-clause (4), lines 2 and 3, *delete* “non-bank financial institutions” and *insert* “specialized deposit-taking institutions”.
25. **Clause 19 – Amendment proposed** – paragraph (c) line 3, after “institution”, insert “that the Bank regulates,”
26. Clause 21 – **Amendment proposed** – Sub-clause (1), line 2, *delete* “non-bank financial institutions” and *insert* “specialised deposit-taking institutions”.
27. Clause 22 – **Amendment proposed** – line 2, after “standards delete “approved” and insert “adopted”
28. Cause 24 – **Amendment proposed** – definition for “distributable earnings”, delete
29. Cause 24 – **Amendment proposed** – definition for “unrealised loss”, delete
30. Cause 24 – **Amendment proposed** – definition for “unrealised profit”
31. **New Clause – Amendment proposed** – *Add* the following new provision:
“Section 53 of Act 612 amended
The principal enactment is amended by the substitution of section 53 of
53 The Bank shall hold all foreign exchange of Ghana and submit a report to

Parliament on all foreign exchange receipts and payments or transfers of the Bank in and outside Ghana once every six months”.

8.0 CONCLUSION AND RECOMMENDATION

The Committee having thoroughly examined the Bill recommends to the House to adopt its report and pass the Bank of Ghana (Amendment) Bill, 2016 into law in accordance with Article 106 of the Constitution and Orders 126 and 127 of the Standing Orders of the House.

Respectfully Submitted.



HON. JAMES KLUTSE AVEDZI
(CHAIRMAN, FINANCE COMMITTEE)



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

July 2016.

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