

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

REPORT OF THE FINANCE COMMITTEE

ON

THE GHANA DEPOSIT PROTECTION BILL, 2015

MARCH, 2016



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PROTECTION BILL, 2015**

1.0 INTRODUCTION

The Ghana Deposit Protection 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 for Finance, Mr. Seth Emmanuel Terkper and his two Deputies, Ms. Mona K. Quartey and Mr. Cassiel Ato Baah Forson, the Governor of the Bank of Ghana (BoG), Dr. Henry Wampah and his deputies, Attorneys from the Attorney-General's Department and Officials from the Ministry of Finance and BoG. The Committee expresses its gratitude to the Hon. Minister and his Deputies, the Governor and his Deputies 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

A Deposit Protection Scheme seeks among others, to safeguard the savings of individual depositors in a country in order to build up trust in the formal banking system, and to contribute to the stabilization and development of the financial system of that country. In its bid to add on to the overall financial safety net framework of the country, the Bank of Ghana in November 2011 conducted a pre-feasibility study which assessed the Ghanaian banking system, as well as the legal, supervisory and political framework in terms of its specific characteristics and readiness for a deposit protection system.

After a positive outcome, the first analysis was followed by a Feasibility Study in July 2012, which proposed a tangible outline of a deposit protection scheme in Ghana based on the given macroeconomic framework, characteristics of the national banking system and existing supervision regulations. The Ghana Deposit Protection Bill, 2015 therefore is to give effect to the findings and to provide legal protection to depositors in the country.

4.0 PURPOSE OF THE BILL

The object of the Bill is to establish a Deposit Protection Scheme to protect a small depositor from loss incurred by the depositor as a result of the occurrence of an insured event and to support the development of a safe, sound, efficient and stable market-based financial system in Ghana; to establish the Deposit Protection Fund which constitutes the assets of the Scheme and the Deposit Protection Corporation to manage the Scheme efficiently and effectively towards the attainment of the objects of the Scheme, amongst others.

5.0 DIVISIONS OF THE BILL

The Bill has fifty-six (56) clauses. Clauses 1 and 2 deal with preliminary provisions.

~~Clause 1 deals with application. Clause 2 provides that where a provision in the Bill is~~
inconsistent with the provisions of another enactment that deals with the insurance of

deposits or matters relating to the insurance deposits, the provision in the Bill should prevail.

Clause 3 to 8 deals with the establishment and membership of the Deposit-Protection Scheme. The establishment of the Deposit Protection Scheme is provided for in clause 3. The object of the scheme is provided for in clause 4.

The membership of the Scheme is provided for in clause 5. Clause 6 provides for the issue of a certificate of membership by the Board to a bank or a specialized deposit-taking institution that is a member of the Scheme.

Clause 7 deals with cessation of membership. The effect of cessation of membership is provided for in clause 8.

The establishment of the Deposit Protection Fund and Reserve Fund is dealt with from clause 9 to 13. Clause 9 provides for the establishment of a Deposit Protection Fund. The object of the Fund is set out in clause 10 and the sources of money for the Fund are provided for in clause 11. The Fund constitutes the assets of the Scheme. Clause 12 provides that the Fund is to be managed by the Corporation.

The Reserve Fund is provided for in clause 13. The Corporation is to establish and operate a Reserve Fund into which the Corporation is to transfer the net operational surplus of the Corporation for each year. The Board may withdraw moneys from the Reserve Fund to meet the obligations of the Scheme if the moneys in the Deposit Protection Fund are not sufficient to meet those obligations. The Board may also withdraw moneys from the Reserve Fund to satisfy the recurrent expenditure of the Corporation for the year as well as to make payments in respect of depreciation of assets, contribution to staff pension and for any other contingency but the total withdrawal for these purposes in any case shall not exceed twenty-five percent of the net operational surplus paid annually into the Reserve Fund. Furthermore, the Board may also withdraw money from the Reserve Fund if moneys in the Deposit Protection Fund are not sufficient to meet the obligations of the Scheme to insured depositors.

Clause 14 to 22 deals with insurable deposits, premium and payment of compensation. Insurable deposits are provided for in clause 14. Clauses 15, 16 and 17 deal with initial premium, annual premium and differential premium respectively.

The announcement of payment of compensation is provided for in clause 18. Where an Insured event occurs, the Corporation is to announce the modalities for payment of compensation for insured deposits and subsequent developments after commencement of payment of compensation, by a publication on the website of the Corporation, in a newspaper of national circulation and on television and radio.

Clause 19 deals with claim for payment of compensation and clause 20 deals with payment of compensation to depositors. Coverage limits are provided for in clause 21. An insured depositor is, on the occurrence of an insured event, entitled to reimbursement of the insured deposit from the Corporation. However where the amount of compensation paid by the Corporation to an insured depositor is less than the amount credited to the depositor at the bank or specialized deposit-taking institution on the date of occurrence of the insured event, that depositor may claim the difference of the amount from the liquidator or receiver of the bank or specialized deposit-taking institution. Periodic reporting is provided for in clause 22. A bank or specialized deposit-taking institution is to submit to the Corporation, information, data statements and reports in a form and manner determined by the Corporation.

The establishment, object and functions of the Deposit Protection Corporation are dealt with in clause 23 to 33. Clause 23 provides for the establishment of the Deposit Protection Corporation. The object of the Corporation which is to manage the Scheme efficiently and effectively towards the attainment of the objects of the Scheme is captured in clause 24. The functions of the Corporation are provided for in clause 25 and include requiring each member of the Scheme to submit to the Corporation information or data relating to its operations, setting the coverage limits for insured deposits, cooperating with the Bank of Ghana in exchanging information relevant to the attainment of the objects of the Scheme and collaborating with international deposit insurance bodies.

Clause 26 deals with the governing body of the Corporation. The governing body is a Board and the functions of the Board are provided for in clause 27. Clause 28 deals with the tenure of office of members of the Board. A member of the Board appointed otherwise than by reason of the office of that member is to hold office for a period not exceeding three years and is eligible for re-appointment but a member is not to be appointed for more than two consecutive terms.

Meetings of the Board are provided for in clause 29. The Board is to meet at least once every three months for the dispatch of business at times and in places determined by the chairperson. Disclosure of interest is provided for in clause 30. Clause 31 deals with the establishment of committees.

Clause 32 provides for the Board to appoint consultants to carry out any of its functions under the Bill. Clause 33 provides for members of the Board and members of a committee of the Board to be paid the allowances approved by the Minister.

Clause 34 to 40 deals with the administration and staff of the Corporation. The appointment of the Chief Executive Officer is provided for in clause 34. Clause 35 provides for the functions of the Chief Executive Officer. The appointment of other staff is provided for in clause 36.

Clause 37 provides for the Secretary to the Board. The business premises of the Corporation is dealt with in clause 38. The Corporation is to situate its Head Office in the capital city of Ghana but may open offices in other parts of the country and appoint agents and correspondents.

Clause 39 deals with information access, use and exchange. The Corporation and the Bank of Ghana are to enter into an agreement which is to be reduced into writing in the form of a Memorandum of Understanding which is to provide for the undertaking of examination on behalf of the Corporation, the exchange of information with respect to problem banks and specialized deposit-taking institutions, the sharing of information and

data and for any other matters considered necessary by the Corporation. Clause 40 deals with confidentiality.

Clause 41 to 48 deals with financial provisions. The sources of funds for the corporation are provided for in clause 41 as consisting of capital contributions from the Government and the Bank of Ghana, grants received from the Government and donors, borrowings, issuance of securities and other revenues payable to the corporation in accordance with the Bill.

Clause 42 deals with investments. The Board is to formulate an investment policy to guide the deployment of the resources of the Fund. The target size of the Fund “A” and the Fund “B” is dealt with in clause 43. Clause 44 deals with financial reporting and external auditing. The Corporation is to maintain accounts and records in accordance with International Financial Reporting Standards to reflect its operations and financial condition.

Clause 45 deals with annual reporting and other reports. Financial planning and budgeting is provided for in clause 46. Not later than the 31st of October of each year, the Board is to cause to be prepared, estimates of revenue and expenditure for the Corporation for the ensuing year.

Clause 47 provides for emergency or extraordinary funding. Accounting and book-keeping is provided for in clause 48. The Corporation is to organize its policies, accounting and book-keeping in accordance with International Financial Reporting Standards. Miscellaneous provisions are dealt with in clause 49 to 56. Clause 49 deals with administrative sanctions. The administrative sanctions provided under the Bill are not to preclude the application of other sanctions or criminal penalties as provided for under any other enactment.

Clause 50 provides that the Corporation is exempted from the payment of income tax.

Clause 51 deals with protection from liability and indemnification. Public information is dealt with in clause 52. A bank or specialized deposit-taking institution is to openly display and make available brochures, leaflets and other educational materials to explain the Scheme and its operations. A bank or specialized deposit-taking institution which does not comply with the provisions is liable to pay an administrative penalty to the Corporation.

The penalty for non-payment of premium is dealt with in clause 53. A bank or a specialised deposit-taking institution that fails to pay a premium as specified under clauses 15, 16 and 17 is liable to pay to the Corporation an administrative penalty.

Clause 54 deals with Regulations. Clause 55 deals with the interpretation of words used in the Bill. Finally transitional provisions are dealt with in clause 56.

6.0 OBSERVATIONS

Importance of the proposed legislation

Touching on the importance of the proposed legislation, the Governor of the Bank of Ghana stated that the Insurance Scheme that would be established under the Act would protect small depositors in the event of a financial institution becoming insolvent or distressed. The Governor emphasized that the existence of deposit insurance provides depositors with clarity, reassurance and confidence and thereby promoting financial stability. He explained that like any other business, banks and other financial institutions can fail, however; knowing that their savings are protected against failure helps depositors feel confident about keeping their savings in banks and other financial institutions that would be members of the Scheme. This, in his view would help keep the financial system strong and beneficial to all.

Coverage limit

The Committee noted that on the occurrence of an insured event, an insured depositor would recover up to five thousand Ghana Cedis in the case of depositor of a bank and up to one thousand Ghana Cedis in the case of a depositor of a specialised deposit-taking

institution. It was explained that though the threshold may seemed low, it is meant to protect small depositors who ordinarily constitute majority in many deposit-taking institutions and the vulnerable in the society. Further, a high threshold would mean high premium which would eventually be passed on to the depositor in the form of service charges and interest. It was added that the proposed threshold seems acceptable by the stakeholders and since the Corporation would have the power to regularly review the coverage limits, it would be appropriately reviewed as the scheme grows and circumstances dictates.

Financing the Scheme

The Committee learnt that total seed capital of cedi equivalent of Twenty Million Euros (€20,000,000.00) is envisaged to be equally contributed by the Government of Ghana and the Bank of Ghana. To ensure the continuous flow of fund into the Scheme, Members of the Scheme (Banks and deposit-taking Institutions) would be expected to contribute an initial one-off premium amounting to 0.1% of the required minimum paid-up capital and annual premium. The Scheme would also be permitted under the Act to invest its funds. However, to guarantee the managers of the funds do not deviate from the core object of the Act, provision has been made to ensure that the Scheme's investment policy adhere to the principles of safety and liquidity over returns.

7.0 AMENDMENTS PROPOSED

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

- 1) Clause 4 – Amendment proposed – Paragraph (b), line 1, after “sound “ delete “and” and insert “,” and after “efficient” insert “and”
- 2) Clause 5 – Amendment proposed – Sub-clause (1), line 1, delete “55(3)” and ~~insert “56(3)” and after “Bank” delete “and” and insert “or”~~
- 3) Clause 6 – Amendment proposed – Sub-clause (1), line 1, delete “Board” and insert “Corporation”.

- 4) **Clause 7 – Amendment proposed –**
 - a). Sub-clause (1), paragraph (b), line 1, delete “surrender” and insert “revocation”.
 - b). Sub-clause (4), paragraph (a), lines 1 and 2, respectively delete “belongs” and “is” and insert “belong” and “are”
 - c). Sub-clause (4), paragraph (b), sub-paragraph (ii), line 1, delete “compromises” and insert “compounds”.
- 5) **Clause 8 – Amendment proposed –**
 - a) Sub-clause (1), paragraph (b), sub-paragraph (ii): delete “of the cessation” and closing sentence of paragraph (b), insert “of the cessation” before “of its membership”
 - b) sub-clause (4) line 5, delete all words after “both”
- 6) **Clause 11 – Amendment proposed –**
 - a). Sub-clause (1), paragraph (a), line 1, after “is” insert “a” and paragraph (b) insert “a” before “member”
 - b). Sub-clause (1), paragraphs (c) and (d), respectively delete “funds invested” and insert “investment”
 - c). Sub-clause (2), before “assets” insert “main”.
 - d). Sub-clause (4) line 1, delete ”assets of the”
- 7) **Clause 13 – Amendment proposed –**
 - a). sub-clause (1) delete and insert the following:

“(1) The Corporation shall establish and operate a Reserve Fund into which the Corporation shall transfer results after paying for the recurrent expenditure of the Corporation and satisfying any other provisions determined by the Board in respect of depreciation of assets and other contingencies”
 - b). Sub-clause (2), paragraphs (b) and (c), delete
 - c). Sub-clause (3), delete
- 8) **Clause 15 – Amendment proposed –**
 - a). Sub-clause (1), line 2, delete “one-time” and insert “one-off”,

- b). Sub-clause (3), line 2, delete “goes high” and insert “increases”.
- 9) Clause 16 – **Amendment proposed** – line 1, insert “(1)” before “The” and sub-clause (4) line 1, insert “than” after “later”.
- 10) Clause 18 – **Amendment proposed** – paragraph (b), delete “a daily newspaper” and insert “at least two daily newspapers”.
- 11) Clause 19 – **Amendment proposed** –
- a). Sub-clause (3), line 2, delete “19” and insert “20” and line 4, delete “two” and insert “five”.
- b). sub-clause (4) line 3, delete “Republic” and insert “Corporation”
- c). Insert a new sub-clause (5) to read:
“(5) The amount that is fortified under subsection (4) shall revert to the Fund.”
- 12) Clause 20 – **Amendment proposed** –
- a). Sub-clause (1), line 1, before “payment”, insert “process of”.
- b). Sub-clause (1), line 3, delete “a daily newspaper” and insert “at least two daily newspapers” and line 4, insert “television and” before “radio”
- c). Sub-clause (4), line 3, delete “softcopy” and insert “soft copy” and line 4, delete “hardcopy” and insert “hard copy”.
- d). Sub-clause (7), line 4, Delete “legislation” and insert “Act, 2008 (Act 773)”.
- 13) Clause 21 – **Amendment proposed** –
- a). Sub-clause (2), paragraph (b), sub-paragraph (i), line 2, delete “section 13” and insert “section 14”.
- b). sub-clause (3) paragraph (a) line 1, delete “five thousand cedis” and insert “six thousand two hundred and fifty cedis” and paragraph (b) line 1, delete “one thousand cedis and insert “one thousand, two hundred and fifty cedis”
- c). sub-clause (4) (a) delete after “A”, the “full stop” and insert “comma”
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- d). ~~Sub-clause (9), Delete.~~
- 14) Clause 22 – **Amendment proposed** – Sub-clause (2), paragraph (b), sub-paragraph (i), line 1, delete “an”

- 15) Clause 24 – Amendment proposed – line 2, delete full stop after “Scheme” and insert “as specified in section 4.”
- 16) Clause 25 – **Amendment proposed** –
- a). Introductory statement, number as sub-clause (1).
 - b). paragraph (e), line 2, delete “20” and insert “21”.
 - c). paragraph (j), line 1, delete “assets” and insert “moneys” and line 2, delete “contained in this Act” and insert “specified in Section 42 of this Act”.
 - d). paragraph (k), delete and insert the following:
“(k) borrowing to fund reimbursement of insured depositors upon the occurrence of an insured event if Fund A and/(or) Fund B is not sufficient but shall not borrow from members of the Scheme”
- 17) Clause 26 – **Amendment proposed** –
- a). Sub-clause (1), paragraph (f), line 2, Delete “Bank” and insert “Bar” and delete “General Legal Council” and insert “Ghana Bar Association”.
 - b). Sub-clause (2), paragraph (b), Delete.
 - c). Sub-clause (7), Delete.
- 18) Clause 27 – **Amendment proposed** – paragraph (g), insert “Protection” before “Fund”.
- 19) Clause 28 – **Amendment proposed** –
- a). sub-clause (2), delete
 - b). Sub-clause (5), paragraph (a), line 2, Delete “25” and insert “26”.
 - c). sub-clause (5), insert new paragraphs (g) and (h) to read
“(g) is absent from three consecutive meetings of the Board without sufficient causes;
(h) has an interest in a matter before the Board and
(i) fails to disclose that interest; or
(ii) is present at or participates in the deliberations of the Board in respect of that matter;”
 - d). Sub-clause (6), line 4, delete “33(5)” and insert “34(5)”.
 - e). Sub-clause (8), paragraph (a), Delete “29(3)” and insert “30(3)”.

- 20) Clause 31 – **Amendment proposed** – Sub-clause (3), delete “32” and insert “33”.
- 21) Clause 34 – **Amendment proposed** –
- a). Sub-clause (2), paragraph (a), delete “the” and insert “a”.
 - b). Sub-clause (2), paragraph (b), line 1, after “minimum” insert “of five years” and line 2, delete “for at least five years”.
 - c). Sub-clause (5), lines 1 and 2, delete “for incapacity, malfeasance or incompetence” and insert “in accordance with the terms and conditions of his appointment”.
- 22) Clause 35 – **Amendment proposed** –
- a). Sub-clause (1) line 2, delete “is” and insert “be”
 - b). Sub-clause (2), line 2, delete “a Chief Executive Officer” and insert “the office”.
- 23) Clause 39 – **Amendment proposed** –
- a). Sub-clause (1), paragraph (b), line 1, after “information” insert “or data” and after “to” delete all words and insert “distressed financial institution”.
 - b). sub-clause (1) paragraph (c), delete “and” after “information”
 - b). Sub-clause (2), line 3, after “systems” delete “and software” and before “transfer” insert “prompt”
- 24) Clause 40 – **Amendment proposed** –
- a). Sub-clause (1), paragraph (d), lines 2 and 3, delete all words after “institutions”
 - b). Sub-clause (2), line 5, delete all words after “both”.
- 25) Clause 41 – **Amendment proposed** – line 1, delete “source” and insert “sources”
- 26) Clause 42 – **Amendment proposed** –
- a). Sub-clause (2), line 1, delete “Corporation” and insert “Board”.
 - b). Sub-clause (3), paragraph (b), delete all words after “securities” and insert “designated as qualified instruments by the Bank of Ghana”.
 - c). Sub-clause (3), paragraph (c), delete.
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- 27) Clause 43 – **Amendment proposed** –
- a). Head note, delete and insert the following “Management of Assets”.

- b). Sub-clause (1), line 1, delete “of Directors of the Corporation”.
 - c). Add a new Sub-clause (2) to read:
“(2). The Board shall determine the target size of each Fund” and sequentially renumber the remaining sub-clauses
 - d). original sub-clause (2), line 1, delete “a” and insert “the”.
- 28) Clause 44 – **Amendment proposed** –
- a). Sub-clause (1), line 1, delete “Board” and insert “Corporation”.
 - b). Sub-clause (4), lines 1 and 2, delete “through a competitive process” and insert “in accordance with the Public Procurement Act, 2003 (Act 663)”.
 - c). Sub-clauses (6) and (7), delete
 - d). sub-clause (9) line 2, delete “a daily newspaper” and insert “at least two daily newspapers”
- 30) Clause 47 – **Amendment proposed** –
- a). sub-clause (1) paragraph (b) line 1, delete “the applicable Acts in Ghana” and insert “this Act”
 - b). sub-clause (1) paragraph (c) line 1, insert “subject to section 25 (1) (k)” before “borrow” and delete “except from a member of the scheme” and line 2, delete “the Acts in force” and insert “this Act”
 - c). Add a new sub-clause (3) as follows:
“(3). any borrowing under subsection 2 shall be repaid within six months”
- 31) Clause 48 – **Amendment proposed** – delete
- 32) Clause 49 – **Amendment proposed** – line 1, delete “The” before “administrative”.
- 33) Clause 53 – **Amendment proposed** –
- a). Sub-clause (1), line 2, delete “14, 15 and 16” and insert “15, 16 and 17”.
 - b). sub-clause (2) line 4, delete “bill” and insert “Bill”

34) Clause 55 – **Amendment proposed** –

- a) insert the following definition after the definition for “Board”: “compounds” mean an agreement between a creditor and a debtor by which the creditor accepts a composition or smaller sum in discharge of the original debt owed;”.
 - b) interpretation of “Corporation”, line 2, delete “22” and insert “23”.
 - c) interpretation of “financial institution” lines 1 and 2, delete “non-bank financial” and insert “specialised deposit-taking”
 - d) interpretation of “initial premium” line 1, delete “one-time” and insert “one-off”
 - e) insert a definition for “next friend” after definition for “joint account” to read as follows:

“next friend” means a person who acts on behalf of another person who has not legal capacity to act on his or her own behalf under this Act”
 - f) insert a definition for “main asset” to read as follows:

“main asset includes core assets such as cash, Treasury Bills and other short-term investments of Fund A and B other than investment for other operational purposes”
 - g) substitute “distressed financial institution” for “problem institution” and insert in the appropriate alphabetical order.
 - h) insert definition for “reconstruction” before the definition for “Scheme” to read “reconstruction” means a complete overhaul of the capital of a distressed company to save the company from liquidation and to enable the company to continue as a going concern by removal of the burden of immediate debt, attraction of additional capital and creation of a viable financial structure.”
 - i). insert the following definition after the definition for “Scheme”: “scheme of arrangement” means any change in the rights and liabilities of members, debenture holders or creditors of debenture holders and creditors or in the Regulations of a company;”
 - j). definition of “small depositor” line 2, delete “to be a small deposit”
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- k) definition for “supervisory instructions” lines 2-4: delete words after “institution” and insert “using the risk based supervision methodology,”

Clause 56 – **Amendment proposed** –

- a). Sub-clause (2), line 3, delete “13” and insert “14”.
- b). Sub-clause (3), paragraph (a), delete and insert “distressed financial institution”.
- c). Sub-clause (5) line 4, delete “six” and insert “twelve”
- d). Sub-clause (6) line 3, after “shall” insert “undertake a mandatory merger or amalgamation with stronger institutions or”
- e). Sub-clause (7), line 1, delete “an insured bank or specialized deposit-taking institution” and insert “A member of the Scheme”.
- f). Sub-clause (8),line 1, delete (1) and insert (7) and line 2, delete “15” and insert “16”.
- g). Sub-clause (9), Delete.

8.0 CONCLUSION AND RECOMMENDATION

The Committee has thoroughly examined the Bill and is of the view that the passage of the Bill into an Act will help ensure a sound, stable and efficient financial system and further boost public confidence in the banking system. The Committee therefore recommends to the House to adopt its report and pass the Ghana Deposit Protection Bill, 2015 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)

March, 2016

