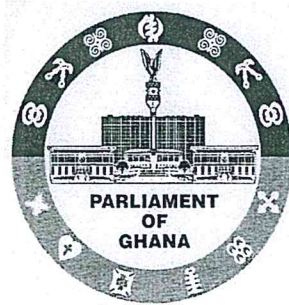


**IN THE FOURTH SESSION OF
THE SIXTH PARLIAMENT OF
THE FOURTH REPUBLIC OF GHANA**



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

ON THE

COMPANIES (AMENDMENT) BILL, 2016

JULY 2016

1.0 INTRODUCTION

1.1 The **Companies (Amendment) Bill, 2016** was presented to Parliament and read the first time on **Monday, 18th July, 2016**. In accordance with Article 106(4) and (5) of the Constitution and Order 179 of the Standing Orders of the House, the Rt. Hon. Speaker referred the Bill to the Committee on Constitutional, Legal and Parliamentary Affairs for consideration and report.

1.2 The Committee met to deliberate on the referral. In attendance were the Honourable Minister for Justice and Attorney-General, Mrs. Marietta Brew Appiah-Oppong, Officials from the Legislative Drafting Division of her Ministry and Officials from the Registrar-General's Department. Members of the Business Law Reform Committee of Experts were also in attendance. The Committee is grateful to them for their assistance.

2.0 REFERENCE

2.1 The Committee referred to the following Documents during its deliberations.

- i. 1992 Constitution
- ii. Standing Orders of Parliament
- iii. The Companies Act, 1963 (Act 179)

3.0 BACKGROUND

3.1 The Companies Code came into force in 1963 after Professor Gower's Commission had engaged with the private sector, particularly the business community and had considered their views on new approaches to company legislation. The Companies Code, 1963, now referred to as the Companies Act, 1963 (Act 179), pursuant to the Laws of Ghana (Revised Edition) Act, 1988 (Act 562).

3.2 Due to changing circumstances and experiences in the world of business, it has become necessary to do a holistic review of the Act, after decades of its operation. There is a global consensus that central registers of companies are the most effective way of indicating information on the beneficial owners of companies to tackle corruption, money laundering and terrorism. This is because, experience the world over has shown that the identity of beneficial owners of some companies are shrouded in secrecy and this has the tendency of fuelling global corruption, money laundering, movement of illicit money inflows into countries and terrorism financing.

3.3 Ghana is also being called upon to introduce certain provisions in its existing Company Law, Act 179 in line

with the protocols in respect of best business practices that the Country has acceded to. In a Pre-assessment Workshop held in March, 2016, to ascertain Ghana's level of compliance with the Financial Action Task Force (FATF) Recommendations, it emerged that there is a lacuna in the existing Legislation in relation to the submission of details by shareholders of companies on the beneficial ownership of companies in Ghana. It was also noted by the FAFT that the information in companies register pertaining to legal ownership/control does not include information on beneficial ownership. Again, there is no mechanism in place to verify the identity or owners of companies for purposes of fighting corruption, money laundering and terrorism financing.

- 3.4 Ghana is due for the second round of mutual evaluation by the Inter-Governmental Action Group Against Money Laundering in West Africa (GIABA) in September 2016. Unfortunately, the holistic review of the Law cannot be done within the stipulated time for the evaluation and the Country risk being blacklisted if its existing Company Law is not revised to ensure compliance with FATF Recommendations. There is therefore the urgent need to amend certain portions of the Companies Act 1963 (Act 179) in line with the FAFT Recommendations to avoid

blacklisting, as happened in February 2012. The provisions being introduced are to allow for transparency in the operations of companies in respect of beneficial ownership arrangements. Hence the introduction of the Bill.

4.0 OBJECT OF THE BILL

4.1 The Bill seeks to provide for the inclusion of the names and particulars of beneficial owners of companies in the register of members, establish a Central Register and to provide for related matters.

5.0 OBSERVATION

5.1 The Committee observed that *Clause 1* of the Bill seeks to amend *Section 27* of the Companies Act, 1963 (Act 179) to require a subscriber of a company to provide the details of the beneficial owner in the Register of Members, in a situation where the subscriber is not the beneficial owner.

5.2 The provision of the particulars of actual owners of shares in the Company's Register of Members, would enable businesses to identify who really owns the company. Companies are required to indicate during

registration the members and beneficial owners who are politically exposed in the Register of Members.

5.3 The Committee also noted the establishment of a Central Register by the Bill, which is to be kept and maintained by the Registrar-General, both in manual and electronic forms. The Register is supposed to contain particulars required for registration under *Sections 27, 32 and 303* of Act 179 and any other information that the Registrar-General may require. The Central Register most importantly, must contain the nature of interest including the details of the legal arrangement in respect of the beneficial ownership. The Registrar-General is enjoined to collaborate with competent authorities for the purposes of maintaining, verifying and updating the Register and upon request and on timely manner, make it available to the authorities for inspection. The information in the Central Register would facilitate the tracking of corruption on the part of members and beneficial owners of companies.

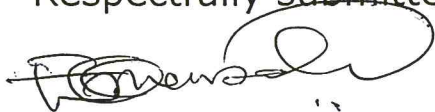
6.0 CONCLUSION

6.1 Throughout the world, the issue of transparency has become very critical in the operations of companies. Experience have shown that, people hide behind

complex and opaque business organisations to evade tax, engage in corruption and transnational organised crimes. Countries are therefore being compelled by International Protocols to put the necessary transparent measures in place to combat illicit activities perpetrated by companies.

6.2 As afore-indicated in the Report, Ghana is due for assessment on its compliance with the Recommendations of FAFT in September, this Year. The Country would be blacklisted if it fails in the evaluation. Judging from the exigencies of the House therefore, the Committee recommends to the House to adopt its Report and pass the Bill under certificate of urgency in accordance with Article 106(13) of the Constitution and Order 119 of the Standing Orders of the House, subject to the amendments proposed in the attachment.

Respectfully submitted.



ERIC OWUSU-MENSAH
Clerk, Committee on
Constitutional, Legal and
Parliamentary Affairs



HON. MAGNUS KOFI AMOATEY
Chairman, Committee
on Constitutional, Legal and
Parliamentary Affairs

JULY, 2016

APPENDIX

AMENDMENTS PROPOSED TO THE COMPANIES (AMENDMENT) BILL, 2016

- i. Clause 1 – Section 27 of Act 179 – Amendment proposed – Delete paragraph (a) and insert the following:
- “(a) the insertion after paragraph (g) of
- “(h) the following particulars of each subscriber:
- (i) the full name and any former or alternate name;
 - (ii) the date and place of birth;
 - (iii) the telephone number;
 - (iv) the nationality and proof of identity;
 - (v) residential, postal and email address, if any;
and
 - (vi) place of work and position held;
- (i) where a subscriber under paragraph (h) is not the beneficial owner of the interest, the following in respect of the beneficial owner:
- (i) the full name and any former or alternate name;
 - (ii) the date and place of birth;
 - (iii) the telephone number;
 - (iv) the nationality and proof of identity;

- (v) residential, postal and email address, if any;
- (vi) place of work and position held; and
- (vii) the nature of the interest including the details of the legal arrangement in respect of the beneficial ownership."

ii. Clause 2 – Section 32 of Act 179 – Amendment proposed – Subsection 1, delete "Depositary" and insert "Depositary"

iii. Clause 2 – Section 32 of Act 179 – Amendment proposed – Delete paragraph (b) of subsection (1) and insert the following:

"(b) where a member is not the beneficial owner of the interest;

- (i) the full name and any former or alternate name of the beneficial owner;
- (ii) the date and place of birth;
- (iii) the telephone number;
- (iv) the nationality and proof of identify;
- (v) residential, postal and email address, if any;
- (vi) place of work and position held; and
- (vii) the nature of the interest including the details of the legal arrangement in respect of the beneficial ownership."

- iv. Clause 2 – Section 32 of Act 179 – Amendment proposed –
Delete paragraph (a) of subsection (2) and insert the following:
“(a) provide the company with the particulars of the beneficial owner at the time of becoming a member; and”
- v. Clause 5 – Section 303 of Act 179 – Amendment proposed –
Delete subparagraph (v) of paragraph (bA) and insert the following:
“(v) the nature of the interest including the details of the legal arrangement in respect of the beneficial ownership.”
- vi. Clause 7 – Section 331 of Act 179 – Amendment proposed –
Delete and insert the following:
“Section 331A inserted
7. The principal enactment is amended by the insertion after section 331 of a new section 331A as follows:
“Central Register
331A. (1) There is established by this Act a register to be known as the Central Register.

(2) The Register shall
(a) keep and maintain the Central Register both in manual and electronic formats;

and

- (b) enter in the Central Register,
 - (i) the particulars required to be submitted for registration under subsection (1) of section 27;
 - (ii) the particulars required to be submitted for registration under subsection (6) of section 32;
 - (iii) the particulars required to be submitted for registration under paragraph (c) of subsection (1) of section 303; and
 - (iv) any other information that the Registrar may require.

(3) The Registrar shall

- (a) collaborate with other competent authorities for the purpose of maintaining, verifying and updating the register; and
- (b) on request and in a timely manner, make the register available to the competent authorities for inspection.

(4) For the purpose of this section, "competent

authority” means all public authorities with designated responsibilities for combating money laundering or terrorism financing, in particular, the Financial Intelligence Units and the authorities that have the function of investigating or prosecuting money laundering, associated predicate offences and terrorist financing and seizing of freezing, and confiscating criminal assets; authorities receiving reports on cross-border transportation of currency and Bearer Negotiable Instruments, and authorities that have anti-money laundering and combating the financing of terrorism supervisory or monitoring responsibilities aimed at ensuring compliance by financial institutions and designated non-financial business and professions with anti-money laundering and combating the financing of terrorism requirements.”

- vii. Clause 8 – Section 336 of Act 179 – Amendment proposed – Delete.

viii. Clause 9 – First Schedule to Act 179 – Amendment proposed – Delete the definition for “politically exposed person” and insert the following:

“politically exposed person” includes

- (a) a person who is or has been entrusted with a prominent public function in this country, a foreign country or an international organization, including
 - (i) Head of state or of government;
 - (ii) senior political, government, judicial or military official
 - (iii) a person who is or has been an executive in a foreign country of a state owned company; and
- (b) a person who is or has been a senior political party official in a foreign country and includes any immediate family members or close associates of that person;”

ix. Clause 10 – Third Schedule to Act 179 – Amendment proposed – Delete paragraph 7 and insert the following:
“7. The following personal particulars of every beneficial owner of the company:

- (a) the full name and any former or alternate name of the beneficial owner;

- (b) the date and place of birth;
- (c) the telephone number;
- (d) the nationality and proof of identity;
- (e) residential, postal and email address, if any;
- (f) place of work and position held; and
- (g) the nature of the interest including the details of the legal arrangement in respect of the beneficial ownership".

