

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

THE REPORT OF THE COMMITTEE ON TRADE, INDUSTRY AND TOURISM
ON THE GHANA INVESTMENT PROMOTION CENTRE BILL, 2013

1.0 INTRODUCTION

The Ghana Investment Promotion Centre Bill, 2013 was presented and read the first time in the House on Thursday 14th March, 2013 and referred to the Committee on Trade, Industry and Tourism for consideration and report in accordance with the Order 159 of the Standing Orders of the House.

Pursuant to the referral, the Committee requested and received memorandum from the public and other interest groups.

The Committee met with the Minister of Trade and Industry (MO/II) Hon. Haruna Iddrisu and his team of officials, the Chief Executive Officer of the Ghana Investment Promotion Centre (GIPC), Mrs. Mawuena Trebarh and her team of officials, the Commissioner-General, Mr. George Blankson and officials from, Ghana Revenue Authority (GRA). Some Members of the Ghana Union of Traders Association (GUTA) led by their President, Mr. G.K. Ofori, the Executives of the Association of Pharmaceutical Business Executives of Ghana (APBEG), and the Attorney General's Department were also present during the consideration of the bill.

The Committee is grateful to all members who attended upon it for the immense support provided during the consideration of the Bill.

2.0 REFERENCES

In examining the Bill, the Committee referred to and was guided by the following:

- The 1992 Constitution of the Republic of Ghana.
- The Standing Orders of the Parliament of Ghana.
- Ghana Investment Promotion Centre Act, 1994 (Act 478)
- Ghana Revenue Authority Act, 2009 (Act 791)

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3.0 BACKGROUND

The economic and investment climate which existed when the GIPC Act (478) was enacted has undergone major changes making the Act obsolete. Recent developments have also highlighted shortcomings in the Act and have provided a new policy focus.

There is therefore an urgent need to provide incentives to attract and retain strategic investors to make Ghana a competitive investment destination and to also provide Ghanaians with opportunities to take advantage of the prevailing economic conditions in the country.

4.0 PURPOSE OF THE BILL

The Bill seeks to revise the law relating to investment promotion and to establish the Ghana Investment Promotion Centre (GIPC) as the government agency responsible for the encouragement and promotion of investments and for creating a congenial environment for investments in Ghana.

Government therefore wants to commit itself through this bill to empower Ghanaian-owned enterprises. Provision has therefore been made to expand the list of businesses reserved exclusively for Ghanaians.

4.0 DIVISION OF THE BILL

The Bill contains a total number of forty-four (44) Clauses.

Clause 1 provides for the scope of application of the Bill.

Clause 2 establishes the Centre as a body corporate with all the incidents of incorporation and provides for the acquisition of property by the state under the State Lands Act, 1961 (Act 125), for the benefit of the Centre.

Clause 3 provides for the object of the Centre which is to create an enhanced environment for investment and the development of the Ghanaian economy through investment, and encourage, promote and facilitate investment in the country.

Clause 4 enumerates the functions of the Centre.

Clauses 5 – 13 deals with the governance of the Centre.

Clauses 14 – 25 deals with administration, financial and miscellaneous matters.

Clause 26 reserves certain activities for Ghanaians.

Clause 27 spells out the minimum foreign capital requirement for foreigners wanting to operate a business in Ghana as well as for joint enterprises with Ghanaians.

Clause 28 Exempts Export trading and portfolio investments from the minimum capital requirement

Clauses 29 to 32 relate to investment guarantees. Clause 29 prohibits discrimination between a foreign investor and a Ghanaian in the operation of a business unless specifically provided for by the legislation and *clause 30* protects the assets of a foreign investor against expropriation, except where the acquisition is done in the national interest and in accordance with law. *Clause 31* deals with other guarantees such as transfer of capital, profits and dividends and personal remittances. *Clause 32* deals with standard provision on dispute resolution.

Clauses 33 to 35 – clause 3 makes Labour legislation applicable to enterprises registered under the Bill. Clause 34 fixes automatic expatriate quotas for enterprises registered under the Bill. Clause 35 also requires the Centre to provide assistance and guidance to enterprises and act as a facilitator between the enterprises and relevant government departments, agencies and other public authorities.

Clauses 36 – 37 deal with technology transfer agreements and mandate the Centre to monitor enterprises to which the Bill applies to ensure compliance with the Bill.

Clases 38 - 40 provision is made for appeals, offences and penalties

Clause 41 deals with the power to make Regulations by legislative instrument

Clause 42 is on interpretation and **clases 43** and **44** deal with repeals and savings and transitional provisions respectively.

5.0 OBSERVATIONS

5.1 Minimum capital

The Committee observed that the interests of both the Ghanaian and foreign investors have been dealt with by the bill and allows a broad room for them to do business in the country to enhance development.

Nevertheless, the bill also seeks to correct the abuse of the system by foreign investors who have strayed into sectors reserved exclusively for Ghanaians, particularly the retail and trading sectors. As a result the minimum capital required of foreigners to engage in retail trade in the country for instance has been increased from 300 thousand to one million US dollars in cash or in goods or both by way of equity capital.

The Committee is of the view that the increase would deter foreign investors from engaging in petty trading and put an end to the unfair competition between Ghanaian investors and foreign investors.

5.2 Benefits of the Bill

Officials from the Ministry of Trade and Industry (MOTI) informed the Committee that the Bill significantly, embraces all enterprises including mining and petroleum which were not covered by the previous law (Act 478). This provision according to the Ministry would ensure increased efficiency in the co-ordination of investments, improved investment promotion strategies and a comprehensive dissemination of information on investment in Ghana.

5.3 Protection of Ghanaian-owned Enterprises

The Committee noted with concern that even though the GIPC Act (478) reserved petty trading, hawking or selling in Kiosk and other small businesses for Ghanaians, it is currently being flouted by foreigners. This infiltration however, is negatively affecting Ghanaians engaged in petty trading.

The review therefore seeks to empower Ghanaian entrepreneurs so they would not be subjected to the kind of competition from foreign business that would make it unprofitable for them to operate. In seeking to protect the local retailer, the bill also encourages foreign investor to engage in large scale value added trading activities which would not interfere with the activities of Ghanaian petty traders.

Activities exclusively reserved for Ghanaian businesses as listed in clause 26 have been augmented to include the printing of scratch cards for the use of subscribers of telecommunication services.

5.4 Registration by Enterprises

The Committee again observed that the Bill explicitly states that all enterprises including Ghanaian enterprises must register with the Centre. According to GIPC the registration would enable them coordinate all activities of investors in the country and also enable Ghanaian enterprises enjoy applicable benefits and incentives under the Act.

7.0 AMENDMENTS PROPOSED

- i. Clause 5 - **Amendment proposed-** Sub-clause (1) Paragraph (b), *Delete* sub-paragraph (iii) and (iv);

The main reason was to reduce the number of Deputy Ministers from four (4) to two (2) which in the Committee's opinion would be more efficient and cost effective.

Membership of the subcommittee according to the Committee may then include a Deputy Minister in charge of the sector that deals with the subject matter under consideration.

1. The Committee, however, was of the view that the Deputy Minister of Finance and Economic Planning be retained to frequently advise the GIPC Board on Micro Finance Investments in their operations
2. The Deputy Minister for Trade and Industry is also retained to allow for information flow between the Presidency and GIPC

- ii. Clause 5 - **Amendment proposed** -Sub-clause (1) paragraph (d) line 1, before appointed, *delete* "at least three of whom are persons"

The amendment would encourage private sector participation since all the five (5) other persons who would serve on the governing body would to be nominated from the Private Sector.

- iii. Clause 5 - **Amendment proposed** - Sub-clause (1) paragraph (d), line 2, *delete* "and" after Service

- iv. Clause 5 - **Amendment proposed** - Insert a new clause after clause 5 as follows

"Functions of the Board

- (1) The Board shall provide policy guidance and give advice to ensure the proper and effective performance of the functions of the Centre.
- (2) The Board may, in the implementation of the objects of the Centre
 - (a) design, review, formulate and adopt a national strategy for promoting domestic and foreign investment;
 - (b) approve the investment promotion operations and marketing plans which are proposed by the Chief Executive officer for implementation by the Centre;
 - (c) identify obstacles to investment in Ghana and make proposals and suggestions to the President

on steps which should be taken to remove the obstacles and foster effective linkages between the appropriate institutions and agencies towards the removal of obstacles of investment; and

(d) make recommendations to the President on incentives for the promotion of investment and the eligibility criteria for the incentives and priority areas of investment.”

- v. Clause 7 - **Amendment proposed** – Sub-clause (1) , paragraph 4, line 1, delete “six” and insert “five”

The number was reduced from six to five because the membership of Board has also been reduced from eleven to nine.

- vi. Clause 13 - **Amendment proposed**- sub-clause (2) line 2, *Delete* “and the Board shall comply” after the word “policy”

The Committee noted that the phrase above was not necessary. It only emphasized the need for the Board to strictly adhere to the directives of the President

- vii. Clause 18 - **Amendment proposed** – delete head note “Relationship of the Centre with other public authorities” and insert “Collaboration”

The Committee was of the opinion that the word “collaboration” was more appropriate than the word “relationship” in the head note.

- viii. Clause 18 - **Amendment proposed** – line 2, delete “co-operate” and insert “Collaborate”

The Committee was of the view that the word ‘collaborate’ was more appropriate because it allows the MDA’s to share information with the Centre while the word ‘co-operate’ compels them to assist.

- ix. Clause 24- **Amendment proposed** – line 1, delete the number (1)

The number "(1)" which should have represented a sub-clause of Clause 24 was deleted because there is no sub-clause "2".

- x. Clause 25- **Amendment proposed** – sub-clause (4), line 3 & 4, delete "that the Board may determine"

The preceding statement, in the same sub-clause is sufficient to suggest that the Board is responsible for paragraph (a) and (b).

- xi. Clause 25- **Amendment proposed** – sub-clause (4), line 3, *insert*, 'the Ghana Revenue Authority (GRA) and other' between the word "with" and "appropriate"

The Committee noted that since GRA is the sole agent for administering taxes and customs duties in the country it would be necessary to consult them.

- xii. Clause 26- **Amendment proposed- sub-clause (1), paragraph (a), line 2, insert 'not less than 12 by 14 ft' after the word 'stall'**

This provision was necessary because it specifies the dimension of the stall and would further expunge any form of ambiguity.

- xiii. Clause 26- **Amendment proposed-** sub-clause (1), paragraph (d), line 2, *delete* "mobile"

The deletion of 'mobile' would ensure that the provision made in the clause is not limited to only mobile subscribers but would cover all telecommunication services.

- xiv. Clause 26- **Amendment proposed** – to insert new paragraphs "e", "f" and "g" as follows:
e) Retailing of internet bandwidth and mobile

- telephony value added services;
- f) Production of exercise books and other basic stationery; and
- g) Importation and internal distribution of finished pharmaceutical products

This amendment is to widen the scope of the activities of Ghanaian owned enterprises.

- xv. Clause 26- **Amendment proposed** – to insert a new sub-clause between sub-clause (1) and (2) as follows:

- (2) Activities eligible for Joint Venture Participation with Ghanaians

Notwithstanding Section 27 (1) (b), a person who is not a citizen or an enterprise which is not wholly owned by citizens shall not invest or participate in the following activities unless there is at least thirty percent participation by a citizen or an enterprise which is wholly owned by citizens:

- a) Production of packaging materials;
- b) Manufacture of furniture and wood products;
- c) Manufacture of sanitary paper products;
- d) Provision of all services; including Mining, Oil and Gas and
- e) Manufacture of generic pharmaceutical products;

- xvi. Clause 26 - **Amendment proposed** – sub-clause (2), line 2, delete “citizens and enterprises wholly owned by citizens” and insert “Ghanaians and also the list of enterprises eligible for joint-venture participation with Ghanaians”

The rationale for proposing the reservation of the enterprises specified under section 26(1) for Ghanaian and the activities stipulated under section 26(2) eligible

for joint-venture participation with Ghanaians is that Ghana has fully built the capacity to produce the goods and or supply the services pertaining to those enterprises or activities. In fact, little or no foreign technology is required in the provision of these goods and services.

In the telecommunication industry in particular, the industry is presently dominated by foreign interest. Ghanaian entrepreneurs have however built some capacity in certain sectors of the industry and it is only fair that these local entrepreneurs are empowered to build further capacity and participate in activities in the industry by reserving a few activities in the industry for Indigenes or Ghanaians.

- xvii. Clause 26 - **Amendment proposed** – sub-clause (2), delete the number (2) and insert number “(3)”.

This new sub-clause has been introduced to provide for all services; including Mining, Oil and Gas

- xviii. Clause 27 - **Amendment proposed**- sub-clause (1), paragraph (a), line 2, *delete* “fifty” and *insert* “Two Hundred” before “thousand”

The proposed amendment of a higher figure seeks to correct abuses in the system by foreign investors who have strayed into sectors reserved exclusively for Ghanaians, particularly the retail and trading sectors.

The increase would also deter foreign investors from engaging in petty trading and put an end to the unfair competition between Ghanaian traders and foreign investors.

xix. Clause 27- **Amendment proposed** - sub-clause (1), paragraph (b),
Delete "two" and *insert* "Five"
The increase in the foreign capital will discourage cheap and unscrupulous investors from entering the country.

xx. Clause 27- **Amendment proposed**- sub-clause (5), line 2, *delete*
"ten" and *insert* "twenty" before "skilled Ghanaians"

This amendment would help to correct the abuses in the system by foreign investors and also ensure that even if a foreign investor is to engage in retail it would create employment for a greater number of locals.

xxi. Clause 31 - **Amendment proposed**- sub-clause (2), line 3, *delete*
"the basic net salary of that person" and *insert* "sixty percent of the net salary of that person."

The Committee noted that the phrase 'basic net salary' was self-contradictory because 'basic salary' and 'net salary' are two different items. The Committee therefore, decided to use a fixed percentage for clarity and to ensure that a proportional amount of salaries of foreign investors is spent within the country.

xxii. Clause 34- **Amendment proposed**- sub-clause 1 (a), (i) *delete* "
lines 1 and 2" and *insert* "two hundred thousand United States Dollars and not more than five hundred thousand United States Dollars"

The Committee was of the view that the threshold between US\$50,000 to US\$250,000 was too low, and also it would prevent unscrupulous people from investing in Ghana.

xxiii. Clause 36 - **Amendment proposed** – Delete sub-clause “(6)” with the following:
“A technology transfer agreement may be renewed with the approval of the Centre and the regulator of the relevant sector and is subject to registration by the Centre”

xxiv. Clause 37 - **Amendment proposed** - sub-clause (3), line 2 insert “who provides proof of identity” between the words “centre” and “to”

The Committee was of the view that ‘proof of identity was necessary to avoid misrepresentation by unauthorized persons who may decide to engage in the monitoring exercise.

xxv. Clause 38 - **Amendment proposed**- insert a new sub-clause (6) “if the appellant is not satisfied with the decision, he/she may seek for redress at the high court”

This amendment would give assurance and security to the investors who may want to seek redress in court as a result of GIPC’s decision(s)

xxvi. Clause 39 - **Amendment proposed**- Delete clause 39 and insert the following:

“Offences”

- (1) A person commits an offence if that person being an enterprise
 - (a)
 - (i) which is required to register with the Centre by the Act fails to register or renew its registration with the Centre in accordance with this Act;
 - (ii) engages in an activity other than for which that enterprise has been registered under this Act;

- (iii) applies any benefit conferred by or under this Act for purposes other than for which the benefit was conferred;
 - (iv) refuses or neglects to give any information which the Centre reasonably requires for the purpose of this Act;
 - (v) refuses without lawful excuse to admit an officer or a designated person into the business of that enterprise or otherwise obstructs an officer or a designated agent of the Centre in the performance of the functions of the officer or agent;
- (b) deliberately or negligently submits false or misleading information to the Centre;
 - (c) lets out a stall or store in a market to a foreigner; or
 - (d) otherwise contravenes a provision of this Act.

xxvii. Clause 42 **Definition of Ghanaian –**

Amendment proposed- Line 3 *Delete*, “the majority capital or financial interest of which is” and *insert* “which is wholly” before the word “owned”.

Line 4 delete, the phrase ‘and includes the State and a statutory corporation’

xxviii. Clause 42 **Amendment proposed –** delete the definition of “Technology transfer agreement” and insert the following:

“Technology transfer agreement” means an agreement with an enterprise which has a duration of not less than eighteen months which involves:

- a) The assignment, sale and licensing of all forms of industrial property, except for trademarks, service marks and trade names when they are not part of transfer of technology;
- b) The provision of know-how and technical expertise in the form of feasibility studies, plans, diagrams, models, instructions, guides, formulae, basic or detailed engineering designs, specifications and equipment for training , services involving technical advisory and managerial personnel, and personnel training;
- c) The provision of technological knowledge necessary for the installation, operation and functioning of the plant and equipment, and turnkey projects;
- d) The provision of technological knowledge necessary to acquire, install and use machinery, equipment, intermediate goods and /or raw materials which have been acquired by purchase, lease or other means.

The revised definition is addressing the gross abuse of huge foreign exchanged resources being repatriated without any tangible transfer of technology under the current definition.

xxix. Clause 42 - **insert a new definition for "Pharmaceutical Products"**
"Any chemical substance or products intended for use in the medical diagnosis, cure, treatment or prevention of disease".

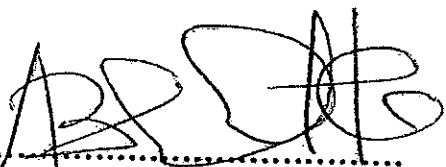
xxx. Clause 42 - **insert a new definition for "finished pharmaceutical products"** "any chemical substance or products meant for purchase by the end user"

8.0 CONCLUSION

The Bill is germane and appropriate for the purpose of revising the law relating to investment promotion and to establish the Ghana Investment Promotion Centre (GIPC) as the government agency responsible for the encouragement and promotion of investments; and for creating a congenial environment for investments in Ghana.

The Committee therefore recommends to the House to pass the **Ghana Investment Promotion Centre Bill, 2013** subject to the amendments proposed.

Respectfully submitted.



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HON. SOROGHO AMADU B
(CHAIRMAN OF THE COMMITTEE)



MS. EVELYN BREFO-BOATENG
CLERK TO THE COMMITTEE

11TH JUNE, 2013