

**IN THE SECOND SESSION OF THE SEVENTH PARLIAMENT
OF THE FOURTH REPUBLIC OF GHANA**

**REPORT OF THE FINANCE
COMMITTEE**

ON THE

**MINERALS INCOME
INVESTMENT FUND BILL, 2018**

PARLIAMENT OF GHANA LIBRARY

JULY 2018

Acc No: 1815 C₁

Class No: BE/MIF/18.

1.0 INTRODUCTION

The Minerals Income Investment Fund Bill, 2018 was presented to Parliament and *read the first time* on Friday 20th July, 2018. The Bill was subsequently *referred* to the Finance Committee for consideration and report in accordance with the 1992 Constitution and Order 169 of the Standing Orders of the House.

A Deputy Minister for Finance, Hon. Charles Adu-Boahene and officials from the Ministry of Finance, the Ghana Revenue Authority (GRA) and the Attorney General's Department attended upon and assisted the Committee in its deliberations on the Bill.

The Committee is grateful to the Hon. Deputy Minister and the officials from the Ministry of Finance, the GRA and the Attorney-General's Department for attending upon the Committee.

2.0 REFERENCES

The Committee referred to the following documents *inter alia* during its deliberations on the Bill:

- a. The Constitution of the Republic of Ghana, 1992.ed
- b. The Standing Orders of the Parliament of Ghana.
- c. Interpretation Act, 2009 (Act 792)
- d. Ghana Revenue Authority Act, 2009 (Act 791)

3.0 BACKGROUND

The Government of Ghana has identified the need to raise sustainable funding to finance long-term strategic capital and social investments in education, health, agriculture, infrastructure and other areas in order to transform the economy and enhance the lives of the people of Ghana.

Government has decided to establish diverse sources of funding which do not rely entirely on debt instrument financing. Pursuant to this decision and to address rising Government expenditure over the short to medium term, necessary measures are being adopted by Government to innovatively increase revenue in a manner that does not unduly burden the Ghanaian populace.

An alternative and sustainable source of funding identified by Government is to monetize income from mineral streams and equity revenues from mining operations.

In the past, Ghana has not sufficiently leveraged its mineral resources to create significant value for the country. Presently, however, Government considers using income that it receives from mining as a basis for raising additional funds for the country. This is an effective method by which mineral resources can create significant additional value for the country.

Unlike the traditional methods of raising capital, the monetization of income from minerals does not involve an increase in the debt burden of the Republic. Also, realizing the value of a specified

percentage of future mineral income mitigates the exposure of the Republic to fluctuations in mineral prices and production levels.

The Minerals Income Investment Fund Bill, 2018 is introduced to establish a Fund that will establish and implement investment policy to maximize Ghana's mineral wealth for the benefit of the country.

3.1 URGENCY OF THE BILL

In accordance with article 106(13) of the 1992 Constitution and Order 119 of the Standing Orders of the House, the Committee determined and hereby certifies that the Bill is of an urgent nature and may therefore be taken through all its stages of passage in one day.

4.0 PURPOSE OF THE BILL

The object of the Bill is to establish a Minerals Income Investment Fund to hold and manage the equity interests of the Republic in mining companies, to receive mineral royalties and other related income due to the Republic from mining operations, to provide for the management and investment of the assets of the Fund and to provide for related matters.

5.0 CONTENTS OF THE BILL

The Minerals Income Investment Fund Bill, 2018 is divided into forty-six (46) clauses.

Clause 1 of the Bill establishes the Minerals Income Investment Fund. The Fund is a body corporate with perpetual succession, and

a common seal, may sue and be sued in its corporate name and have in all respects the power of a body corporate.

The objects of the Fund include maximizing the value of the income due to the Republic from the mineral wealth of the country for the benefit of the citizens and monetizing the mineral income accruing to the Republic in a beneficial, responsible, transparent, accountable and sustainable manner. This is provided for in *clause 2*.

Clause 3 empowers the Fund, inter alia, to create and hold equity interests in a Special Purpose Vehicle (SPV) in any jurisdiction in furtherance of its objects, and the Special Purpose Vehicle is required to be free to operate as a regular, commercial company.

Clause 4 provides for the functions of the Fund. For the purpose of achieving the objects of the Fund, the Fund is to manage, deal in and invest minerals income accruing to the Republic received by the Fund, hold and manage mineral equity interest of the Republic and exercise all rights related to the minerals equity interest, and disburse twenty percent of income accruing to the Republic from minerals to the Minerals Development Fund, among others.

The management of the Fund is provided for in *clauses 5 to 22*.

Clause 5 provides for the governing body of the Fund. The members of the Board are to be appointed by the president in accordance with article 70 of the Constitution. This is captured in clause 6.

Clause 7 provides for the functions of the Board of the Fund which include the formulation of policy and the supervision of the management and affairs of the Fund.

Standard provisions on tenure of the office of members of the Board, duties and liabilities of the members of the Board, meetings of the members of the Board, disclosure of interest, and establishment of committees are provided for in *clauses 8,9,10,11 and 12* respectively.

Clause 13 provides for the establishment of an Investment Advisory Committee to advise the Board on the investment of the Fund under the act. *Clause 14* outlines the membership of the Investment Advisory Committee with proven competence in finance and other qualifications.

Clause 15 provides the functions of the Investment Advisory Committee.

Standard provisions on tenure of office of members of the Investment Advisory Committee, meetings of members of the Investment Advisory Committee and disclosure of interest are provided for in *clauses 16, 17, and 18* respectively.

The Secretariat of the Investment Advisory Committee is provided for under *clause 19*.

Clause 20 requires the Board to provide the Investment Advisory Committee with the administrative support required by the Committee for the performance of its functions.

Members of the Board and members of a Committee of the Board are to be paid allowances approved by the minister *under clause 21*.

Administrative provisions are provided for in *clause 22 to 26*. *Clause 22* makes provision for the appointment of a Chief Executive

Officer. The Chief Executive Officer is to be appointed in accordance with article 195 of the Constitution by the President and is to hold office on the terms and conditions specified in the letter of appointment.

The Chief Executive Officer is responsible under *clause 23* for the day to day administration of the affairs of the Fund and is answerable to the Board in the performance of the functions of the Fund.

Clause 24 is on appointment of other staff and professional advisors.

Clause 25 makes provision for the Board to select asset managers to manage the assets of the Fund and Special Purpose Vehicle established under the Act.

The Fund is to have its head office in Ghana pursuant to *clause 26*. The Fund may, where it considers necessary for the performance of its function, open branches within or outside the country subject to the approval of the Minister.

Clauses 27 to 35 make provision for financial matters of the Fund. The sources of funds for the Fund in clause 27 include mineral income as defined under the Act, income from investment, money raised from the sales of its shares, rights or interest in a Special Purpose Vehicle or other company and dividends, distributions, interest or other payments from Special Purpose Vehicle or other company.

Clause 28 provides for the payment of mineral royalty by a mining company in each month including any payments due for the late payment of mineral royalties calculated in accordance with the

applicable law or any agreement between the relevant mining company and the Republic by the relevant mining company directly into the Fund.

Clause 29 permits the payment of minerals in places of royalties.

Transfer of mineral equity interest is dealt with in *clause 30*.

Disbursement of money from the Fund is provided for in *clause 31*.

Subject to the Public Financial Management Act, 2016 (Act 921), the Fund and any Special Purpose Vehicle may open, maintain and operate bank accounts in foreign currency both within and outside the Republic and receive payments in any currency, including its accounts and retain the proceeds and make payments from the account as the Fund considers fit as stipulated in *clause 32*.

Provision is made in *clause 33* for foreign currency arrangements. Under this clause, the Fund or Special Purpose Vehicle may transfer foreign currency into the country, purchase local currency at the prevailing inter-bank exchange rate or at any other rate approved by the Bank of Ghana.

The administrative and other expenses related to the management of the Fund including the payment of salaries, wages and pension to employees and officials of the Fund are to be charged on the Fund under *clause 34*.

Tax exemption for the Fund and each Special Purpose Vehicle is provided for in *clause 35*.

Clauses 36 to 40 provide for transparency, accountability and audit. The management of the Fund is to be exercised taking into account the overall consideration that minerals income constitutes

proceeds from the exploitation of non-renewable mineral resources; and the overall object that mineral income and mineral investment income is to be managed for the benefit of the current and future generations of citizens of the Ghana.

Standard provisions on the account and audit, financial year and annual report and other reports are provided for in *clauses 37, 38 and 39* respectively.

Clause 40 provides for the issuance of an Investment Policy Statement. The Fund may also develop, adopt and, amend, revoke or supplement appropriate codes of practice, internal guidelines or procedures consistent with the Act.

Provisions are made in *clauses 41 and 42* for Stability and Allocation agreements. Clause 41 empowers the minister to enter into tripartite agreement with the Fund and a Special Purpose Vehicle.

Miscellaneous provisions are dealt with under *clause 43 to 46*. The minister is empowered in *clause 43* to guarantee the performance by the Fund of its obligations under any agreement to which the Fund is a party. Offences and penalties are provided for in *clause 44*. *Clause 45* provides for the Minister to, by legislative instrument, make Regulations for the effective implementation of the Act.

Finally, *clause 46* provides for the interpretation of words and phrases used in the Bill.

6.0 OBSERVATIONS

6.1 Expected Revenue

As to what the fiscal impact of the passage of the Bill will be, the Committee was informed that the expected upfront revenue from the passage of the Bill is estimated at Eight Hundred Million Ghana Cedis (GH¢800 Million).

6.2 No lending to Government

The Committee observed that the Fund would not be permitted to borrow moneys and lend same to Government or other entities but would be restricted to investing its funds and paying dividends to Government.

It was explained to the Committee that this was to forestall the situation where some public entities have gone out of their way to borrow funds and created contingent liabilities for Government.

6.3 Retention of Mineral Revenues by the Fund

Section 25 of the Minerals and Mining Act, 2006 (Act 703) provides that royalties are payable to the Republic of Ghana by holders of mineral rights. Under this Bill however, income from mineral royalties and equity interest held by Government will be monetized, and eighty percent (80%) paid retained by the Minerals Income Investment Fund. The remaining twenty percent (20%) is to be paid to the Minerals Development Fund in accordance with the Minerals Development Fund Act, 2016 (Act 912)

6.4 Establishment of Special Purpose Vehicles

The Committee observed that the Fund to be set up under the Bill when passed into law, shall have the right to set up Special Purpose Vehicles (SPVs) into which specified portions of mineral revenue may be assigned through allocation agreements. These SPVs may be listed on the Stock Exchange to attract investors.

6.5 Use of Proceeds

The Committee was informed that proceeds from the monetization of the mineral royalties and equity interests held by government would be used to finance long-term strategic capital and social investments in education, health, agriculture, infrastructure and other areas in order to transform the Ghanaian economy and to enhance the lives of the people of Ghana.

7.0 AMENDMENTS PROPOSED

The Committee respectfully recommends the following amendments to the Bill:

- i. **Clause 1 – Amendment Proposed – Sub-clause (4) line 3, delete “Authority” and insert “Fund”.**

Reason: To correct a typographical error

- ii. **Clause 2 – Amendment Proposed – Headnote – Delete “Object” and insert “Objects”.**

Reason: To correct a typographical error

iii. **Clause 2 – Amendment Proposed – Sub-clause (2), paragraph (d) – Delete**

Reason: The Fund is not set up to provide funding

iv. **Clause 3 – Amendment Proposed – Paragraph (f), line 2, delete “41” and insert “40”.**

Reason: to correct wrong referencing

v. **Clause 4 – Amendment Proposed – Sub-clause (2) paragraph (a), line 2, delete “41” and insert “40”.**

Reason: to correct wrong referencing

vi. **Clause 4– Amendment Proposed – Sub-clause (3), delete and insert the following**

(3) “In the performance of its functions, the Fund or a Special Purpose Vehicle shall not provide credit to the Government, public enterprises, private sector entities or any other person or entity”

Reason: For clarity

vii. **Clause 5 – Amendment Proposed – Sub-clause (1) paragraph (c), sub-paragraph (i) delete “of” and insert “responsible for”**

Reason: For clarity

viii. **Clause 5 – Amendment Proposed – Sub-clause (1) paragraph (c), sub-paragraph (ii), delete “of Lands and” and insert “responsible for”.**

Reason: For clarity

- ix. **Clause 5 – Amendment Proposed – Sub-clause (4) line 3,** delete “Board” and insert “Fund”.

Reason: For clarity

- x. **Clause 7 – Amendment Proposed – Sub-clause (1) line 2,** after “integrity,” insert “gender,” and in line 3, delete “conferred upon the Fund by” and insert “in”.

Reason: For clarity

- xi. **Clause 9 – Amendment Proposed – Sub-clause (3) line 1,** delete “Subsection (2) does” and insert “Subsections (1) and (2) do”.

Reason: to include subsection 1 in the referencing

- xii. **Clause 9 – Amendment Proposed – Sub-clause (7) paragraph (b),** after “subsection” delete “(5)” and insert “(6)”.

Reason: To correct a typographical error

- xiii. **Clause 10 – Amendment Proposed – Headnote – Delete** “of members”.

Reason: For clarity

- xiv. **Clause 10 – Amendment Proposed – Sub-clause (1) line 2,** delete “the times and in the places” and insert “a time and place”.

Reason: For clarity

- xv. **Clause 10 – Amendment Proposed – Sub-clause (2) lines 2 and 3, delete “place and time” and insert “time and place”**
Reason: For clarity and consistency
- xvi. **Clause 11 – Amendment Proposed – Sub-clause (1) paragraph (a), line 1, delete “promptly”.**
Reason: For clarity
- xvii. **Clause 12 – Amendment Proposed – Sub-clause (3) line line 1, delete “non-member of the Board” and insert “person”.**
Reason: The provision applies to all persons appointed to the Committee
- xviii. **Clause 13 – Amendment Proposed – Line 1, delete “13” and insert “12”.**
Reason: To correct a wrong reference
- xix. **Clause 14 – Amendment Proposed – Sub-clause (1) line 2, delete “and” and insert “who”**
Reason: To correct a grammatical error
- xx. **Clause 14 – Amendment Proposed – Add a new Sub-clause as follows:**
“(4) A member of the Board shall not be appointed a member of the Investment Advisory Committee”
Reason: For clarity

xxi. **Clause 15 – Amendment Proposed – Sub-clause (1) paragraph (b), line 1, delete “its functions” and insert “the functions of the Board”.**

Reason: For clarity

xxii. **Clause 15 – Amendment Proposed – Sub-clause (1) paragraph (d), after “Fund” in line 3, delete all words.**

Reason: Clause 15(1)(a) takes care of the matter.

xxiii. **Clause 15 – Amendment Proposed – Sub-clause (2), delete “in a timeous manner”.**

Reason: For clarity

xxiv. **Clause 16 – Amendment Proposed – Sub-clause (4), after “may” in line 1, insert “in consultation with the Minister” and at end of line 2, insert “except that in the case of the chairperson, the revocation shall be at the instance of the Minister”.**

Reason: The Minister should be consulted and the revocation of the appointment of the chairman should be at his instance.

xxv. **Clause 16 – Amendment Proposed – Sub-clause (6) line 1, delete “with the consent of” and insert “in consultation with”.**

Reason: For clarity

xxvi. **Clause 16 – Amendment Proposed – Sub-clause (7) last but one line, after “consultation” insert “with the Minister”**

Reason: The Minister should be consulted.

xxvii. Clause 17 – Amendment Proposed – Sub-clause (3) line 2, delete “of the Investment Advisory Committee”.

Reason: To avoid repetition.

xxviii. Clause 25 – Amendment Proposed – Delete

Reason: The Asset managers can be appointed as part of the professional advisors under clause 24

xxix. Clause 27 – Amendment Proposed – Paragraph (b), delete “investment of minerals income” and insert “investments”

Reason: For clarity

xxx. Clause 27 – Amendment Proposed – Paragraph (g), after “moneys” in line 1, delete all words and insert “approved by Parliament”.

Reason: For clarity

xxxi. Clause 28 – Amendment Proposed – Sub-clause (2) line 1, delete “payable by” and insert “assessed as due from” and in line 4, delete “when due”

Reason: For clarity

xxxii. Clause 28 – Amendment Proposed – Sub-clause (5) paragraph (a) line 1, at the beginning insert “not”

Reason: To correct a typographical error

xxxiii. **Clause 31 – Amendment Proposed – Sub-clause (1)**
Delete and insert the following

“(1) The Fund shall not later than three days after receipt of any mineral income distribute the amount due and payable into the designated account of the Minerals Development Fund in accordance with the Minerals Development Fund Act, 2016 (Act 912)”

Reason: There is a law that makes reference to the 20%.

xxxiv. **Clause 33 – Amendment Proposed – Sub-clause (1) line 1, after “may” insert “subject to Bank of Ghana regulations”**
Reason: Reference to Bank of Ghana regulations.

xxxv. **Clause 33 – Amendment Proposed – Sub-clause (2) line 1, delete “To the extent that the following are not included in” and insert “Subject to”**
Reason: For clarity

xxxvi. **Clause 34 – Amendment Proposed – Line 2, after “shall” insert “be subject to the approval of the Minister and”**
Reason: The Minister should give approval to the salaries, wages and pensions of employees and officers.

xxxvii. **Clause 35 – Amendment Proposed – Delete and insert “The Mineral Income paid to the Fund and the dividend payable by the Fund or a Special Purpose Vehicle are not taxable”**

Reason: To avoid abuse of the taxable vehicles by the officers.

xxxviii. Clause 36 – Amendment Proposed – Headnote, delete “Transparency” and insert “Good governance”

Reason: To cover all the principles of good governance.

xxxix. Clause 36 – Amendment Proposed – Sub-clause (2) line 3, delete “good governance” and insert “accountability”

Reason: To cover all the principles of good governance.

xl. Clause 36 – Amendment Proposed – Sub-clause (3) line 3, delete “transparency mechanisms” insert “transparency, accountability”

Reason: It is to put in place processes and procedures.

xli. Clause 39 – Amendment Proposed – Sub-clause (3) line 2, delete “statements” and insert “a statement”

Reason: To correct a typographical error.

xlii. Clause 40 – Amendment Proposed – Headnote, delete “regulations”

Reason: For clarity

xliii. Clause 40 – Amendment Proposed – Sub-clause (2) delete

Reason: Sub-clause 1 takes care of the matter.

xliv. Clause 40 – Amendment Proposed – Sub-clause (4) line 1, delete “Fund may” and insert “Board shall”; in line 2, delete

“regulations,” and in line 3, *delete* “object” and *insert* “objects”

Reason: For clarity

- xlv. **Clause 41 – Amendment Proposed – Sub-clause (1) line 3,** *delete* “will be” and *insert* “shall” and in line 4, after “agreement,” insert “be”.

Reason: For clarity

- xlvi. **Clause 41 – Amendment Proposed – Sub-clause (1) paragraph (b), sub-paragraph (i) line 2,** *delete* “imports” and *insert* “imposts”

xlvii. Reason: To correct a typographical error

- xlviii. **Clause 42 – Amendment Proposed – Sub-clause (2) paragraph (a),** *delete*.

Reason: The paragraph is unnecessary

- xlix. **Clause 44 – Amendment Proposed – Sub-clause (3) lines 3 and 4,** *delete* “two hundred and fifty thousand” and *insert* “twenty-five thousand” and in line 4, *delete* “one million” and *insert* “fifty thousand”; in the last line *delete* “seven years and not more than eighteen” and *insert* “two years and not more than five”

Reason: The punishment is too harsh and must be reduced.

- I. **Clause 44 – Amendment Proposed – Sub-clause (5) line 1,** after “under” *insert* “subsection (4) of”

Reason: For clarity

- ii. **Clause 46 – Amendment Proposed – Definition of “allocation agreement”** line 2, *delete* “any” and *insert* “a” and in paragraph (a) of that definition, delete “any” and insert “a”.

Reason: For clarity

- lii. **Clause 46 – Amendment Proposed – Definition of “dividend”** line 1, *delete* “to”.

Reason: For clarity

- liii. **Clause 46 – Amendment Proposed – Definition of “Fund”** line 1, *delete* “[Income]” and *insert* “Income”

Reason: For clarity

- liiv. **Clause 46 – Amendment Proposed – Definition of “Ghana Revenue Authority”** before “means” *delete* “Ghana Revenue Authority” and *insert* “revenue collection authority”

Reason: For clarity

- lv. **Clause 46 – Amendment Proposed – Definition of “Investment Policy Statement”** line 2, *delete* “to be adhered to”

Reason: For clarity

- lvi. **Clause 46 – Amendment Proposed – Definition of “mining company”** line 1, *delete* “which”.

Reason: For clarity

- lvii. **Clause 46 – Amendment Proposed – Definition of “mining company”**, paragraph (a), *insert* “which” at the beginning of line 1, and at the end of line 5, delete “and” and insert “or”

Reason: For clarity

- lviii. **Clause 46 – Amendment Proposed – Definition of “minerals investment income”** line 3, *delete* “company” and *insert* “entity”.

Reason: For clarity

- lix. **Clause 46 – Amendment Proposed – Definition of “minerals operations”** line 1, *delete* “means” and *insert* “includes”.

Reason: For clarity

- lx. **Clause 46 – Amendment Proposed – Definition of “minerals royalties”** *delete* ““minerals royalties” means”” and *insert* ““mineral royalties” means””

Reason: For clarity

- lxi. **Clause 46 – Amendment Proposed – Definition of “Ministry”** *delete* “of” and *insert* “responsible for”

Reason: For clarity

- lxii. **Clause 46 – Amendment Proposed – Definition of “Special Purpose Vehicle”**, *delete* and *insert* the following:

“Special Purpose Vehicle” means an entity created by the Fund to receive minerals income assigned by the Fund and into which investors may invest or for the purpose of a joint venture”

Reason: For clarity

ixiii. Long Title – Amendment Proposed – In line 2, *delete* “royalty” and *insert* “royalties” and on the same line *delete* “to” after “due”

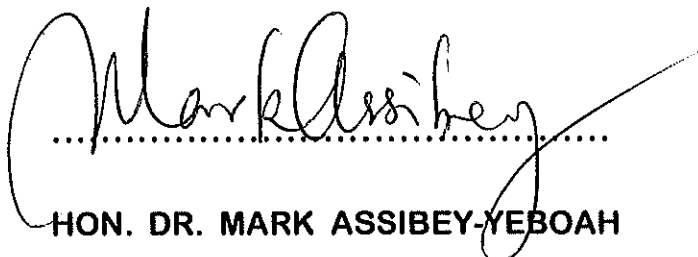
Reason: For clarity

8.0 CONCLUSION

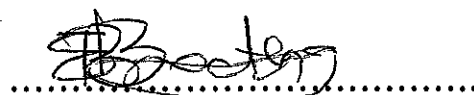
The Committee has thoroughly examined the Bill and finds that its passage would help maximize the value of the nation’s mineral wealth to enhance the lives of the people of Ghana.

The Committee therefore recommends to the House to adopt this report and pass the Minerals Income Investment Fund Bill, 2018 into law *subject to the amendments proposed* in accordance with Article 106 of the 1992 Constitution and the Standing Orders of the House.

Respectfully Submitted.



HON. DR. MARK ASSIBEY-YEBOAH
(CHAIRMAN, FINANCE COMMITTEE)



MS. EVELYN BREFO-BOATENG
(CLERK, FINANCE COMMITTEE)

23RD JULY, 2018