

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

**REPORT OF THE FINANCE COMMITTEE ON
THE MINERALS INCOME INVESTMENT FUND
(AMENDMENT) BILL, 2020**

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1.0 INTRODUCTION

The **Minerals Income Investment Fund (Amendment) Bill, 2020** was *presented and read the first time* in the House on 13th July 2020 by the Hon. Deputy Minister for Finance, Mr. Kwaku Agyeman Kwarteng on behalf of the Minister responsible for Finance.

The Bill was subsequently *referred* to the Finance Committee for consideration and report in accordance with Article 103 of the 1992 Constitution and Order 169 of the Standing Orders of the House.

The Committee met and considered the Bill with a Deputy Minister for Finance, Hon. Charles Adu Boahen and a team of officials from the Ministry of Finance, the Attorney General's Department and the Minerals Income Investment Fund (MIIF).

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The Committee is grateful to the above-mentioned Deputy Minister for Finance and the team of officials for attending upon the Committee.

1.1 URGENCY OF THE BILL

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

2.0 REFERENCES

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

- The 1992 Constitution of the Republic of Ghana
- The Standing Orders of the Parliament of Ghana
- Interpretation Act, 2009 (Act 792)
- The Minerals Income Investment Fund Act, 2018 (Act 978)
- The Public Financial Management Act, 2016 (Act 921)
- The State Interests and Governance Authority Act, 2019 (Act 990)
- The Minerals Development Fund Act, 2016 (Act 912)

3.0 BACKGROUND INFORMATION

The Minerals Income Investment Fund Act, 2018 (Act 978) was passed with the objective of maximizing the value of the minerals income for the benefit of the citizens of the country and monetizing the income for minerals in a sustainable and responsible manner.

Whilst Act 978 captures the overall framework within which the Fund is to operate, it has become necessary to amend some of the provisions in order to fully capture the intention of Government, make room for flexibility in the operationalization and management of the Fund and to make the Act more effective.

4.0 OBJECT OF THE BILL

The purpose of the Bill is to amend the Minerals Income Investment Fund Act, 2018 (Act 978) to clarify the independence of Special Purpose Vehicles (SPVs) created under that Act by removing the applicability of Act 921 and Act 990 to those SPVs.

5.0 CONTENTS OF THE BILL

The Bill is divided into twelve (12) clauses.

Clause 1 amends section 3 of Act 978 to enable the Fund to hold direct or indirect equity interests in a Special Purpose Vehicle

(SPV) in any jurisdiction in furtherance of the objects of the Fund.

Clause 2 amends Section 4 of the Act by substituting paragraph (b) of subsection (1) of section 4 of the Act to enable the Fund hold and manage minerals equity interests of the Republic and exercise all rights related to the minerals equity interests.

Clause 3 amends section 25 of the Act to enable the Board procure the services of asset managers to manage the assets of the Fund. This is to be done in consultation with the Minister.

Clause 4 amends section 31 of the Act to place an obligation on the Fund to distribute the money received in respect of any mineral income due and payable to the Minerals Development Fund (MDF) in accordance with the Minerals Development Fund Act, 2016 (Act 912), at least once every month.

Clause 5 amends subsection (2) of section 32 of the Act by making the provision applicable to the Fund only. The clause also makes a provision to empower Special Purpose Vehicles (SPVs) to open, maintain and operate bank accounts in foreign currency both within and outside Ghana.

Clause 6 amends paragraph (f) of subsection (1) of section 33 of the Act to enable the Fund or a Special Purpose Vehicle to pay

in foreign currency any amounts due to foreign counterparties and from the Fund to any Special Purpose Vehicle.

Clause 7 amends section 35 of the Act by specifically providing that the mineral income paid to the Fund and the dividend payable to the Fund or a Special Purpose Vehicle are not subject to tax.

Clause 8 amends section 40 of the Act to empower the Minister responsible for Finance to enter into a stability agreement with the Fund, a Special Purpose Vehicle or a Stabilized Party.

Clause 9 amends section 41 of the Act by providing for an allocation agreement to provide for the tax treatment of a Special Purpose Vehicle or other entity which is assigned or transferred rights under the Act, subject to the approval of the Minister and in accordance with applicable enactments.

Clause 10 introduces a new provision into the Act to the effect to clarify that the Public Financial Management Act, 2016 (Act 921) and the State Interests and Governance Authority Act, 2019 (Act 990) are not applicable to a Special Purpose Vehicle.

Clause 11 amends subsection (4) of section 43 of the Act to correct a typographical error in the Act.

Clause 12 amends section 45 of the Act by substituting the definitions of "allocation agreement", "mineral royalties" and "Special Purpose Vehicle". New terminologies introduced in the Bill are also defined.

6.0 OBSERVATIONS

6.1 Proper Functioning of the Investment Structure

The Committee observed that the proposed amendments are essential to ensure the proper functioning and implementation of the investment structure. The proposed amendments will also enhance the robustness of the country's long-term commitment to the success of any proposed investment.

6.2 Raising Proceeds from Third Party Investments

The Committee noted that the passage of this Bill will help improve the effectiveness of Act 978 and ensure that third party investments in the sector will raise significant proceeds for the country and on the whole, facilitate the achievement of the objects of the Fund.

6.3 SPVs to Operate on Pure Commercial Principles

The Committee noted that the Bill has introduced a new provision into Act 978 to clarify that the Public Financial Management Act, 2016 (Act 921) and the State Interests and Governance Authority Act, 2019 (Act 990) are not applicable to Special Purpose Vehicles (SPVs). This is to enable the SPVs

operate freely as commercial ventures on pure commercial principles with the necessary corporate governance structures.

The Fund itself will however continue to be governed by Act 921 and Act 990.

7.0 AMENDMENTS PROPOSED

The Committee respectfully recommends the following amendments to the Bill:

- i. **Clause 1 – Amendment Proposed** – Paragraph (a) line 3, *delete* “be free to”

- ii. **Clause 2 – Amendment Proposed** – Paragraph (c), *delete* and *insert* the following:
(c) the substitution for subsection (3) of
“(3) The Fund shall not provide credit to Government, a public enterprise, a private sector entity or any other person or entity.”

- iii. **Clause 5 – Amendment Proposed** – Paragraph (b) line 4, *delete* “account” and *insert* “accounts”

- iv. **Clause 7 – Amendment Proposed** – Line 1, after “principal” *delete* “amendment” and *insert* “enactment”

- v. **Clause 11 – Amendment Proposed** – Line 2, before “of” insert “on first occurrence”

- vi. **Clause 11 – Amendment Proposed** – Add a new subclause as follows:
“(2) The principal enactment is amended in section 43 by the substitution for subsection (4) on second occurrence of
“(5) A fine imposed under subsection (4) that is not paid when it is due shall attract an additional penalty of five percent of the original amount for each day of default.”

- vii. **Long Title – Amendment Proposed** – *Delete* lines 2 and 3 and *insert* “operation of the Minerals Income Investment Fund, to authorize Special Purpose Vehicles to operate as regular commercial companies and to provide for related matters.”

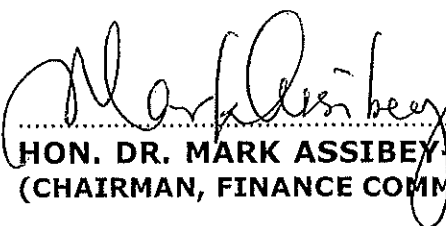
8.0 RECOMMENDATION AND CONCLUSION

The Committee has thoroughly considered the Bill and finds that the passage of the Bill will help clarify the operation of the Minerals Income Investment Fund vis-a-vis the Special Purpose Vehicles created under Act 978.


The Committee therefore recommends to the House to pass the **Minerals Income Investment Fund (Amendment) Bill,**

2020 into law in accordance with Article 106(13) and Order 119 of the Standing Orders of the House, *subject to the amendments proposed.*

Respectfully Submitted.



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



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

16TH JULY 2020