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THE MONITORING OF THE OPERATIONS OF THE BANK OF GHANA BY THE AUDITOR-GENERAL AND OTHER COMPETENT BODIES

by

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I. Introduction

What makes institutions function as intended in democracies is that the performances of such institutions are monitored in relation to their functions, and governing as well as operating procedures as laid down in documents respected by all concerned. In Ghana the document that spells out the functions and the procedures is the 1992 Constitution. Under Article 183 of the Constitution, the functions of the Bank of Ghana are spelled out. To enable the Bank perform such functions effectively, Articles 183 and 184 vest in the Bank the power to control monetary transactions in and outside Ghana and, at the same time, subject its operations to the monitoring of the Auditor-General and Parliament.

The 1992 Constitution of the Republic of Ghana names the Auditor-General and Parliament as the two bodies vested with the responsibility of monitoring the Receipts and Payments or Transfers of this country's foreign exchange. Article 183 of the 1992 Constitution stating the functions of the Bank of Ghana, inter alia, makes the Bank — in Clause (2) (b) — the *sole*

custodian of State Funds of Ghana both in and outside Ghana. This implies that the Bank is made accountable to the people of Ghana through Parliament in respect of the handling of State Funds in and outside Ghana at any particular time. The same Clause of Article 183 of the Constitution gives the Bank the discretionary powers of authorizing any other person or authority to act as a custodian of any such Fund '*as may be specified in a notice in the Gazette*'. Article 184 Clauses (1)-(4) deals specifically with the handling of the country's foreign receipts and payments or transfers.

It is interesting to note in this connection that Clause 3 of Article 183 of the 1992 Constitution vests in the Governor of the Bank of Ghana the power to '*disallow any transaction or transfer involving directly or indirectly, any foreign exchange whether in or outside Ghana, which is contrary to law*'. This presupposes that the information flows between the Executive Arm of Government and the Central Bank are such that the Governor is made aware of foreign exchange transactions and transfers in and outside Ghana at all times.

The Necessity of Holding State Funds In The Bank of Ghana or In Other Deposit Accounts Authorised And Gazetted By The Bank of Ghana. The danger that other institutions or persons keeping Government deposits for unnecessarily long periods poses — even if they are revenue collectors — is that not only might the Government end up paying interest on its own monies lent to it by the holders; the Government might also become a net borrower at the Central Bank. Given that eventually, the Government might find itself paying double interest — one to the holder or holders of Government monies who might lend same to Government, and the other to the Bank of Ghana on Government's Overdrawn Account. It was therefore quite disturbing to learn several years after the Bank of Ghana had sent Notices to various banks and other holders of Government monies to transfer such funds to the Central bank, that certain powerful executives were still keeping state funds outside the Central Bank. On the basis of recent revelations, one would not be surprised if it were discovered that substantial amounts of state funds have been disbursed without the knowledge of the Bank of Ghana.

Given the size of Net Credit to Government in Domestic Monetary Assets — forming a major determinant of Net Domestic Assets (NDA)*, the leakages described above would make it difficult to get the country's Monetary Policy right. A major reason is that, by keeping a significant amount of state funds outside the Central Bank as well as other authorized and Gazetted holders, it might not be possible for the Bank of Ghana to have full knowledge of the size of state funds and therefore, the correct Net Claims on Government.

II. The Monitoring of The Foreign Exchange Receipts And Payments of The Bank of Ghana.

As was noted in an earlier Institute of Economic Affairs (IEA) Round -Table discussion, Clause (2) of Article 184 of the 1992 Constitution makes it obligatory on the part of the Bank of Ghana to submit to the Auditor-General, Statements of Foreign Exchange Receipts and Payments or Transfers in and outside Ghana twice a year for auditing. The First Statement must be submitted

*The other determinant of Money Supply is Net Foreign Assets (NFA)

'not later than three months after the end of the first six months of its financial year', and the second Statement must be submitted ***'not later than three months after its financial year'***. For the sake of synchronisation, section 54 of the 1992 Bank of Ghana Law, PNDC.L. 291 provides that ***'the financial year of the Bank shall be the same as the financial year of the Government'***. This, incidentally, is repeated in Section 59 of the Revised Bank of Ghana Bill.

According to Clause (3) of Article 184 of the Constitution, ***'the Auditor-General shall, not later than three months after the submission of the statement referred to in clause (2) of this Article, submit his report to Parliament on the statement'***.

Parliament, under clause (4) of the same Article, ***'shall debate the report of the Auditor-General and appoint where necessary, in the public interest, a committee to deal with any matters arising from the report'***. For easy identification of the Parliamentary Committee concerned, Article 184 (1) stipulates that ***'the Committee of Parliament responsible for financial measures shall monitor the foreign exchange receipts and payments or transfers of the Bank of Ghana in and outside Ghana, and shall report on them to Parliament once in every six months'***.

III. The Effectiveness of The Office of The Auditor-General So Far

The verdict after reading several of the Auditor-General's reports is that the work of the Auditor-General suffers from certain defects manifesting themselves in:

- late submission of reports to Parliament;
- inadequate knowledge of the limits to Bank of Ghana's Statements; and
- lack of specificity with regard to who the miscreants are.

While some of the defects could be put down to personnel constraints — both numbers and quality — others could be attributed to sheer lack of appreciation of the ultimate goal of the Auditor-General's reports.

The late submission of Auditor-General's reports to Parliament is in breach of clause 3 of Article 184 of the 1992 Constitution, which imposes a time limit of three months after receiving the appropriate statement from the Bank of Ghana. Enquiries at the Central Bank have shown that the Auditor-General has his staff physically stationed permanently at the Bank of Ghana. Under normal circumstances therefore, the three-month period within which the Auditor-General is required to submit his report to Parliament should not present any problem. Two of the Auditor-General's officials at the Bank confirmed this. They however could not satisfactorily explain why a backlog and delays had developed. What they were clear about was that the delay could not be put at the door of the Bank, and was of their own making. The enquiry took place on the 22nd October, 2001. At the time, it was learnt that there was a backlog, and that completed reports to be submitted to Parliament by the Auditor-General related to 1999. Incidentally the 2nd report relating to the 1998 financial year was submitted to Parliament by the Auditor-General on 3rd May, 2001. Because of the backlog, the reconciliation of the Bank's figures with those of the Bank's Correspondent Banks has necessitated archival research. I was assured that everything possible was being done to clear the backlog. It is hoped that when that is done, and the work gets onto a current basis, the archival research will be unnecessary and the delays will thereby be eliminated.

Ignorance of the coverage of Bank of Ghana's Statements of foreign exchange receipts and payments or transfers has to do with non-traditional exports. It emerged from the discussions with some of the Auditor-General's officials stationed at the Bank, that in their view, the Central Bank could rely on the other banks for complete information regarding all exports — both Traditional comprising cocoa, gold and other minerals as well as logs on the one hand, and Non-Traditionals defined to exclude traditional exports on the other. That view was confirmed by Recommendation 1 of the Auditor-General's Report relating to the second half of 1998, submitted to Parliament on May 3, 2001. According to Recommendation 1 referred to above, ***'BOG should urge Authorised dealer banks to submit returns on Foreign exchange earnings from non-traditional export to enable BOG present a more accurate position'***. It is important to point out that a similar recommendation was made by the Auditor-

General's report to Parliament dated September 21, 2000, relating to the 1st half of 1998. The impression given by the Auditor-General's officials at the Bank of Ghana, confirmed by the quoted Recommendations above, is that the Office of the Auditor-General is not aware of the changes and developments that have taken place, particularly during the last decade, with respect to the handling of non-traditional export proceeds. The position is that authorized dealer banks are able to keep track of their customers' non-traditional export proceeds only if their customers use such proceeds as collateral for credit granted them. Moreover, the Auditor-General does not seem to be aware that it is only Tuna exports — outside the traditional exports — whose proceeds must be reported automatically to authorised dealer banks.

Lack of specificity of the Auditor-General's reports is in respect of those whose malfeasance or negligence results directly or indirectly in losses of foreign exchange to the country. The reports should not stop at giving numbers of external loan defaulters and the amounts of foreign exchange lost through wrong currency specification, or failure to sign Memoranda of Understanding (MOUs) with beneficiaries of donor funds. Identification of such beneficiaries who default on repayment of such facilities thus becomes very difficult, if not impossible. Normally one would expect that the names and other indications that would make identification possible should be either in the Report or attached to the Report as an addendum.

IV. Personnel and Other Constraints

It has been learnt that the Office of the Auditor-General that has to audit and report on the Central and Local Administrations, Public Corporations, and various Subvented Organizations in addition to the country's foreign exchange in and outside Ghana, has only four qualified professional accountants. While this may be better than the situation in the Controller and Accountant-General's Department that has only two qualified accountants, it cannot be regarded as adequate. This is a clear case of personnel constraint. This, together with equipment constraint needs to be addressed if the Office is to fulfill its constitutional functions effectively.

However, while lack of adequate personnel and equipment can have a negative effect on the timeliness and the quality of the Auditor-General's

reports. lack of knowledge of the changes and the developments affecting the handling of non-traditional export proceeds, for example, cannot be excused. Also, the Auditor-General's report should make it a lot easier for Parliament to identify organizations and persons against whom remedial measures should be taken.

V. The Role of The Minister of Finance

In addition to the Bank of Ghana's obligations under the 1992 Constitution, the Bank of Ghana Law (PNDC.L.291) of 1992 imposes additional requirements for purposes of monitoring the Bank's operations. Under section 54 (3) of the existing BOG Law, the Secretary (Minister of Finance) ***can, at any time, request the Auditor-General to make an examination of the accounts of the Bank and submit a report on the accounts and the Auditor-General shall do so accordingly***'. This power given to the Minister is clearly inconsistent with Article 187 (7) (a) of the Constitution. The continued exercise of such power by the Minister is therefore in contravention of the Constitution. It is simply unconstitutional.

Another provision in the Bank of Ghana Law PNDC.L. 291 which was passed before the 1992 Constitution came into force is Section 48 (2). Under this section, ***'the Bank of Ghana may, at the written request of the Secretary*, guarantee a loan granted to the Government or to any person in Ghana by a foreign institution'***. The 1992 Constitution, on the other hand, empowers the Governor of the Bank of Ghana ***'to disallow any transaction or transfer involving directly or indirectly, any foreign exchange whether in or outside Ghana which is contrary to law'***. It is by now a well-known fact, at least within the business and financial communities that until the end of 2000, the Secretary and the Ministers of Finance have been exercising the powers granted them under PNDC.L.291 for the benefit of Non-Governmental Organisations (NGOs), private corporate bodies

*Now the Minister of Finance

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and private individuals. It is instructive to note that various Governors of the Central Bank have not been bold enough to resist the accompanying executive pressures, even though some of them knew that guaranteeing external loans to private persons could not be constitutional. It is therefore important that the Bank of Ghana Bill which seeks to revise the existing PNDC L. 291 by cutting out ***'any person in Ghana'*** among other changes, be passed into law without undue delay.

VI. Recommendations

For effective monitoring of foreign exchange receipts and payments or transfers generally, and the effectiveness of the Office of the Auditor-General in particular, the following recommendations are made:

1. Information flows with regard to foreign exchange receipts and disbursements should be free and unsolicited from the Executive to the Central Bank, so that the statements required by the 1992 Constitution will be more accurate. {Article 184 (2)}
2. The use of the ***'Export Forms'*** introduced when the A-2 Forms meant for non-traditional exporters, were abolished by law, should be strictly enforced so that a global picture of export proceeds can be obtained for monitoring purposes;
3. The problem of inadequate personnel and equipment facing the Auditor-General, should as much as possible be addressed;
4. The Revised Bank of Ghana Law — now a Bill before Parliament — seeking in Articles 50 (2) and 52 among others which align the Bank's governing and operating procedures with the 1992 Constitution, should be passed without undue delay; and
5. Parliament should be seen to take necessary and timely recovery and remedial action on the Auditor-General's reports.

Note: Nothing written herein is to be construed as necessarily reflecting the views of the Institute of Economic Affairs.