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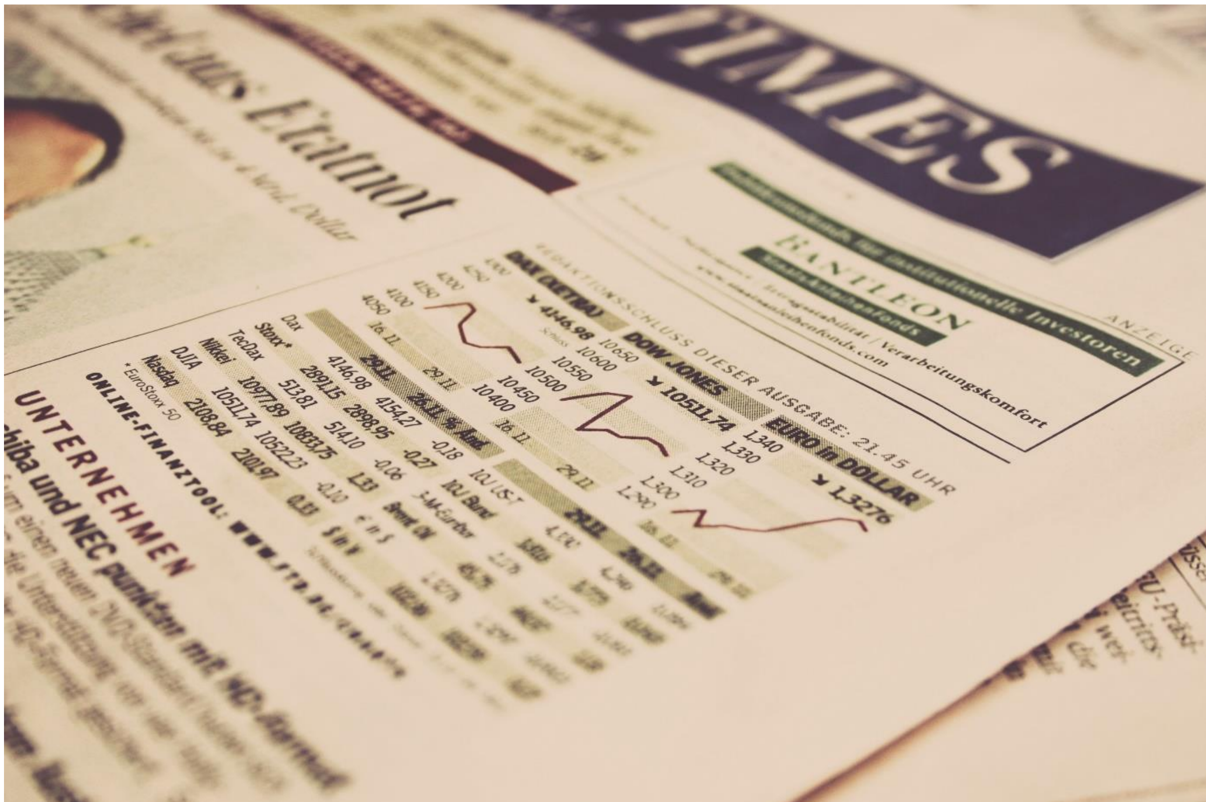

A COMPREHENSIVE FINANCIAL SECTOR REGULATORY FRAMEWORK STUDY FOR GHANA – FINAL REPORT

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There was no conflict of interest in the writing of this report.

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LIST OF ACRONYMS AND ABBREVIATIONS

AML	Anti-Money Laundering
BIS	Bank for International Settlements
BNM	Bank Negara Malaysia
BoC	Bank of Canada
BoG	Bank of Ghana
CDIC	Canada Deposit Insurance Corporation
CFT	Combatting the Financing of Terrorism
CFR	Committee of Financial Regulators
CPF	Central Provident Fund
DFID	Department for International Development UK
FATF	Financial Action Task Force
FCA	Financial Conduct Authority
FCAC	Financial Consumer Agency of Canada
FMCA	Financial Market Conduct Authority
FIC	Financial Intelligence Centre
FINSSP	Financial Sector Strategic Plan
FISC	Financial Institutions Supervisory Committee
FPC	Financial Policy Committee
FSA	Financial Services Act
FSA-UK	Financial Services Authority, United Kingdom
FSAP	Financial Sector Assessment Program
FSB	Financial Services Board
FSC	Financial Stability Committee
FSD	Financial Sector Division
FSOC	Financial Stability Oversight Committee
FSPA	Financial Sector Prudential Authority
HKMA	Hong Kong Monetary Authority
IAIS	International Association of Insurance Supervisors
IA	Insurance Authority
ICP	Insurance Core Principle
IFRS	International Financial Reporting Standards
IFSA	The Islamic Financial Services Act
IOPS	International Organization of Pensions Supervisors
IOSCO	International Organization of Securities Commissions
LFSA	Labuan Financial Services Authority
MAS	Monetary Authority of Singapore
MoF	Ministry of Finance
MPFA	Mandatory Provident Fund Scheme Authority
NIC	National Insurance Commission
NPL	Non-Performing Loans
NPRA	National Pensions Regulatory Authority
OCA	Office of Chief Actuary
OECD	Organisation for Economic Co-operation and Development
OSC	Ontario Securities Commission
OSFI	Office of Superintendent of Financial Services
PRA	Prudential Regulation Authority
RBS	Risk-Based Supervision

SAC	Senior Advisory Committee
SARB	South Africa Reserve Bank
SDI	Specialized Deposit-Taking Institution
SEC	Securities & Exchange Commission
SFC	Securities and Futures Commission
SSA	Sub-Saharan Africa
SSNIT	Social Security and National Insurance Trust
SWOT	Strengths, Weaknesses, Opportunities, Threats
TOR	Terms of Reference

EXECUTIVE SUMMARY

1. This report, 'A Comprehensive Financial Sector Regulatory Framework Study for Ghana,' presents the findings from a study of the regulatory framework of Ghana's financial sector and presents recommendations for reform. As required by the Terms of Reference the study is to address the following key questions:

    a. What are the main objectives and functions of a comprehensive financial sector regulatory framework?

    b. Based on international evidence and country studies, what is the best way to divide these functions among different regulatory bodies?

    c. What are the incentives, checks and balances for different regulatory bodies to ensure that they are delivering successfully on their objectives?

    d. How can risks around coordination failure, lack of clarity on functions, and overlapping remits among different regulatory agencies be addressed and minimised?

2. The study was carried out through the following activities as required in the Terms of Reference and confirmed in an Inception report dated 31 January 2018.

    a. Literature review synthesizing evidence of the features of effective financial sector regulatory frameworks.

    b. A deep dive into how Ghana's financial sector regulatory framework is organized

    c. Desk-based case studies.

    d. Consultation with experts and stakeholders.

    e. Recommendations for improvement.

3. The literature on financial sector regulation confirms the consensus that financial markets support the growth of economies by offering intermediation and ancillary services to the users of financial products. However, because of imperfections in the market, financial markets are susceptible to market failure. The regulation of financial markets is justified in terms of interventions to mitigate market failure, leading to an overall increase in economic welfare.

4. There are two complementary forms of regulation for financial markets. Prudential regulation deals with the soundness of financial institutions that provide financial services while market conduct regulation deals with how financial institutions conduct business with their customers, including the enforcement of consumer protection rules.

5. There is a realization that market conduct and prudential regulation may conflict in situations where prudential standards undermine market conduct best practices. Therefore, many

countries have moved towards establishing market conduct regulation independently of prudential regulation while establishing coordinating mechanisms between the two.

6. This study has identified five main approaches to the design of the architecture of financial regulation:

    a. The 'silo' approach (also called the 'institutional' or 'traditional approach') – regulatory agencies are focused on institutions offering the same services e.g. insurance, securities, banking.

    b. Integrated or unified approach – a single regulator is responsible for stability, soundness and business conduct.

    c. Some combination of the silo and integrated approach – a variety of models involving combinations of regulatory functions either inside or outside the central bank.

    d. Functional Approach – focus is on regulating transactions and products, not the legal entity. Thus, a legal entity that engages in different transactions and products would be subject to multiple regulators, who together are responsible for safety, soundness and business conduct of the entities.

    e. Twin Peaks Approach – two main regulators focusing on prudential regulation and market conduct regulation.

7. There are advantages and disadvantages associated with the operation of each of the models of regulatory architecture. For example, although unified regulation improves regulatory coordination, unified regulation outside the central bank has been noted to create an information gap between the regulator and the central bank in terms of the early warning signals needed by the central bank to deal with systemic risk. While the Twin Peaks model also reduces the number of regulators, there are too many grey areas where the target of regulation does not fall neatly under market conduct or prudential regulation. Thus, regulated entities under the Twin Peaks model may find themselves reporting to two regulators. The silo system is simple but tends to result in a fragmentation of the regulatory system.

8. There is no evidence that one model of regulatory architecture is necessarily more effective than another. The case studies of the United Kingdom, Canada, Singapore, Hong Kong, South Africa and Malaysia indicated that countries have succeeded and failed along the entire spectrum of architectural specifications.

9. Despite the recent drift towards Twin Peaks, it does not guarantee a more effective regulatory framework. The key differentiating factors for an effective regulatory system revolve around coordination between regulators, between regulators and the central bank and between regulators and the Minister of Finance (Government) on policy issues. In addition, regulatory discipline including surveillance capacity is important.

10. Ghana currently operates a 'silo' system which is largely a historical accident. As the economy developed and the financial system expanded new regulatory agencies were created for emerging segments of the financial sector. Currently, there are four regulators, namely, the Bank

of Ghana (BoG), Securities and Exchange Commission (SEC), National Insurance Commission (NIC) and the National Pensions Regulatory Authority (NPRA). The silo system is simple to operate in an emerging market with a relatively simple financial system.

11. The challenges associated with the 'silo model' in Ghana include the following:

    a. Lack of coordination among regulators, manifested in extensive regulatory arbitrage and the inability of regulators to effectively regulate financial conglomerates.

    b. Poor consultation at the policy level between regulatory agencies and the Ministry of Finance.

    c. The overall burden of regulation is higher because of lack of economies of scale.

    d. Weak regulatory agencies lacking effective capacity.

    e. The four regulatory agencies have mandates that cover both prudential regulation and market conduct regulation. However, regulation in the banking sector is heavily skewed towards prudential regulation at the expense of market conduct regulation.

12. Although a continuation of the present silo system is an option, the study concludes that the need to decisively address the weaknesses of the existing regulatory framework provides adequate justification for modifying Ghana's financial regulation architecture. Therefore, the study recommends that Ghana implements a Twin Peaks regulatory model by:

    a. Transferring the prudential regulation of all sectors of the market to a new Financial Sector Prudential Authority (FSPA) under Bank of Ghana supervision.

    b. Establishing an independent Financial Markets Conduct Authority (FMCA) outside the central bank to enforce market conduct regulation.

    c. Establishing coordinating mechanisms by constituting by law the following bodies:

        i. *Committee of Financial Regulators (CFR)* constituted by senior policymakers from the Ministry of Finance (Chair), the Bank of Ghana (Deputy Governor), Financial Markets Conduct Authority (Chief Executive Officer), Financial Sector Prudential Authority (Chief Executive Officer), Financial Intelligence Centre (Chief Executive Officer) and the Registrar-General.

        ii. *Financial Stability Oversight Committee (FSOC)* under the central bank to support the central bank's responsibilities for macroprudential regulation and constituted by the Governor of the Bank of Ghana (Chair), Ministry of Finance, Financial Sector Prudential Authority, Financial Markets Conduct Authority and 2-3 independent appointees.

13. The recommendation of the Twin Peaks model is not expected to resolve all challenges of financial sector regulation. However, given the weaknesses in the current regulatory system, there are significant benefits to be gained by adopting the Twin Peaks model. The benefits include the following:

a. Comparing the four regulatory agencies, the Bank of Ghana and the National Insurance Commission have significant prudential regulation responsibilities. The National Pensions Regulatory Commission and the Securities and Exchange Commission have relatively less prudential regulation responsibilities. Therefore, there are economies of scale to be gained by centralizing all prudential regulation at the Bank of Ghana. The incremental prudential regulation responsibilities of the Bank of Ghana will be relatively minimal. The centralization of prudential regulation under the Bank of Ghana would enable the country as a whole to benefit from economies of scale in financial regulation.

b. The Bank of Ghana is the strongest among financial sector regulatory agencies in terms of financial and human resources. The remaining regulators are relatively less endowed with resources. By centralizing prudential regulation at the Bank of Ghana, the entire regulatory system, can benefit from Bank of Ghana's resources and capabilities.

c. With prudential regulation all concentrated at the Bank of Ghana, the market conduct functions of all the agencies can be organized under a new Financial Market Conduct Authority. Currently, the bulk of regulation by the SEC and the NPRA is market conduct regulation which should facilitate the merger of the market conduct regulatory activities of the BoG, SEC, NPRA and NIC into a market conduct regulator.

d. The Ministry of Finance can be made more effective as a financial sector policymaker by its participation in the Committee of Financial Regulators and the Financial Stability Oversight Committee.

14. In addition to architectural issues, other regulatory challenges were identified during discussions with experts and industry players. Some of these nagging regulatory challenges are noted below:

a. Ministerial Responsibility for NPRA: The Pensions Act does not specify who the 'responsible Minister' is for the act. Ministerial responsibility has at various points in time been exercised by the Minister of Employment and Labour, Minister of State at the Presidency and the Minister of Finance. Currently, the NPRA is jointly supervised by the Minister of Finance and the Minister of Employment and Labour Relations. It is recommended that the law should be amended to specify the Minister of Finance as the responsible Minister.

b. FinTech Regulation. Regulators need to streamline their regulatory procedures to create room for emerging financial technologies (FinTechs). FinTechs are expected to revolutionize the delivery of financial services through technological innovation. Because the pace of change is rapid with many of the products not fully tried and tested, regulators need to create space for FinTechs to deploy their services in a controlled setting.

c. Board Representation of the Ministry of Finance. The practice whereby the Ministry of Finance sits on the boards of regulatory agencies should be stopped as it creates the appearance of policy consultation with the Ministry while distorting the Ministry's substantive role as policymaker for the sector.

15. As migration to Twin Peaks regulation is a major transformation of the Ghanaian financial sector regulatory architecture, implementation has to be planned and phased in. It is recommended that if a decision is made to adopt the Twin Peaks model, a Steering Committee on the Reform of Financial Regulation be appointed and given a two-year mandate to manage the implementation.

16. In the transition, it is anticipated that:

    a. The Bank of Ghana takes on the prudential regulation currently being undertaken by the Bank of Ghana (Banking Supervision), NPRA, SEC and NIC under the FSPA with Bank of Ghana oversight.

    b. SEC, NPRA, NIC and the Market Conduct Department of Bank of Ghana merge to become the new FMCA.

17. The draft report was presented and discussed at a number of forums including separate presentations to the staff of the Financial Sector Division, Ministry of Finance and senior management of the Ministry. In addition, a forum of regulators was held on 28 June 2018. In attendance were the Bank of Ghana, National Insurance Commission, National Pensions Regulatory Commission, Financial Intelligence Centre, Securities and Exchange Commission and the Ministry of Finance.

18. The feedback from stakeholders was generally positive. Participants acknowledged the weaknesses of the existing regulatory architecture and the need for reform. Concerns were raised about implementation issues such as timing and how to ensure a smooth transition to a Twin Peaks system. Additionally, participants were of the view that reforms are unlikely to succeed unless the issues of limited capacity of regulators and poor enforcement of regulatory sanctions are addressed.

1.0 INTRODUCTION

This Report, 'A Comprehensive Financial Sector Regulatory Framework Study for Ghana', is jointly sponsored by the Ministry of Finance of Ghana (MoF) and the Department for International Development, U.K. (DFID). The objective of the study as stated in the Terms of Reference is to 'draw on international evidence and compare experiences from other countries (advanced and developing economies) to identify the features of an effective financial sector regulatory system and make recommendations on how Ghana's regulatory framework can be further developed'. The detailed Terms of Reference (TOR) are attached as Appendix A.

The TOR have identified the following as the specific questions to be addressed by the study:

1. What are the main objectives and functions of a comprehensive financial sector regulatory framework?
2. Based on international evidence and country studies, what is the best way to divide these functions among different regulatory bodies? For example, what are the advantages and disadvantages of an integrated financial services authority compared with multiple agencies and regulatory bodies?
3. What are the incentives, checks and balances for different regulatory bodies to ensure that they are delivering successfully on their objectives?
4. How can risks around coordination failure, lack of clarity on functions, and overlapping remits among different regulatory agencies be addressed and minimized?

As required by the TOR and confirmed in the inception report, the study was carried out with the following components:

1. A literature review of financial sector regulation globally.
2. Case Studies and Distillation of best practices.
3. A diagnostic review of financial sector regulation in Ghana with specific attention to the following subsectors:
    a. Banking
    b. Insurance
    c. Pensions
    d. Securities
4. Interviews with financial sector institutions, think tanks and knowledgeable experts.
5. A Technical Workshop of industry stakeholders.
6. A summary of Findings, Conclusions and Recommendations.

The rest of the Report is organized as follows - *Section 2* presents a literature review of the theoretical and empirical works on Financial Sector Regulation and summarizes the current state of knowledge; *Section 3* presents case studies of the financial sector regulatory systems of Canada, Singapore, Malaysia, Hong Kong, South Africa and the United Kingdom drawing out the lessons for Ghana; *Section 4* provides a diagnostic analysis of Ghana's financial sector regulatory system by sector; *Section 5* presents a summary' of the study's findings; conclusions and recommendations are presented in *Section 6*.

2.0 FINANCIAL SECTOR REGULATION: A LITERATURE REVIEW

2.1 Background

The financial sector is important in modern economies because it facilitates the flow of funds that support the real economy. Financial sector institutions facilitate the mobilization of loanable funds from surplus spending units to deficit spending units. Because of this intermediation, loanable funds are made available for investment in the economy. Over the years, the intermediation role of the financial sector has led to the emergence of institutions such as commercial banks, investment banks, insurance companies, collective investment schemes and pension funds. In addition to the intermediation function, these institutions also provide a wide array of services that include payment services, risk management products such as insurance and derivatives, provision of credit information and liquidity. The availability of the services of financial intermediaries and related financial institutions reduces the overall cost of mobilizing and allocating financial resources in a modern economy.

2.2 The Need for Regulation, Supervision and Policy

The phrase 'financial regulation' refers to the laws and rules that govern financial markets and market participants. Regulation aims to protect investors, maintain orderly conduct of business in the financial market place and promotes financial stability and allocates resources efficiently to the real economy. Financial regulators set the requirements, restrictions and guidelines for all to abide by and oversee implementation of financial regulations.

There are two generic types of regulation and supervision based on the objectives of regulation:

1. *Prudential regulation* focuses on the solvency and safety and soundness of financial institutions. Prudential regulation is justified on the grounds that consumers are not in a position to judge the safety and soundness financial institutions. This is particularly important when the post contract behaviour of the institution determines the value of contracts, and when the institution may become riskier because of a change in its behaviour after a long-term contract has been taken out by consumers as is the case with insurance contracts and bank deposits.

2. *Conduct of business regulation* focuses on how financial firms conduct business with their customers. Conduct issues include mandatory information disclosure, the honesty and integrity of financial service providers, the level and competence of firms supplying financial services and products, fair business practices and the way financial products are marketed.

In the wake of the Global Financial Crisis of 2007-2009, there has been an increased focus on market conduct by financial regulators around the globe, driven by the realization that consumers were not treated fairly in the run-up to the crisis. There were poorly designed products being sold to consumers. The initial focus of regulators coming out of the crisis was on prudential standards, that is, boosting capital and liquidity requirements, increasing risk management and governance, and changes to accounting standards. However, it is now generally accepted that market conduct is

equally important for financial stability. There is also a realization that market conduct and prudential regulation may conflict in situations where prudential standards undermine market conduct best practices. For example, tight prudential regulation may lead a financial institution to suffer financial strain which in turn is more likely to foster an environment of customer abuse like mis-selling. Therefore, many countries have moved towards establishing market conduct regulation independently of prudential regulation while establishing coordinating mechanisms between the two.

The need for regulation and supervision of the financial system arises because financial market participants and financial intermediaries are subject to asymmetric information which causes market failures[1]. A typical asymmetric information situation is when the financial intermediary or end user of funds has more information than the supplier of funds and the entity with more information uses the information to the disadvantage of the supplier of funds. Market failure takes many forms. Llewelyn[2] has cited the following as some of the manifestations of market failure in retail financial services:

- Problems of inadequate information on the part of the consumer;
- Problems of asymmetric information (consumers are less well informed than the suppliers of financial services);
- Problems of ascertaining quality at the point of purchase;
- Imprecise definitions of products and contracts;
- Inability of retail consumers to assess the safety and soundness of financial institutions except at an inordinate cost;
- Unequal ability of consumers to assess quality because of the technicalities of some products.

Development of a sound financial sector everywhere is underpinned by a regulatory and supervisory framework that is aimed at enhancing transparency, accountability, reporting, reducing unwarranted risk taking and self-serving transactions that may not be illegal but sub-optimal for the entire economy. Financial regulation and supervision seek to increase the effective functioning of the financial system's capacity to absorb shocks and maintain financial stability. The Global Financial Crisis provided ample evidence that growth and development are better served within a stable financial system in the long-run.[3] Levine concluded his investigation of financial sector regulation and economic growth[4] as follows:

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[1] Market failure is a situation where free markets fail to allocate resources efficiently. Factors that cause market failure include uncompetitive markets and asymmetric information.

[2] Llewellyn, D. (1999), "The Economic Rationale for Financial Regulation", *Financial Services Authority, Occasional Paper Series*

[3] Subbarao, Duvvuri (2011), "Financial Regulation for Growth, Equity and Stability in the Post-Crisis World" Inaugural address by Dr Duvvuri Subbarao, Governor, Reserve Bank of India at the First CAFRAL-BIS international conference on "Financial Sector Regulation for Growth, Equity and Stability in the Post-Crisis World", Mumbai, 15 November 2011., BIS Papers No. 62

[4] Levine, R, (2011), "Regulating Finance and Regulators to Promote Growth," *Proceedings - Economic Policy Symposium - Jackson Hole,* Federal Reserve Bank of Kansas City, pp. 271-311.

> *Primarily by influencing the allocation of capital, financial systems help determine long-run rates of economic growth, the distribution of income, and the degree of poverty. Financial regulation plays a key role in shaping the incentives of financial institutions, so that improving financial sector policies is vital for promoting economic growth. Financial regulation is not just about preventing the next financial crisis. It is about encouraging, and indeed permitting, improvements in living standards, especially for those at the lower end of the distribution of income.*

There have been worldwide efforts to improve financial regulation and supervision to keep up with developments in financial markets such as the increasing complexity of transactions, increasing interconnectedness of intermediaries, blurring of financial boundaries making it difficult to categorise financial institutions into one line of business or other, increasing integration of financial markets and increased sizes of financial institutions. One approach for keeping regulation and supervision in tandem with these developments has been an integrated approach to regulation. This should in principle result in more consistent and harmonised regulation and supervision of the different types of financial businesses and products across all institutions, and still allow for appropriate differentiation (e.g. in capital requirements).

The early wind of change following the Global Financial Crisis was in the direction of supervisory unification. The integrated approach should also reduce the regulatory burden on firms being regulated as they no longer would have to deal with multiple regulators. The public would also have one regulator to deal with or complain to. Additionally, if something went wrong, it would be clear which regulator should be accountable. Integration should help achieve economies of scale, particularly in areas such as support services, statistical reporting and information technology. However, it was thought that if the same regulator was responsible for both monetary policy, stability of the financial system and banking supervision it might find itself in a conflict of interest situation, when its regulatory role calls for an action that may be inconsistent with its role of ensuring financial stability. For example, a central bank as supervisor may find itself enforcing very rigorous prudential standards which may create liquidity challenges for weak banks, thus threatening financial stability. Therefore, the need for close cooperation and coordination between regulation and stability has been recognized, particularly during crises.

However, the Global Financial Crisis brought it home that the improvements and changes made to the regulatory and supervisory environment that existed in countries like the United Kingdom were inadequate. The regulatory changes included Basel Core Principles for Effective Banking Supervision (Basel II), Objectives and Principles of Securities Regulation (International Organization of Securities Commissions) and Insurance Core Principles (International Association of Insurance Supervisors).

Since the Global Financial Crisis, observers have suggested that that parameters of regulation prior to the crisis may have been too narrow. The post-global financial crisis objective has been to identify appropriate tools that will provide regulators with the ability to identify and deal with systemic risks. Taking inspiration from countries whose financial system stayed healthy through the global financial crisis, such as Canada, Australia and Singapore, two issues have dominated the debate – the search for an optimal regulatory architecture and principles of good supervisory governance.

2.3 Functions of Financial Sector Regulation

The regulatory and supervisory framework that may be adopted are themselves derived from financial system policies that countries have opted for. Policy objectives then dictate policy instruments and regulatory institutions that must be in place. To this end, the policy framework should articulate anticipated features of the financial system that are envisaged and the role of financial intermediaries in reducing transaction costs, ensuring risk pooling, risk transfer and risk management. Policy should also reflect anticipated linkages between the financial system and the real economy nationally, and linkages of the financial system to the rest of the world. In an increasingly global world, in which governments are increasingly desirous of alleviating poverty and improving the quality of life, the public policy areas receiving the most attention in emerging economies and which are pertinent to Ghana are:

1. **Financial stability**. Ghana is a small open economy in the global world. Therefore, a crisis in another economy can easily affect Ghana. Increased international trade enhances economic growth and job creation and this requires Ghana's financial sector to be integrated further with the global economy. Unfortunately, this may increase risks to stability of the financial system, hence the need for vigilant regulation and supervision. The Global Financial Crisis has driven home the need for financial regulation to be well coordinated with monetary and fiscal policies and look out for systemic risks.

2. **Consumer protection and healthy market conduct by financial intermediaries**. Ghanaian consumers of financial services complain of high interest rates and opaque fees, unfair treatment, difficult access to credit, headaches with insurance claims processing, opaque and time-consuming processing of pension claims, fly-by-night microfinance institutions, etc.

   Protecting market participants from being taken advantage of by other economic agents in possession of superior information or those with market power is critical to ensure people do not lose confidence in the system or withdraw from transacting business in financial markets. Consumer protection regulation is aimed at promoting stability, efficiency, transparency, competition and market access. This is achieved by reducing information asymmetries, reducing power imbalances among providers and users, engendering fair treatment and effective monitoring, enforcement of rules and regulations, and recourse to resolution mechanisms.[5]

3. **Financial inclusion**: Expanding access through financial inclusion to enhance sustainable and inclusive economic growth and financial development by ensuring access to financial services for the poor.

4. **Combating financial crime**. This includes corruption and stealing of public funds, money laundering and terrorism financing.

5. **Responding to innovations in the financial sector (Financial Technology – FINTECH) -** FinTech businesses aim at providing financial services by making use of modern technology.

[5] World Bank Group, (2017), Good Practices for Financial Consumer Protection, 2017 Edition. World Bank, Washington, DC. World Bank. https://openknowledge.worldbank.org/handle/10986/28996 License: CC BY 3.0 IGO

Today, they compete with banks to offer financial solutions to customers. Banks are not responding fast enough customers, who are increasingly technology savvy, and seek simple and speedy transactions. FinTech solutions seamlessly integrate into the lives of today, be it money transfer, lending, payments, etc. International financial services contribute significantly to the economies of jurisdictions that offer comparative or competitive advantages.

6. **The Growth of Pensions**. Without doubt, the banking sector in Ghana has the most regulatory capacity and the most financial resources among regulators. However, pension funds are growing. Unfortunately, their regulator is the youngest in Ghana and has developed the least supervisory capacity. Interestingly, TIER 2 [6]pension funds under management, which NPRA supervises, are growing and becoming significant, and may soon be of systemic importance in the Ghanaian economy. Further, TIER 1 pension funds are managed by the Social Security and National Insurance Trust (SSNIT), which pre-dated NPRA, but is supposed to be supervised by NPRA. However, SSNIT has more economic clout and is more politically connected.
7. **Economies of Scale.** Attaining economies of scale in small sub-Saharan Africa (SSA) economies is only possible if the regulatory structure allows staff to be deployed efficiently. The silo type regulation comes with high overhead costs per regulator. In addition, conglomerates are evolving and comingling of funds across different lines of businesses is a real possibility.

Government's public policy in respect of the financial sector will likely be informed by these seven policy areas which interact with one another and require well thought through policy responses.

2.4 Models of Regulatory Architecture

Across countries of the world, regulatory and supervisory frameworks that are in place vary. In the main, the following may be identified:[7]

I. **I. SILO APPROACH (also called INSTITUTIONAL or TRADITIONAL approach).**
Under a silo approach, many regulators exist to regulate entities based on the classification of the business that the entity was originally authorized to undertake. Typically, one regulator would regulate entities licensed to do banking, another would regulate those licensed to carry out insurance, another for pensions, and yet another for securities. Mexico, China, Hong Kong and the United States are examples. This is the system currently in place in Ghana.

II. **INTEGRATED OR UNIFIED APPROACH**
In an integrated regulatory system, a single financial regulator is responsible for stability, soundness and business conduct of the financial system. This model is currently used in

[6] The National Pensions Act , 2008 (Act 766) established a three-tier pension scheme comprising a mandatory basic national social security scheme (Tier 1), a privately managed mandatory occupational pension scheme (Tier 2), and a privately managed voluntary provident fund and personal pension scheme (Tier 3).
[7] Schmulow, A. D. (2015), "The Four Methods of Financial System Regulation: An International Comparative Survey," *Journal of Banking and Finance Law and Practice*, 26, 151-172.

Germany, Japan, the Scandinavian countries and Singapore. It was the system in place in the United Kingdom until the 2007-2009 Global Financial Crisis.

III. SOME COMBINATION OF I AND II

Various permutations are possible by combining the silo approach and the integrated approach. These include:

1. Unified regulator inside the central bank
2. Separate agency sharing infrastructure of the central bank
3. Partially unified (only bank supervision in the central bank)
4. Partially unified (all deposit-taking institutions supervised by the central bank)
5. Unified outside the central bank

IV. FUNCTIONAL APPROACH

In a functional approach, focus is on regulating transactions and products, not the legal entity. Thus, a legal entity that engages in different transactions and products would be subject to multiple regulators, who together are responsible for safety, soundness and business conduct of the entities. Examples are Brazil, France and Italy. In Ghana some functional regulation occurs with custodian services regulated by the Securities and Exchange Commission (SEC) even though custodian services are also a significant part of the pensions value chain.

V. THE TWIN PEAKS APPROACH

This approach involves two regulators. One is responsible for prudential regulation, while the other is responsible for regulating and supervising market activities and protecting consumers. This is the system in place in Australia, Netherlands, Qatar, Spain and Switzerland. Since the Global Financial Crisis, the UK and South Africa have adopted this model, while France, Italy and the United States have taken steps that bring them closer to the Twin Peaks model.

While work is still in progress, current thinking and practice supports separation of prudential supervision and market conduct, that is, the Twin Peaks approach. Also, the need for the central banks to play a major role is being emphasized. Consensus is also emerging that supervision needs to be more intrusive, proactive, risk-based, and results-oriented.

2.5 Advantages and Disadvantages of models of financial regulation

The Silo Approach

The silo system has a built-in tendency towards fragmentation of the regulatory environment and is ill-equipped to deal with financial institutions offering hybrid products such as bancassurance[8]. Such hybrids would tend to face overlapping and potentially contradictory regulations. The silo system is also the least capable of dealing with financial conglomerates, the activities of which blur the boundaries between different types of financial institutions.

Integrated or unified approach under the central bank

Under this approach, there should be no co-ordination failure, and no contentious inter-agency turf wars. Supervision would benefit from the central bank's expertise, prestige and potential independence. The central bank could use its financial muscle to ensure up-to-date infrastructure.

[8] Bancassurance is the marketing of insurance products by banks.

New supervisory activities may be undertaken by leveraging existing ones to attain scope and scale economies and the central bank would be expected to use its muscle to resolve crises that may arise.

On the other hand, the central bank could become very powerful and may be heavy handed in dealing with financial intermediaries, which may dampen innovation. Very firm and elaborate accountability arrangements would be needed as a check on the regulator. Some are of the view that combining banking supervision and monetary policy has the potential for conflicts of interest. There is also the fear that market conduct may not receive as much attention as prudential regulation.

A unified regulator outside the central bank; Central bank focuses on monetary policy
This has the advantages of the second model (unified under the central bank), except that without central bank involvement, central bank expertise and prestige would not be available to it. A new entity would have to be set up from scratch. It is likely to be viewed with suspicion by political opponents. However, economies of scale may be realized once the new entity is set up and is up and running. There should be no co-ordination failures, or conflict of interest and the central bank would not become too powerful.

Two regulators: Central bank regulates all deposit taking entities and a separate regulator regulates all others
This model has the advantage of continuing involvement of the central bank in banking supervision, a role the central bank has played all these years. It would continue to supervise all institutions most closely associated with stability of the financial system. Supervision would benefit from the central bank's expertise, independence and supervisory infrastructure. Some economies of scope and scale would be realized. Regulatory gaps in the deposit-taking business are eliminated. The central bank has no conflict of interest and it would not become too powerful.

Twin Peaks regulation
This has the main advantage of having both macro and micro prudential regulation under one roof; hence the regulator would have the big picture of the entire financial system under one radar. However, to work well, sufficient human and material resources would have to be available. Effectiveness of the prudential regulator may be compromised if the lender of last resort is another entity which may have to undertake its own analysis in an evolving crisis situation. Under one roof, consumer protection and business conduct would receive the full attention of the other regulator and not take lower priority than prudential regulation.

Responsibilities of the two regulators will have to be carefully drawn up to ensure co-operation where responsibilities overlap or 'underlap' (nobody's responsibility). The potential for conflict of interest between the two regulators still exists. For example, the regulator in-charge of consumer protection may wish to act against an entity, which action the prudential regulator may think might affect financial stability negatively.

2.6 Issues in the Literature

2.6.1 The Global Financial Crisis of 2007-2009

The Global Financial Crisis affected many financial markets, irrespective of their regulatory architecture and supervisory governance system. An example of the silo type regulation that was

very badly affected was the US, and of the unified type supervision was the UK. Many researchers have investigated regulatory failures that resulted in the global financial crisis. Broadly, the causes are divided into two – supervisory architecture and flaws in supervisory governance. Supervisory architecture resulting in co-ordination failures has been identified in the literature. For example, Palmer and Cerruti (2009) and D'Huister (2011) categorically stated that the fragmented US supervisory structure was incapable of monitoring US financial markets that had become integrated, interconnected and complex.[9]

Flaws in supervisory governance identified in the literature are many. They include weak supervisory independence and accountability, industry or political capture, wrong incentive structures, lack of audacity to probe deeply, general lack of skills to understand the risks related to new and sophisticated financial products and underlying operations, misalignment of incentives for supervisors to voluntarily cooperate, a lack of binding coordinating mechanisms, and differences in levels of supervisory quality.

Other governance flaws include lack of supervisory resources and lack of attention to systemic risks, supervisors not having enough accountability, not being proactive in dealing with emerging issues, not enjoying as much independence as central banks, insufficient consumer protection measures such as lack of effective disclosure of the interests of sponsors of financial products and the full nature of the products, deceptive advertising by suppliers, and failure by consumers to understand products, the so called 'light touch' approach to supervision, the 'too-big-to-fail' rule, and 'resting - on-oars' syndrome.[10]

The literature lists the following as lessons learnt from the global financial crisis:

- Need for a holistic view of financial sector regulation;
- Failure of 'light-touch' regulation of the financial sector at the global level;
- Importance of regulating market conduct to support prudential regulation;
- Global cooperation in preventing macroeconomic imbalances;
- Importance of swift regulatory action to prevent contagion.

The G20 countries proposed reforms that focused on amending regulatory systems to take account of macro-prudential risks to limit the build-up of systemic risk, and to extend the supervisory net to previously unregulated areas such as credit rating agencies, hedge funds, over-the-counter derivatives market and shadow (unregulated or unauthorised) banking. On its part, the US retained its multiple supervisory agencies but established the Financial Stability Oversight Council. The UK moved from a unified regulatory model to a Twin Peaks model and the Financial Policy Committee model. The European Union established the European Systemic Risk Board.

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[9] Leijonhufvud, A. (2009), "Out of the Corridor: Keynes and the Crisis, *Cambridge Journal of Economics,* 33(4), 741-757.
[10] Turner, A. (2009), The Turner Review: A Regulatory Response to the Global Banking Crisis, *Financial Services Authority,* London. 'Too-Big-To-fail' is the theory that certain financial institutions are so essential to the national and/or global economy that their failure would be catastrophic. 'Resting-on-oars' is being satisfied with the status quo and not looking out for evolving regulatory challenges.

2.6.2 Trends in Financial Sector Development in sub-Saharan Africa (SSA)

Discernible features of financial sector development in SSA include[11]:

- Low financial development measured by the ratio of broad money to GDP (Table 1). The low ratios suggest more money outside the formal banking system;
- Bank dominated financial systems; very small insurance and securities sub-sectors; growing non-bank financial and microfinance institutions;
- Very strong presence of subsidiaries of African banks which are headquartered in other African countries.

Quintyn and Taylor (2007)[12] documented that several SSA countries have been revising their financial sector regulatory systems. They include South Africa, Mauritius, Nigeria, Botswana, Zambia, and Uganda. The authors cite association of these countries with regional economic blocs and financial sector reforms as reasons for supervisory reforms.

TABLE 1 INDICATORS OF AFRICAN BROAD MONEY (M2/GDP (%)

Country	2016
Angola	41.8
Benin	41.5
Botswana	41.6
Central African Republic	26.2
Cote d'Ivoire	36.5
Cameroon	20.7
Cote d'Ivoire	36.5
Ghana	34.2
Kenya	38.6
Nigeria	20.4
Senegal	48.4
South Africa	72.6
Tanzania	22.1
Uganda	22.9
Zambia	20.5
Sub-Saharan Africa	37.4
By Economic Classification	
High Income	123.0
Upper Middle Income	149.4
Middle Income	129.6
Lower Middle Income	65.2
Low Income	35.4

[11] Quintyn, M and M. W. Taylor (2007). "Building Supervisory Structures in Sub-Saharan Africa – An Analytical Framework," *IMF Working Paper, WP/07/18*

[12] Ibid.

Source: World Development Indicators, 2018	

2.6.3 Financial Technology Regulation and Supervision

Financial technology (FinTech) is the term applied to technological innovation in the financial sector, including innovations in retail banking, investments, stock trading and even crypto-currencies. It aims at competing with traditional approaches to delivery of financial services. The use of smartphones in mobile banking, investing services and cryptocurrency are examples. FinTech is cheaper, faster, simpler, easier-to-access, and provides on-demand services delivered through a combination of mobile and online platforms.

The heart of the matter are new technologies such as *blockchain,* which have presented opportunities to the public for dealing with money more efficiently at a lower cost, while *big data* and *artificial intelligence* have enabled the use of more targeted and customised solutions. *Blockchain* is a way of maintaining a database without a central authority. Applied to financial services, *blockchain* aims to make financial services more accessible to the general public.

The rise of FinTech raises questions to financial regulatory questions such as:

- Whether to expand the regulatory and supervisory perimeter;

- Whether new types of digital financial services fit existing regulations;
- How to identify, monitor and mitigate the risks of FinTech innovations and FinTech firms;
- Whether FinTech could lead to disintermediation and affect financial stability or change how central banks operate;
- Whether cybersecurity and data protection risks are well understood, managed and mitigated;
- How to keep financial systems stable while harnessing the benefits of FinTech;
- Whether existing supervisory policies, procedures and resources will be adequate to address a fast-changing landscape.

The UK Financial Conduct Authority was the first to promote a regulatory sandbox[13] in 2014. Several other regulators have since also introduced initiatives to promote FinTechs. The Japanese Financial Services Authority has launched a 'FinTech Support Desk'. The Monetary Authority of Singapore also formed a FinTech and Innovation Group responsible for regulatory policies and development strategies to facilitate the use of technology and innovation in the financial sector. Many other jurisdictions have also started promoting FinTech. They include, Australia, Brazil, Canada, China (Mainland), France, Netherlands, Indonesia, Malaysia, South Korea and Thailand.

[13] Testing grounds for new business models that are not protected by current regulation or supervised by regulatory institutions.

3.0 CASE STUDIES

The case study countries (Table 2) were chosen to provide a cross section of countries with the features Ghana is interested in. For example, Hong Kong, Singapore and Malaysia are included because of the Government's policy of developing Ghana into a regional financial hub. Canada and the United Kingdom are both advanced countries but were impacted differently by Global Financial Crisis. Finally, Malaysia and South Africa are emerging markets with significant financial sectors.

TABLE 2 CASE STUDY COUNTRIES

Country	Advanced Country	Emerging	International Financial Services Centre
United Kingdom	√		√
Canada	√		
Malaysia		√	√
South Africa		√	
Singapore	√		√
Hong Kong	√		√

The final verdict on each country's regulatory system has been corroborated with each country's most recently available Financial Sector Assessment Program (FSAP). The FSAP is conducted by the International Monetary Fund and is a comprehensive and in-depth assessment of a country's financial sector. FSAPs analyse the resilience of the financial sector, the quality of the regulatory and supervisory framework, and the capacity to manage and resolve financial crises. Based on its findings, FSAPs produce recommendations of a micro- and macro-prudential nature, tailored to country-specific circumstances.

3.1 Canada

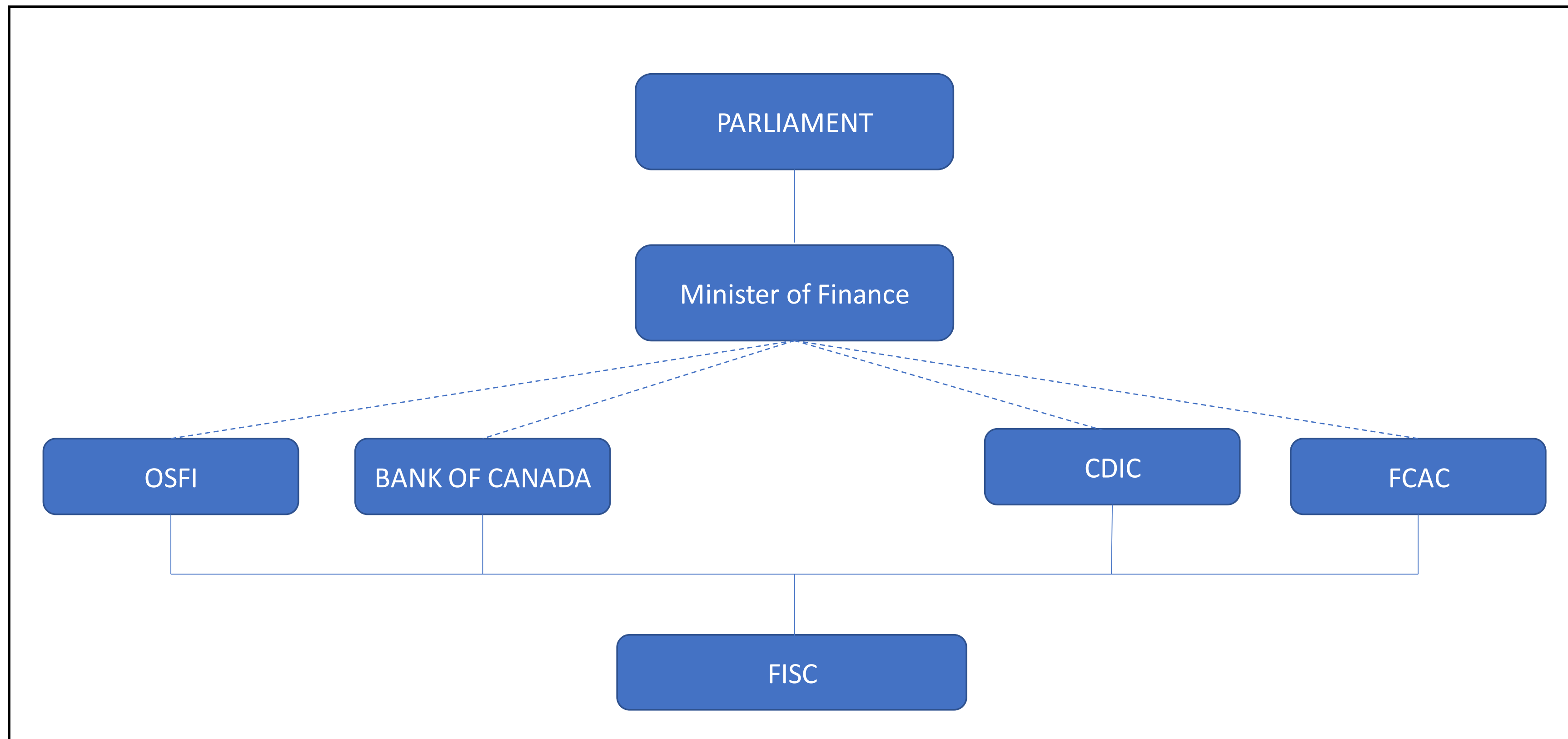
3.1.1 Introduction

Canada's financial system is large. Financial system assets total about 500 percent of its gross domestic product. Each sub-sector of the system is dominated by a few institutions. In banking, the five biggest banks control about 80% of total banking assets. Financial intermediation outside the traditional banking system is estimated at 40 percent of GDP. The equities market is developed. The insurance industry is also very well developed and considered by many to be matured.

The International Monetary Fund and the World Economic Forum have all hailed the Canadian financial system's regulatory and supervisory framework as robust and able to resist negative shocks. Key features of the hybrid system include strong unified prudential regulation and supervision, a well-designed system of deposit insurance, arrangements for crisis management and resolution of failed banks, low risk tolerance, stringent capital requirements and solid consumer protection. Supervisory responsibility is shared among the federal government, the provincial

governments and a group of agencies within the federal government. Canada's system of financial regulation is depicted in Figure 1.

FIGURE 1 FINANCIAL SYSTEM REGULATION IN CANADA



OSFI = Office of Superintendent of Financial Institutions;
CDIC= Canadian Deposit Insurance Corporation;
FCAC = Financial Consumer Agency of Canada;
FISC = Financial Institutions Supervisory Committee.

3.1.2 Regulation and Supervision

At the federal level, supervision is shared among the Department of Finance, the Bank of Canada, the Office of the Superintendent of Financial Institutions (OSFI) and the Canada Deposit Insurance Corporation (CDIC). However, it is the Minister of Finance who is responsible for the entire financial system. Provincial authorities are responsible for prudential regulation and supervision of the financial securities industry. All Canadian Provinces and Territories have crafted individual legislations on financial securities and consumer protection.

Below are the responsibilities of federal agencies, all five of whom report to the Minister of Finance, who in turn reports to the Canadian Parliament.

Office of the Superintendent of Financial Institutions (OSFI)

OSFI was established in 1987 by an Act of Parliament. It is the prudential regulator and supervisor of Canadian banks and other federally regulated financial institutions. It is also responsible for implementing Basel Committee principles and guidance in Canada. It is an independent agency of the Government of Canada.

OSFI regulates and supervises bank and non-bank financial institutions (e.g. loan companies, credit associations, pension and insurance, etc.).

The key supervisory functions of OSFI are as follows:

- promptly advises financial institutions and pension plans if there are material deficiencies and takes corrective measures or requires that they be taken to expeditiously address the situation;
- monitors and evaluates system-wide or sectoral developments that may have a negative impact on the financial condition of federally regulated financial institutions;
- acts to protect the rights and interests of depositors, policyholders, financial institution creditors and pension plan beneficiaries while having due regard for the need to allow financial institutions to compete effectively and take reasonable risks;
- co-ordinates with the Financial Transactions and Reports Analysis Centre of Canada which is responsible for ensuring compliance with Canada's Proceeds of Crime and Terrorist Financing Act, and;
- collaborates and consults with Provincial regulators and regulators outside Canada.

Bank of Canada (BoC)
Canada's central bank is responsible for setting monetary policy and promoting a stable and efficient financial system. It issues and distributes currency and manages government's public debt programs and foreign exchange reserves. It is the lender of last resort to the banking system.

Department of Finance
The Department of Finance is responsible for the legislative framework governing banks and other federally regulated financial institutions in Canada. The Department reports directly to the Minister of Finance, who oversees the incorporation of banks, permits foreign bank branches, and approves bank mergers.

Canada Deposit Insurance Corporation (CDIC)
CDIC is a federal Crown corporation created by Parliament in 1967 to protect deposits made with member financial institutions in case of their failure. CDIC insures deposits of up to CAD 100,000.

Financial Consumer Agency of Canada (FCAC)
In Canada, consumer protection is ensured at two levels – federal and provincial. The FCAC has enforcement powers to ensure that all federally regulated financial entities comply with federal consumer protection legislation. The FCAC is also responsible for promoting financial education and raising consumers' awareness of their rights and responsibilities. All Provinces and Territories have established their own provincial and territorial agencies responsible for consumer affairs and the consumer protection.

Securities
In Canada, regulation of the securities industry falls under the individual provincial governments.

3.1.3 Coordination with the Minister of Finance and Accountability

OSFI reports to Parliament through the Minister of Finance. Although the Minister of Finance is responsible for OSFI, the Superintendent is solely responsible for exercising the authorities provided by the financial and pension legislation and must report to the minister from time to time on the administration of legislation governing financial institutions and pension plans.

Co-ordination of supervision at the federal level is ensured through the *Financial Institutions Supervisory Committee (FISC)* made up of OSFI (Chair), the Department of Finance, Bank of Canada, Canada Deposit Insurance Corporation (CDIC) and the Financial Consumer Agency of Canada. The Committee meets regularly to share information, coordinate actions, and advise the federal government on financial system issues. FISC conducts a legally mandated five-year review of the National Bank Act to ensure that banking legislation is modernized periodically.

In addition to FISC, there is a *Senior Advisory Committee* (SAC) that has the same membership as FISC but is chaired by the Deputy Minister of Finance (equivalent to a Chief Director in Ghana). SAC is a discussion forum for financial sector policy issues, including financial stability and systemic vulnerabilities in order to inform the advice provided to the Minister of Finance.

Unlike the Department of Finance which reports directly to the Minister of Finance, the Bank of Canada, OSFI, CDIC, and FISC have arms-length relationship with the Minister but report to Parliament through the Minister. The OSFI law has a section on Governance and Accountability which speaks to how OSFI itself is accountable to Parliament and other stakeholders about how it is doing its work.

3.1.4 FinTech Regulation

When *Lending Loop*, a peer-to-peer lending platform, started in Toronto in 2015, it needed to obtain approval from provincial securities regulators for a prospectus and to comply with other securities-related regulatory requirements like any other publicly traded company. Facing substantial difficulties, it suspended its fund raising until the Ontario Securities Commission (OSC) started the OSC Launchpad in 2016 to provide compliance advice and other support to FinTech start-ups. *Lending Loop* then re-launched its fundraising efforts under an exempt market dealer license that was granted by the OSC. The license is recognised by other provincial regulators across Canada, except in the province of Québec. OSC LaunchPad was the first in Canada, but other provinces have

started their own. The LaunchPad is staffed with representatives of regulators, compliance and company registrars, corporate finance, derivative securities, investment funds, structured products experts, etc. It provides informal guidance on regulatory compliance matters from OSC staff and, on a case-by-case basis, eligibility for time-limited registration relief.

In January 2017, the OSC announced the formation of the FinTech Advisory Committee, which will advise the regulator on FinTech-related developments as well as regulatory challenges faced by businesses in this sector.

3.1.6 Financial Sector Stability Assessment (2014)

The FSAP report on Canada's 2014 assessment says that prudential regulation and supervision of the banking, insurance, and securities industries demonstrate strong compliance with international standards and is well coordinated across the federal oversight bodies. In particular, the statutory framework governing OSFI provides comprehensive powers and operational flexibility. The OSFI has very good relationships with other federal agencies in Canada and with its overseas counterparts, but relationships with Canadian provincial regulators could be strengthened.

Stress tests conducted in 2013 suggest that major financial institutions would continue to be resilient to credit, liquidity, and contagion risks arising from even severe stress scenarios. The supervision of the Canadian banking system by the OSFI was found to be very effective. Canada has adopted the Basel III capital standard and a framework for assessing Domestic Systemically Important Banks.

OSFI's prudential supervision of insurers was found to be robust and highly consistent with Insurance Core Principles. The insurance regulatory regime has served Canada even in the prevailing low interest rate environment. The operational capacity of the Canadian Deposit Insurance Corporation (CDIC) was well developed. The framework for the regulation and supervision of securities markets is highly consistent with the principles of International Organisation of Securities Commissions. The assessment found that credible federal systems of safety nets were in place.

A number of challenges were however identified. The report indicates that *there was no single body with an explicit mandate to take a comprehensive view of systemic risks or to undertake crisis preparedness.* For securities, risk identification challenges remain in respect of more coordination, allocation of resources and data collection. Enforcement challenges too remain, especially in respect of criminal offenses. Canada has not developed as much macro-prudential tools for insurance as it has for banking. For the CDIC, the FSAP recommends that its operational independence, resolution powers, and ex-ante funding should be further enhanced and that OSFI relationships with Canadian provincial regulators could be strengthened. Finally, it found that household debt was high. However, it found that targeted macro-prudential measures to ameliorate high debt levels were effective.

3.1.7 Lessons for Ghana

The commendable performance of the Canadian system may be attributable to

- Strong regulatory regime including mortgage markets;
- Strong capital requirements;
- Conservative appetite for risk; and

- Strong macroeconomic fundamentals.

Ghana does not have the equivalent of OSFI. Instead, Ghana has separate regulators for banking, insurance, securities and pensions. Unlike Canada, it is Ghana's central bank that regulates banks. In Canada, it is the Minister of Finance who licences banks and approves mergers of federally regulated financial institutions. In Ghana, it is the Bank of Ghana that does. The issue as to whether bank licensing and mergers should be left to the regulator is a legitimate issue for a policy dialogue.

Ghana has no effective financial consumer protection agency, which reflects a generally low level of market conduct regulation. Ghana is only now on the verge of having bank deposit insurance. Canada has long had one. Ghana has no effective Financial Institutions Supervisory Committee.

What exists on paper is a regulators forum but is largely ineffective and has not met for many years.

3.2 Singapore

3.2.1 Introduction

Singapore is among the top three financial hubs in the world (London and New York being the first two). Her financial market is regarded as one of the most competitive across the globe. More than 120 out of the world's biggest banks are located there. Only five of these banks are local banks. The capital market of Singapore has enormous depth and liquidity. Almost 800 companies are listed on the stock exchange. The foreign currency market very strong. In 2016, Singapore handled 8% of global average daily turnover in the foreign exchange market. At the end of 2016, almost USD 1.9 trillion was invested with asset management companies in Singapore. The country boasts 270 asset and fund management companies.[14]

3.2.2 Regulation and Supervision

Singapore has maintained a unified system of financial regulation and supervision which is highly regarded as being exceptionally effective.[15] At the apex is the Monetary Authority of Singapore (MAS). It is the central bank, the market conduct regulator, and the prudential regulator.

The direct functions of MAS are:

1. Regulation – prudential and market conduct regulation;
2. Authorization – Licensing of institutions that wish to offer financial services;
3. Supervision – compliance with prudential, anti-money laundering/ countering financing of terrorism and market conduct regulations;
4. Surveillance of the financial system;
5. Enforcement of rules and regulations; and
6. Resolution – the timely and orderly removal non-viable institutions.

[14] Source: Singapore, Third Largest Financial Hub in the World. http://teamconcurs.com.sg/2017/07/31/singapore-third-largest-financial-hub-in-the-world/

[15] Schmulow, A. D. (2015), "The Four methods of Financial System Regulation: An International Comparative Survey," *Journal of Banking and Finance Law and Practice*, 26, 151-172.

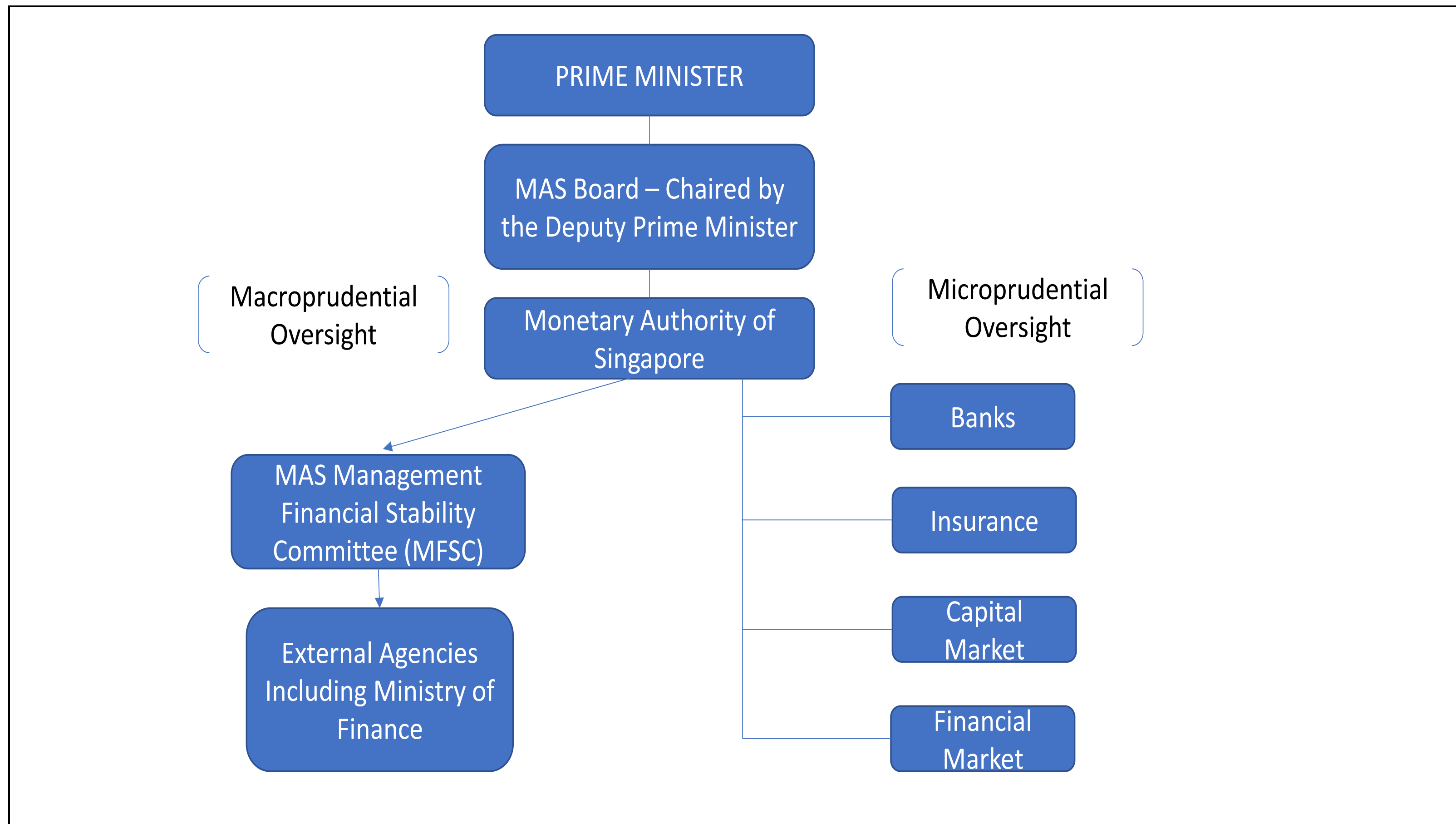
Indirectly, through other stakeholders, MAS encourages and ensures good corporate governance, market discipline, consumer education and consumer safety-net schemes such as deposit insurance.

MAS oversees all financial institutions in Singapore including banks, insurers, capital market intermediaries, financial advisors, stock exchange and FinTechs; it also promotes retail investor education. Singapore's financial regulatory system is depicted in Figure 2.

Singapore's pension system essentially rests on one pillar, the Central Provident Fund (CPF). It serves most social security functions. The CPF is the statutory authority that administers Singapore's public pension system. The CPF is managed by a tripartite board of government, employee, employer and industry representatives that are appointed by ministers. The Ministry of Manpower[16] oversees the CPF.

[16] The equivalent Ministry in Ghana is the Ministry of Employment and Labour Relations which is also the supervising ministry (jointly with the Ministry of Finance) for the National Pensions Regulatory Authority

FIGURE 2 SINGAPORE'S FINANCIAL REGULATORY SYSTEM



CPF covers private and most public-sector employees. As well, the self-employed may join on a voluntary basis.

MAS has established a reputation of discipline which is reflected in the following principles:

1. MAS focuses on proper risk management systems as a way of consciously aligning market integrity with protecting the public interest.
2. Firms are assessed on their demonstrable capacity to protect the public interest. They are required to report suspicion of wrong doing rather than provide evidence of wrongdoing.
3. MAS is clothed with the powers of compulsion, inspection and issue of reprimands in situations where the law may not have been violated, but potential for violation exists.
4. Not respecting the rules risks huge fines, and even prison terms.
5. MAS's organisational culture in respect of its responsibilities is aggressive with a *no-nonsense* approach. That is, there is no 'light touch' approach to regulation. For example, banks are expected to keep their services up and running all the time since users of online banking services expect services to be available 24 hours every day of the year, that is, near-zero system downtime. Violations attract huge fines.

Singapore as an International Financial Services Centre[17]

In 2016, the Global Financial Centres Index ranked Singapore as the third most dynamic international financial centre in the world. As an international financial centre, Singapore offers financial institutions a pro-business environment, excellent infrastructure, cost-competitiveness, and a highly skilled and cosmopolitan labour force. Some indicators of activities are:

- The capital market of Singapore has enormous depth. The liquidity of the market further attracts more investors across the world.
- Financial institutions in Singapore also trade around-the-clock with Asia-Pacific centres, as well as European and American centres, making Singapore a significant hub for 24-hour trading in foreign exchange and securities.
- International travel is equally convenient. Singapore has grown to be a strategic link and important gateway for global investors.
- Singapore is the major hub for trading crypto-currencies in Asia at present.

Yeandle (2016) has summarized the factors that make the Singapore financial sector competitive in Table 3.[18]

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[17] Singapore's Transformation into a Global Financial Hub, Lee Kuan Yew School of Public Policy at the National University of Singapore, 2017.

[18] Yeandle, M, (2016), "Global Financial Centres Index 20." London, U.K.: Z/Yen Group and China Development Institute.

TABLE 3 STRENGTH OF SINGAPORE'S FINANCIAL SYSTEM

Business Environment	Financial Sector Development	Infrastructure	Human Capital	Reputation
Political Stability and Rule of Law	Volume and Velocity of Trading	Building and Office Infrastructure	Availability of Skilled Personnel	City Brand and Appeal
Institutional and Regulatory Environment	Availability of Capital	Transportation Infrastructure	Education and Development	Level of Innovation
Macroeconomic Environment	Depth and Breath of Industry Clusters	ICT Infrastructure	Flexible Labour Market and Practices	Attractiveness and Cultural Diversity
Tax and Cost Competitiveness	Employment and Economic Output	Environmental Care and Sustainability	Quality of Life	Comparative Positioning with Other Centres

MAS released the roadmap (strategic plan) in October 2017 that it drew up in close consultation with the financial industry and the tripartite movement. In the roadmap, Singapore would be a leading global financial centre in Asia connecting global markets, supporting Asia's development, and serving Singapore's economy. They aim to achieve growth in real value-added of 4.3% and productivity of 2.4% annually in the financial sector, (faster than the overall economy) and to create 3,000 new jobs in financial services and an additional 1,000 new jobs in the FinTech sector annually.

3.2.3 Coordination with Minister and Accountability

The Minister's responsibilities include the following:

- Appointment of Chairman and Directors (Currently the Chairman is the Deputy Prime Minister).
- Appointment of the Managing Director.
- The Board shall furnish the Minister with such information as the Minister may require in respect of the duties and functions of the Authority.
- Certain decisions of MAS (e.g. primary dealer appointments) can be appealed to the Minister.

The law requires the annual publication of Annual Accounts and a report by the Board on the performance of the functions and duties of the Authority. The financial statements and annual report are presented to Parliament.

3.2.4 FinTech Regulation[19]

MAS has a policy of supporting FinTechs. Their regulatory mandate is two-fold:

- provide regulation conducive to innovation while fostering safety and security; and

[19] FInTech Regulatory Sandbox Guidelines, (2016), Monetary Authority of Singapore, Singapore.

- facilitate infrastructure for an innovation ecosystem and adoption of new technologies.

The principles that guide MAS's regulation of FinTechs are:

1. *Regulation must not be made ahead of innovation.* Introducing regulation prematurely may stifle innovation and potentially derail the adoption of useful technology. However, it is important to keep pace with what is going on, assess what the risks might be, and continually evaluate whether it is necessary to regulate or leave things to evolve further.

2. *Application of a materiality and proportionality test.* Regulation is applied only when the risk posed by the new technology becomes material or crosses a threshold, that is, the weight of regulation must be proportionate to the risk posed.

3. *Focus on the balance of risks posed by new technologies or solutions.* Many technologies mitigate existing risks but may create new ones. The regulatory approach must seek to incentivise the risk mitigation aspects while restraining the new risks.

Some illustrative regulatory initiatives are:

Insurance

In insurance, MAS already allows insurers to offer online without advice simple term life and direct purchase policies with broadly standardised features. MAS is on the verge of allowing insurers to offer the full suite of life insurance products online without advice. MAS will be issuing guidance on the safeguards to be put in place for online distribution of life insurance products.

Regulatory Sandbox to Test Innovative Ideas

In June 2017, MAS launched a regulatory sandbox for financial institutions as well as new FinTech players to test their innovations. The sandbox serves two purposes. First, it allows experiments to take place, even where it is not possible at the outset to anticipate every risk or meet every regulatory requirement. Second, it provides an environment where if an experiment fails, it fails safely and cheaply within controlled boundaries, without widespread adverse consequences. MAS and the applicant will jointly define the boundaries within which the experiment will take place. MAS will then determine the specific legal and regulatory requirements which it is prepared to relax for the duration of the experiment within these boundaries. MAS works closely with other government agencies and the industry to help ensure cyber-defences are robust.

3.2.5 Financial System Stability Assessment (2013)

Singapore underwent an assessment under the Financial Sector Assessment Program (FSAP) in 2013.[20] The *FSAP Update* of 2018 included assessments of the Basel Committee for Banking Supervision (BCBS) Basel Core Principles for Effective Banking Supervision, International Association of Insurance Supervisors (IAIS) Insurance Core Principles, International Organization of Securities Commissions (IOSCO) Principles and Objectives of Securities Regulation and IOSCO Recommendations for Securities Settlement Systems and Central Counterparties.

[20] IMF Country Report No. 13/325. November 2013

The FSAP concluded that Singapore's financial system was highly developed and well-regulated and supervised. It is built around a core of domestic and international banks and offers a wide range of non-bank services. Singapore's current regulation and supervision of banks are among the best globally. The insurance sector, capital markets, over-the-counter derivatives clearing also appeared sound. Crisis management and resolution arrangements are generally strong.

Overall compliance with supervisory standards in banking, insurance, securities and financial markets infrastructure was high. The banking sector appeared resilient to stressed conditions; the insurance sector was stable; capital markets did not pose material risks to financial stability and arrangements for over-the-counter derivatives clearing appeared sound.

Nevertheless, Singapore was exposed to a broad array of domestic and global risks, especially considering its interconnectedness with other financial centres. However, stress tests suggested that these risks were manageable.

The FSAP Report observed that the number of government ministers on MAS board is probably inconsistent with full supervisory independence.

3.2.6 Lessons for Ghana

Broadly, Singapore's approach for regulating and supervising the financial sector is very instructive.

Ghana may note that a single regulator can be effective, if it is determined to be so by working hard and creating a healthy work culture. It is noted that in Singapore's case, the single regulator has existed right from the beginning. Ghana, on the other hand has four regulators, therefore, moving to a single regulator that will work well will be challenging because of turf wars.

The potential conflict of interest between market conduct and prudential regulation exists under a unified system and will take a lot to overcome.

3.3 Malaysia

3.3.1 Introduction

Figures 3 and 4 depict Malaysia's financial system and the regulatory architecture respectively. For most of Malaysia, there are two financial services regulators, the Central Bank of Malaysia (also called Bank Negara Malaysia (BNM)) and the Securities Commission. A third regulator focuses on the Labuan Offshore Financial Centre.

Banks and non-bank deposit taking and loan-granting institutions in Malaysia are regulated and supervised under two main laws:

- The Financial Services Act 2013 (FSA), and;
- The Islamic Financial Services Act 2013 (IFSA).

The main distinction between the FSA and the IFSA is that, IFSA requires Islamic financial institutions to ensure that their aims, operations, business, affairs and activities follow Shariah principles at all times.

FIGURE 3 MALAYSIA'S FINANCIAL SYSTEM

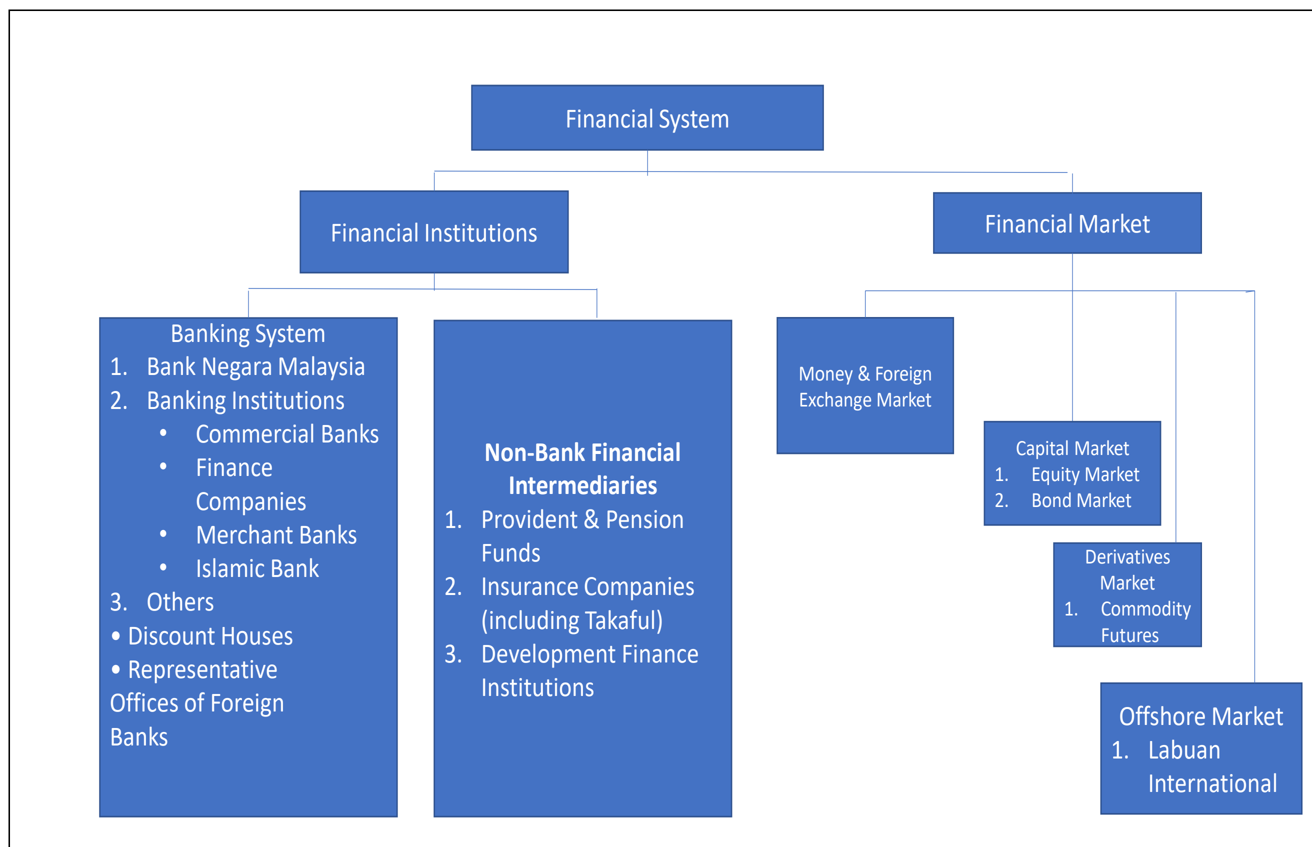
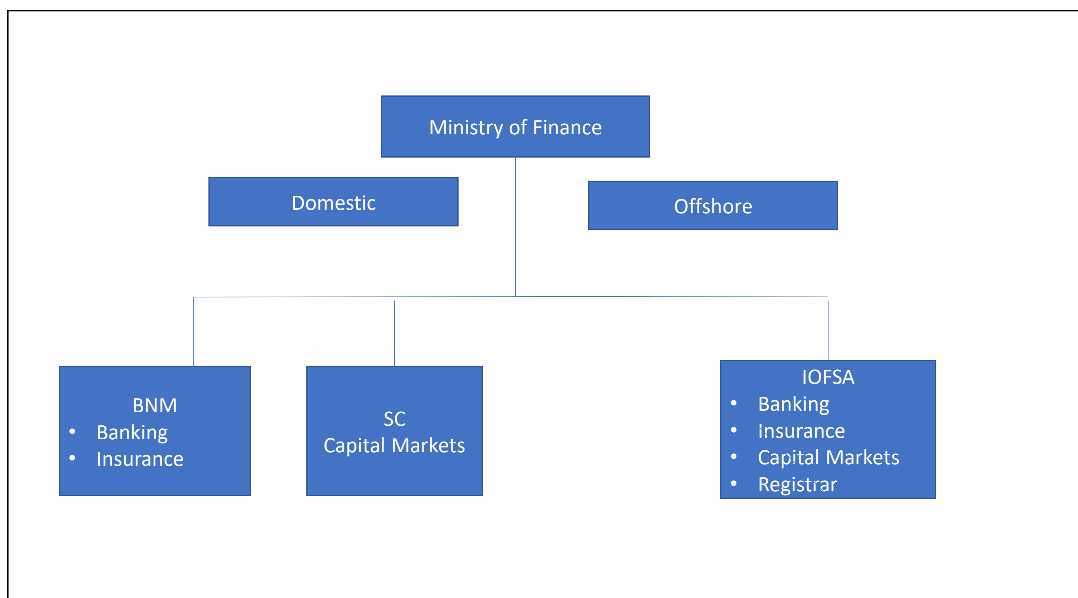


FIGURE 4 REGULATION OF FINANCIAL SERVICES IN MALAYSIA



3.3.2 Regulation and Supervision

Malaysia operates a dual banking system: conventional (western-style) banking system, and an Islamic banking system. A wide range of Islamic financial products exist alongside conventional banking products.

The Islamic Financial Services Act 2013 (IFSA) entrenches the role of BNM as Shariah regulator, embeds Shariah principles and rulings, strengthens Shariah governance and compliance requirements, makes it an offence for Islamic financial institutions to carry on Shariah non-compliant activities and imposes heavy penalties and gives BNM wide powers to assess, intervene, direct and penalise Islamic financial institutions in relation to offences and breach of IFSA provisions.

Central Bank, Bank Negara Malaysia (BNM)
The body created by both laws to implement both the FSA and IFSA is the BNM. The objectives of the FSA are to promote financial stability and protect the rights and interests of consumers of financial services and products. The objectives of the IFSA are similar but, in addition, pertain to compliance with Shariah (Islamic) law.

BNM is empowered to act as the regulator of banking institutions under the FSA and the IFSA. and is also the central bank of Malaysia under the Central Bank of Malaysia Act 2009. Its responsibilities as the central bank are to:

- promote financial stability;
- formulate monetary policy through its Monetary Policy Committee;
- advise the government on macroeconomic policies and managing the public debt;
- be the sole authority for issuing currency as well as managing the country's international reserves;
- regulate and supervise financial institutions which are subject to the laws enforced by it; and
- oversee payment systems and money and foreign exchange markets.

BNM has powers to intervene and ensure sound risk management and good governance policies. BNM has power to restrict institutions from carrying on business or a line of business or to dispose of assets if deemed necessary. BNM has the mandate to vet directors and senior officers. BNM has the power to remove directors, CEOs and senior officers. It has the power to order share transfers or share issues or reduce the share capital of institutions.

BNM also regulates insurance companies, insurance brokers, insurance adjusters and financial advisers in the industry. However, it is the Minister of Finance who licenses insurance companies on the recommendation of the BNM, while brokers and financial advisers are approved by BNM. Adjusters must register with BNM.

Malaysia operates a compulsory retirement savings scheme for private-sector and public-sector workers called Employees Provident Fund. It is an agency of the Malaysian Ministry of Finance. In addition, Malaysia also operates a voluntary Private Retirement Scheme, open to all Malaysian residents. It supplements the government-run mandatory retirement scheme. It is run by the Private Pension Administrator (PPA) and regulated by the Securities Commission of Malaysia.

The Securities Commission of Malaysia
The other financial services regulatory body is The Securities Commission of Malaysia. It was created by the Securities Commission Act 1993. The objective of the Commission is to promote and maintain

fair, efficient, secure and transparent securities and futures markets and to facilitate the orderly development of an innovative and competitive capital market in Malaysia.

The Securities Commission of Malaysia implements the provisions of the Capital Markets and Services Act, 2007 which mandates it to regulate and to provide for matters relating to the activities, markets and intermediaries in the capital markets. Its two main responsibilities are: i) to act as a single regulatory body to promote the development of capital markets; and ii) to take responsibility for streamlining the regulations of the securities market, and for speeding up the processing and approval of corporate transactions.

Both the BNM and Securities Commission adopt a risk-based supervision approach, under which financial institutions are assessed and monitored based on risk profiles and adequacy of risk management systems. Like the MAS of Singapore, both rely on institutions' internal oversight and risk management control functions to anticipate and respond to emerging risks and to ensure that identified weaknesses are addressed. To ensure this, BNM has taken measures to strengthen the boards and senior management of financial institutions to ensure more effective leadership and oversight.

The Securities Commission is responsible for investment banks' business and market conduct, market integrity and investor protection in the capital markets. It also regulates Investment banks that undertake capital market activities in addition to banking activities. BNM is responsible for the prudential regulation of investment banks to ensure their safety and soundness and the overall stability of the financial system. Special attention is paid to systemically important banks.

Consumer protection and proper business conduct
The FSA grants BNM the authority to take actions to ensure that financial services providers are fair, responsible and professional when dealing with customers. Contravention of laid down standards attract hefty fines or imprisonment. The FSA has also created a financial ombudsman to handle complaints fairly and effectively.

Development of Financial Markets
BNM has the mandate to ensure a conducive environment for greater financial inclusion, create a diverse range of financial service providers that thrives and competes, enhance distribution channels to ensure widespread access to financial services, ensure that a minimum level of banking products and services is provided at reasonable cost and Improve financial literacy, advisory, awareness and consumer education.

International Financial Services Centre

Malaysia operates an international financial centre called the *Labuan Financial Services Authority (LFSA)*. It was established in 1996 and is responsible for developing and promoting offshore business in Labuan, administering and enforcing legislation, and incorporating and registering companies. Called the Labuan International Business and Financial Centre (Labuan IBFC), it operates an independent legal framework that offers integrated offshore financial services covering both conventional and Islamic products. The centre deals mainly with non-residents.

All functions under the jurisdiction of Bank Negara Malaysia, Registrar of Companies and Securities Commission for the rest of the country have been transferred to LFSA.

In 2016, there were 61 banks, 74 insurance-related companies, 47 trust companies, 18 Fund Management Companies and securities licensees and 383 leasing companies operating in Labuan.[21]

External links

BNM keeps a keen eye on developments in international standards and encourages compliance with international standard-setting bodies such as Bank for International Settlements (BIS), Islamic Financial Services Board, IAIS, IOSCO and international accounting standard-setting entities.

3.3.3 Coordination with Minister and Accountability

The Minister of Finance plays an active role in the regulation of banks under FSA and IFSA. Key roles of the Minister are:

- the approving authority for applications for banking licenses;
- power to impose conditions under which licences are issued;
- powers to revoke licences;
- power to direct that investigations be carried out under prescribed circumstances.

The two bodies report to the Minister of Finance and their accounts are tabled in Parliament annually. The Minister has the power to investigate and enforce all provisions of the law under its jurisdiction.

3.3.4 FinTech in Malaysia

The FinTech Sandbox was opened in October 2016 by BNM. It is open to all FinTech companies, even if a FinTech does not have presence in Malaysia. Earlier in 2015, the Malaysian Securities Commission had launched an initiative on promoting innovation. The FinTech must have a genuinely innovative solution that fills a gap in the market. The FinTech is not required to work with a bank, but the Bank Negara Malaysia encourages it. Being in the sandbox gives the FinTech a 12-month testing period.

The Securities Commission introduced guidelines and frameworks around Equity Crowdfunding and P2P in 2016. As at March 2017, USD 3.3 million (RM 12.6 Million) had been raised by way of Equity Crowdfunding.[22]

After public consultation the central bank has announced the official cryptocurrency regulation in Malaysia under the policy paper, 'Anti-Money Laundering and Counter Financing of Terrorism Policy for Digital Currencies'[23]. The policy paper emphasises that cryptocurrencies are not legal tender in

[21] Annual Report, Labuan Financial Services Authority, 2016
[22] https://iclg.com/practice-areas/fintech/fintech-2017/malaysia
[23] https://fintechnews.my/16648/regtech-fintech-regulation-malaysia/bank-negara-malaysia-issues-cryptocurrency-regulation-malaysia/

Malaysia. As such, there are no established avenues for redress for losses and damages incurred by parties dealing in cryptocurrencies.

Agencies that report cryptocurrency dealings, such as the stock exchanges, are not to portray themselves as licensed by the central bank, even though they have reporting obligations to the regulator. Exchanges are required to conduct adequate risk assessments on their customers in relation to the prevention of money laundering and financing of terrorism. Exchanges are also to conduct the same Customer Due Diligence (Know-Your-Customer) as licensed entities regulated by BNM. If an exchange is making a new cryptocurrency available for trading, it is required to submit its risk assessment in relation to money laundering and terrorism financing in writing to Bank Negara Malaysia.

The cryptocurrency regulation in Malaysia also states that if the activities are carried out in Malaysia, even exchanges without physical presence are subject to Malaysian regulation. It also requires the exchange to have a compliance officer based in Malaysia. This policy paper will come into effect immediately**.**

3.3.5 Financial Sector Stability Assessment (2014)[24]

The most recent FSAP Report om Malaysia was issued in 2014. All banks including those operating in the domestic economy and those in the international financial centre, were subject to credit risk, market risk, liquidity risk and contagion risk tests in the macroeconomic stress testing set-up. The findings suggest that the on-shore banking system in Malaysia had substantial capital buffers to absorb credit losses on its credit risk exposures. Conventional banks were able to benefit from buffers provided by their significant income as a first line of defence against credit losses. Sensitivity tests indicated that solvency was impacted most by credit risk shocks. Stress test results were reinforced by an intensive supervisory and regulatory regime by BNM. Only two Labuan-based entities were assessed for liquidity shock. One of them recorded a domestic currency denominated cumulative net shortfall while the other recorded a net surplus.

3.3.6 Lessons for Ghana

Only two regulators regulate the entire financial system compared to four in Ghana. This suggests that Malaysia is benefitting from economies of scale in financial regulation. Second, market conduct and consumer protection are emphasized. Third, their international financial centre appears to be doing well. Its competitive advantage appears to be its physical location in Labuan and the conscious efforts the authorities have made to make it work. Fourth, reports of the two regulatory institutions are tabled annually in Parliament. Finally, Malaysia has a separate law governing Islamic financial services, while Ghana is trying to accommodate Islamic financial services within the existing banking law. Ghana may want to consider a separate and comprehensive law on Islamic financial services, which will spell out in detail the application of Shariah principles.

[24] IMF Country Report No. 14/98; APRIL 2014

3.4 South Africa

3.4.1 Introduction

Until the early 1980s the South African financial sector was regulated under a 'silo' system. In the late 1980s, deregulation of the financial sector started, following government's acceptance of the De Kock Commission's report in 1987. The report had observed that silo type regulation had resulted in over-regulation in the banking sector resulting in inefficiencies and non-competitiveness. It recommended functional regulation. These recommendations were implemented through the Banking Act of 1990.

The regulatory system remained functional and partially integrated until 2011, when discussions on a new regulatory system started. Until 2011, South Africa had two main regulatory authorities namely, the South African Reserve Bank (SARB) and the Financial Services Board (FSB). SARB was the regulator for banks and the FSB was the regulator for non-bank financial institutions.

Although though South Africa was not one of the worst hit countries by the Global Financial Crisis, after the negative shocks that the South African economy suffered, the authorities re-considered how the financial system was organized and supervised. The process of arriving at a new arrangement started in February 2011. It took the form of 'an important conversation with society including all other stakeholders' set out in a document by the National Treasury titled, *A Safer Financial Sector to Serve South Africa Better*[25]. The document observed that, the South African regulatory and supervisory system had a number of disparate regulators coordinated through statutory bodies, advisory bodies and standing committees but had no overarching coordinating authority.

Discussions led to a draft legislation in 2015. Finally, the *Financial Sector Regulation Act, 2017* was passed in August 2017, after more than six years of consultations. The Act spelt out the new approach by which South Africa would regulate and govern its financial sector.

3.4.2 Regulation and Supervision

The regulatory architecture prescribed by the current law is a version of the Twin Peaks model as depicted in Figure 5. Governance issues are also provided for extensively. Two new regulators were created, namely, The Prudential Authority and The Financial Sector Conduct Authority. The central bank of South Africa, SARB**,** continues to play a key role in ensuring financial stability. The Prudential Authority is a legal entity but operates within the administration of the central bank.

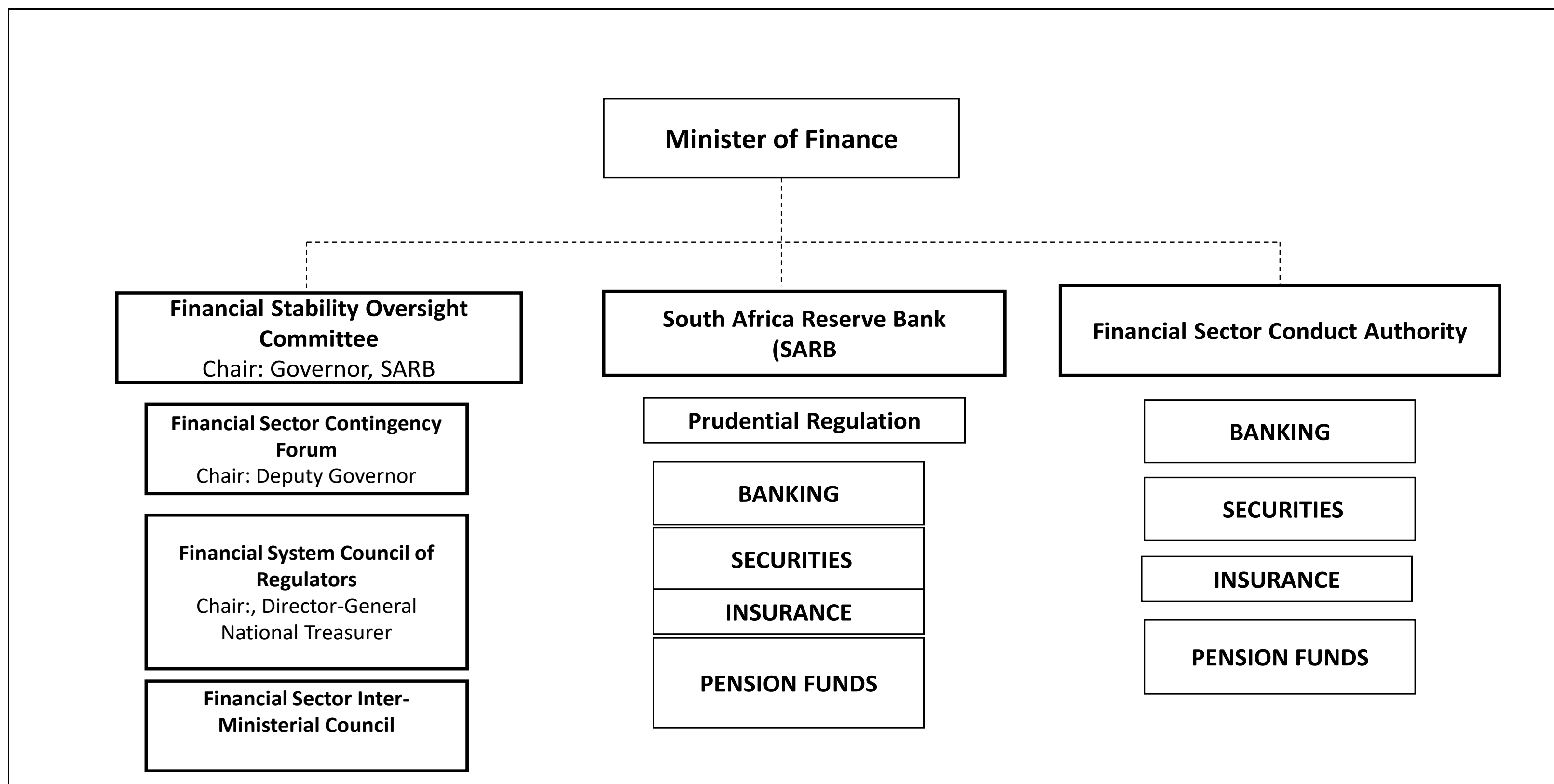
The South Africa Reserve Bank

The Reserve Bank is responsible for protecting and enhancing financial stability and if a systemic event has occurred or is imminent, for restoring or maintaining financial stability. When fulfilling this responsibility, the Reserve Bank must act within a policy framework agreed between the Minister and the Governor and must have regard to, amongst other matters, the roles and functions of other organs of state exercising powers that affect aspects of the economy.[26]

[25] National Treasury, Republic of South Africa (2011) *A Safer Financial Sector to Serve South Africa Better*

[26] Source: Financial Sector Regulation Act, 2017.

FIGURE 5 SOUTH AFRICA'S TWIN PEAKS MODEL



Prudential Authority
The objectives of the Prudential Authority are to:

- promote and enhance the safety and soundness of financial institutions that provide financial products and securities services;
- promote and enhance the safety and soundness of market infrastructure and protect financial customers against the risk that financial institutions may fail to meet their obligations; and
- assist in maintaining financial stability.[27]

The Financial Sector Conduct Authority
The Financial Sector Conduct Authority is a legal entity that operates outside the central bank. The objectives of the Financial Sector Conduct Authority are to:

- enhance and support the efficiency and integrity of financial markets;
- protect financial customers by promoting fair treatment of financial customers by financial institutions, providing financial customers and potential financial customers with financial education programs, and promoting financial literacy and the ability of financial customers and potential financial customers to make sound financial decisions; and
- assist in maintaining financial stability. [28].

3.4.3 Coordination and Accountability

Co-operation and collaboration between financial sector regulators and SARB are mandated at several levels in the Act. The Act creates specific organs for co-operation and collaboration between financial sector regulators and Reserve Bank and lists them as:

- Financial Sector Contingency Forum
- the Financial System Council of Regulators; and
- the Financial Sector Inter-Ministerial Council.

Financial Stability Oversight Committee (FSOC)
An important creature of the Act is the Financial Stability Oversight Committee. The relevant extract on the FSOC in the Financial Sector Regulatory Act is presented in Box 1. Its primary objectives are to:

- support the Reserve Bank when the Reserve Bank performs its functions in relation to financial stability; and
- facilitate co-operation and collaboration between, and co-ordination of action among, the financial sector regulators and the Reserve Bank in respect of matters relating to financial stability.

[27] Source: Financial Sector Regulation Act, 2017
[28] Source: Financial Sector Regulation Act, 2017

FSOC is chaired by the Governor of the central bank. Membership includes Deputy Governors of the central bank, the Prudential Authority, National Treasury, and Financial Intelligence Centre.

BOX 1 - FINANCIAL STABILITY OVERSIGHT COMMITTEE IN SOUTH AFRICA**

Establishment of Financial Stability Oversight Committee

20.
(1) A committee called the Financial Stability Oversight Committee is hereby established.
(2) The primary objectives of the Financial Stability Oversight Committee are to—

a) support the Reserve Bank when the Reserve Bank performs its functions in relation to financial stability; and
b) facilitate co-operation and collaboration between, and co-ordination of action among, the financial sector regulators and the Reserve Bank in respect of matters relating to financial stability.

Functions of Financial Stability Oversight Committee
21. The Financial Stability Oversight Committee has the following functions:

a) To serve as a forum for representatives of the Reserve Bank and of each of the financial sector regulators to be informed, and to exchange views, about the activities of the Reserve Bank and the financial sector regulators regarding financial stability;
b) to make recommendations to the Governor on the designation of systemically important financial institutions;
c) to advise the Minister and the Reserve Bank on—
    i) steps to be taken to promote, protect or maintain, or to manage or prevent risks to, financial stability; and
    ii) matters relating to crisis management and prevention;
d) to make recommendations to other organs of state regarding steps that are appropriate for them to take to assist in promoting, protecting or maintaining, or managing or preventing risks to financial stability; and
e) any other function conferred on it in terms of applicable legislation.

Membership
22.
(1) The Financial Stability Oversight Committee consists of the following members:

a) The Governor;
b) the Deputy Governor responsible for financial stability matters;
c) the Chief Executive Officer;
d) the Commissioner;
e) the Chief Executive Officer of the National Credit Regulator;
f) the Director-General;
g) the Director of the Financial Intelligence Centre; and
h) a maximum of three additional persons appointed by the Governor.

**Financial Sector Regulation Act, 2017

Financial Sector Contingency Forum

Its primary objective is to assist the Financial Stability Oversight Committee with

- the identification of potential risks that systemic events will occur; and
- the co-ordination of appropriate plans, mechanisms and structures to mitigate those risks.

It is chaired by a Deputy Governor of the central bank and includes representatives of each of the financial sector regulators, and others.

Financial System Council of Regulators

The objective of the Financial System Council of Regulators is to facilitate co-operation and collaboration, and, where appropriate, consistency of action, between the institutions represented on the Financial System Council of Regulators. It is chaired by the National Treasury and includes representatives of each of the financial sector regulators and others. Box 2 is an extract from the Financial Sector Regulatory Act on the Financial System Council of Regulators.

BOX 2- FINANCIAL SYSTEM COUNCIL OF REGULATORS**

79. (1) The Financial System Council of Regulators is hereby established.
(2) The objective of the Financial System Council of Regulators is to facilitate co-operation and collaboration, and, where appropriate, consistency of action, between the institutions represented on the Financial System Council of Regulators by providing a forum for senior representatives of those institutions to discuss, and inform themselves about, matters of common interest.
(3) The Financial System Council of Regulators must be composed of the following members:

(a) The Director-General;
(b) the Director-General of the Department of Trade and Industry;
(c) the Director-General of the Department of Health;
(d) the Chief Executive Officer;
(e) the Commissioner;
(f) the Chief Executive Officer of the National Credit Regulator;
(g) the Registrar of Medical Schemes;
(h) the Director of the Financial Intelligence Centre;
(i) the Commissioner of the National Consumer Commission;
(j) the Commissioner of the Competition Commission;
(k) the Deputy Governor responsible for financial stability matters; and
(l) the head, however described, of any organ of state or other organization that the Minister may determine.

Working groups and subcommittees
81. (1) The Financial System Council of Regulators must establish working groups or subcommittees in respect of the following matters:

(a) Enforcement and financial crime;
(b) financial stability and resolution;
(c) policy and legislation;
(d) standard-setting;
(e) financial sector outcomes;
(f) financial inclusion;
(g) transformation of the financial sector; and
(h) any other matter that the Director-General may determine after consulting the other members of the Financial System Council of Regulators.
(2) The Financial System Council of Regulators must determine the membership, terms of reference and procedure of a working group or subcommittee.

** Financial Sector Regulation Act, 2011

Financial Sector Inter-Ministerial Council

The objective of the Inter-Ministerial Council is to facilitate co-operation and collaboration between Cabinet members responsible for administering legislation relevant to the regulation and supervision of the financial sector by providing a forum for discussion and consideration of matters of common interest. The members of the Inter-Ministerial Council are;

(a) the Minister (Finance);
(b) the Cabinet members responsible for consumer protection and consumer credit matters;
(c) the Cabinet member responsible for health; and
(d) the Cabinet member responsible for economic development.

The law mandates that the Inter-Ministerial Council commissions an independent evaluation of the establishment of co-operative and collaborative mechanisms between the financial sector regulators, the Reserve Bank, the Financial Intelligence Centre, the Council for Medical Schemes and the Competition Commission.

Relationship with of the Minister of Finance
The Act provides that the financial sector regulators and SARB keep the Minister informed and involved of major decisions. For example, the Governor can only determine that a specified systemic event has occurred or is imminent only after having consulted the Minister; The Reserve Bank may not, except with the Minister's approval, take a step that will or is likely to bind the National Revenue Fund to any expenditure.

3.4.4 FinTech Regulation

FinTech activities have been on going in South Africa for some time. As far back as 2009, Zoona Transactions International Limited was out-doored to provide money transfer and bill payment services from South Africa, Malawi and Zambia. By 2016, it had processed over USD 1 billion in money transfers, bill payments, and other financial services.

In 2016, USD 5.5 billion of venture capital investment went into payments start-ups in South Africa. This represented 22% of global FinTech investment activity. The FinTech hubs are Cape Town and Johannesburg. Payments dominate the FinTech landscape.

In February 2017, the South African National Treasury mentioned FinTech in its budget review as a relevant factor in transforming the financial services sector. However, a report by the Centre of Excellence in Financial Services, concluded that the country's financial regulation had not created an enabling environment for FinTech development.[29] Then on January 30, 2018, SARB reported that it had established a FinTech unit to research and recommend policy frameworks for the FinTech sector, among other responsibilities. The Bank said the setting up of the FinTech unit is in reaction to the rapidly changing FinTech sector.[30]

In fact, in 2016 SARB circulated a smart contract on an Ethereum[31] based blockchain private network. The Bank also hinted at the possibility of a 'blockchain based, digital version' of the South

[29] https://techfinancials.co.za/2017/11/16/sas-regulation-lack-of-funding-is-dampening-fintech-innovation/
[30] https://bankinnovation.net/2018/01/south-africa-reserve-bank-launches-fintech-unit/
[31] Ethereum is an open-source, public, blockchain-based distributed computing platform and operating system featuring smart contract (scripting) functionality. Ether is a cryptocurrency whose blockchain is generated by the Ethereum platform

African Rand. The University of Cape Town's Graduate School of Business runs short courses on FinTech.

3.4.5 Financial System Stability Assessment (2014)

The 2014 FSAP Report was prepared when the previous financial system regulatory regime was in force. It observed that the South African financial sector was operating in a challenging economic environment (high unemployment and high-income inequality). The result was that banks faced high credit risk.

Banks depended on money market funds for short-term wholesale funding. They traded actively in the over-the-counter derivatives market. There was significant concentration and interconnections in the financial system, and South African banks had expanded into sub-Saharan Africa. Together, these had increased the potential for contagion.

Banks and insurers were however well capitalized and profitable. Stress tests suggested that the capital of banks and insurance companies would have survived severe shocks.

The FSAP recommended reducing systemic liquidity risk by introducing deposit insurance, breaking down existing silos and enhancing group-wide supervision to manage credit concentration, interconnected, and cross-border risks. Other recommendations included enhancing regulation of collective investment schemes to address gaps in disclosure and valuation and enshrining in legislation the objectives, operational independence and enforcement powers of supervisors. Extra surveillance of over-the-counter derivatives markets was also recommended.

Further, the crisis management and resolution framework were to be upgraded. For more efficiencies, the authorities were to promote a more competitive financial system. Finally, the Report recommended going ahead with the planned Twin Peaks reform to the regulatory architecture, as this would provide an opportunity to strengthen regulation and supervision, consistent with SARB being judged as a proactive supervisor, which complies with international standards on effective banking supervision.

3.4.6 Lessons for Ghana

While it may be too soon to pronounce on the success or otherwise of the South Africa's new regime, Ghana should note the deliberate, slow and painful effort that went into crafting the new legislation – six years in all. Ghana may not have the luxury of a six-year implementation because of a shorter electoral cycle (four years compared to five years in South Africa) as well as the continuity guaranteed by one dominant political party in South Africa. Historically, new governments elected in Ghana have tended not to follow the policies and initiatives of an outgoing government from a different party.

The deliberate efforts to ensure co-operation and collaboration are also to be noted. So is sharing of responsibilities among entities and deliberate efforts to emphasize market conduct and consumer

protection. Table 4 suggests that regulation and supervision invariably fall on more than one entity; hence the need for strong co-operation and collaboration.

3.5 Hong Kong

3.5.1 Introduction

Hong Kong's financial regulatory system is a silo system made up of strong institutions that focus on upholding the rule of law. Property rights are respected, and the regulatory framework is benchmarked to international standards. The regulatory system provides investors with predictable, consistent and clear rules within which to operate. Hong Kong's approach to financial sector regulation is institutional, with some functional elements. Thus, a firm's legal status, whether as a bank, insurance company, securities company, or pension fund manager, determines which regulator is principally responsible for regulating and supervising its activities from both a prudential and market conduct perspective. However, when an entity engages in a broad spectrum of financial services that cut across business lines, regulatory and supervisory responsibilities may be shared. For example, a bank that is listed on the Hong Kong exchange will be licensed as a bank but must be registered with the securities authorities.

3.5.2 Regulation and Supervision

Figures 6 and 7 depict Hong Kong's regulatory architecture.

Financial Secretary
At the apex of the Hong Kong financial system is the Financial Secretary (a member of government), whose secretariat is the Financial Services and Treasury Bureau. The Financial Secretary is responsible for the monetary system, exchange fund, public finance, the financial system and status of Hong Kong as an international financial centre.

Hong Kong has four independent regulators, namely, the Hong Kong Monetary Authority (HKMA), the Securities and Futures Commission, the Mandatory Provident Fund Schemes Authority (MPFA) and the Insurance Authority (IA). All four regulators report to the Financial Secretary.

Hong Kong Monetary Authority
HKMA was established by the Hong Kong Banking Ordinance as the government agency responsible for maintaining monetary policy and banking sector stability. Thus, it performs the functions of both the central bank and regulator of the banking sector.

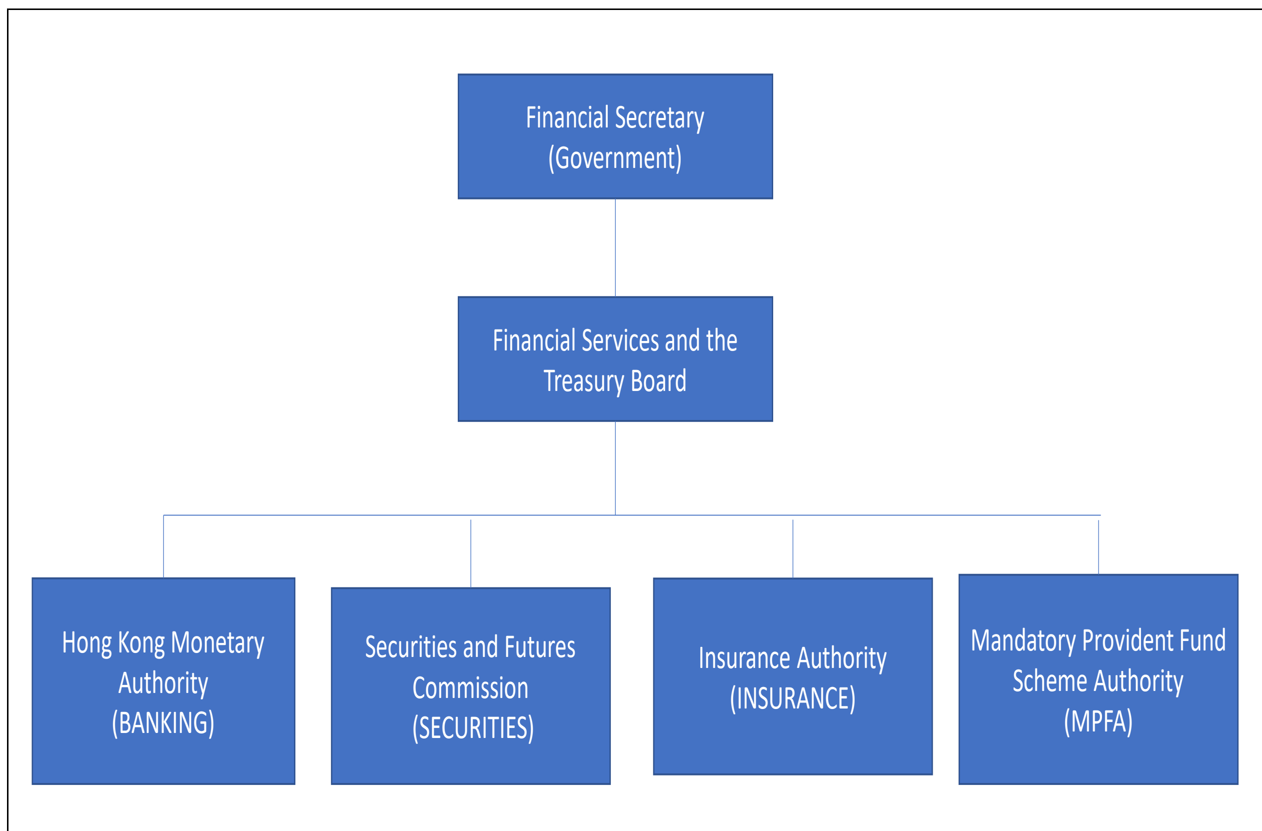
Its mandate is to:

i. maintain currency stability within the framework of the Linked Exchange Rate system;
ii. promote the stability and integrity of the financial system, including the banking system;
iii. help to maintain Hong Kong's status as an International Financial Centre, including the maintenance and development of Hong Kong's financial infrastructure; and

iv. manage the Exchange Fund. [32]

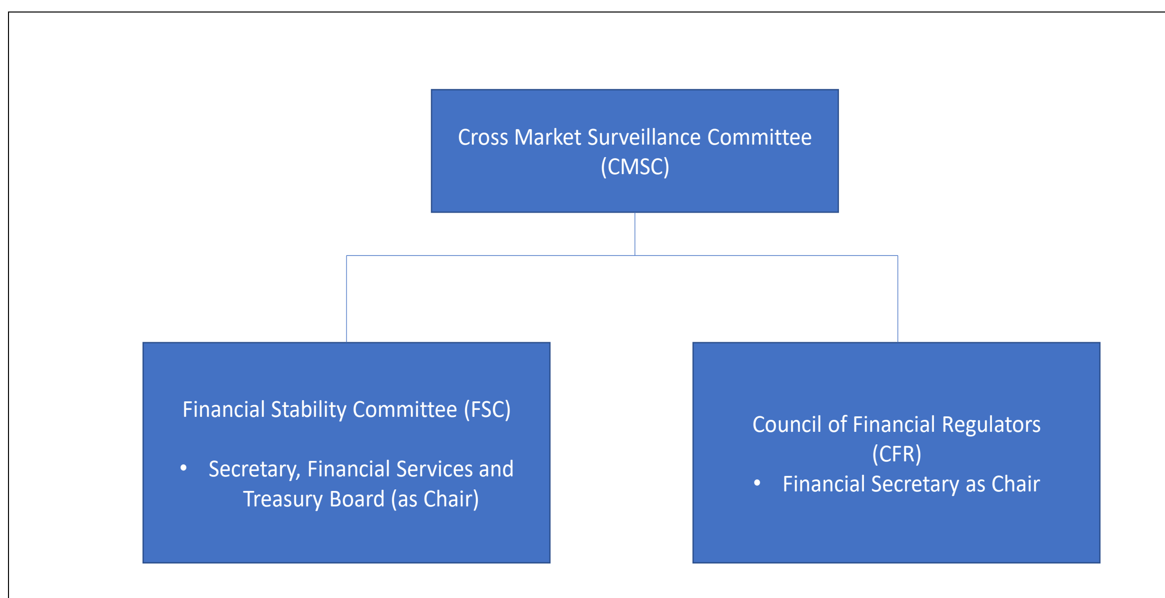
The HKMA also oversees, the Hong Kong Deposit Protection Scheme.

FIGURE 6 HONG KONG'S REGULATORY SYSTEM



[32] The Exchange Fund forms the basis of Hong Kong's linked exchange rate mechanism that pegs the Hong Kong dollar to the United States dollar.

FIGURE 7 COOPERATION AND COORDINATION BETWEEN REGULATORS - HONG KONG



Securities and Futures Commission (SFC)

The SFC regulates the securities and futures markets. The main objectives of the SFC are to

i. maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities industry;
ii. provide protection to the investing public;
iii. minimize crime and misconduct in the industry;
iv. reduce systemic risks in the industry.

It has the statutory duty to help maintain Hong Kong's position as an International Financial Centre, facilitate innovation in financial products, and avoid restrictions on competition.

Insurance Authority (IA)
The IA was established under the Insurance Companies (Amendment) Ordinance 2015, the IA took over the regulatory functions of the then *Office of the Commissioner of Insurance*, which was a Government department. The IA:

i. protects the interests of policyholders, supervises insurers and promotes the general stability of the insurance industry;
ii. authorises insurers to carry on insurance business; and
iii. regulates insurers and intermediaries to ensure the financial soundness and integrity of the insurance market.

Note that securities activities of insurance firms generally fall within the remit of the SFC.

Mandatory Provident Fund Schemes Authority (MPFA)
The MPFA

i. regulates and supervises workers' privately managed mandatory pension fund schemes and occupational retirement schemes;

ii. registers provident fund schemes and approves qualified persons as approved trustees;
iii. regulates the affairs and activities of approved trustees; and
iv. makes rules or guidelines for the administration of registered schemes.

Hong Kong as an International Finance Centre

As an International Financial Centre, Hong Kong has strong credentials (Box 3). What has endeared Hong Kong to international investors and financial intermediaries are its tradition of strong institutions which subscribe to the rule of law, protection of property rights and international standards. Honk Kong operates an International Financial Centre that is considered open, fair and competitive.

BOX 3 - HONG KONG AS AN INTERNATIONAL FINANCIAL CENTRE

- In 2016, Hong Kong was the fourth leading global financial centre in the world after London, New York and Singapore;
- The banking sector of Hong Kong has one of the highest concentration of banks. It has 74 out of the world's largest 100 banks;
- Hong Kong is a global hub for offshore Renminbi (Chinese currency) business. It provides the largest liquidity pool;
- Hong Kong stock market capitalisation is 10 times higher than her Gross Domestic Product;
- Hong Kong is the most active place for raising initial public offering funds;
- The financial service sector contributed about 17% to GDP in 2014;
- In 2015, the financial sector employed about 201,000 persons

Hong Kong has become the gateway to mainland China and acts as the hub for two-way capital flows to and from mainland China. On the one hand, international investors look to Hong Kong Exchange as a 'proxy' for investing in mainland China. On the other hand, mainland Chinese investors do business in financial services and products with the rest of the world through international financial intermediaries in Hong Kong.

The HKMA is the principal regulator and supervisor of the International Financial Services Centre. Other regulators have oversight responsibilities when issues at stake border on their purview. For example, the Securities and Futures Commission would have a say in matters relating to capital markets. These collaborations have been institutionalized.Policies continue to be developed to maintain and further deepen Hong Kong's status as an International Financial Centre. Of these, stability and integrity of the financial system of Hong Kong are paramount.

HKMA is required to actively participate in international financial and central banking forums; promote market development initiatives that help strengthen the international competitiveness of Hong Kong's financial services (including offshore business) and maintain and develop her financial infrastructure.

3.5.3 Coordination and Accountability

Although all four regulatory agencies in Hong Kong are independently mandated, the changing face of financial services (individual institutions are active in banking, securities, insurance and/or pensions business) makes it necessary for regulators to co-ordinate their activities and co-operate with each other. Co-ordination and co-operation are mandated to take place at two levels, i) the Financial Stability Committee, and ii) the Council of Financial Regulators.

The *Financial Stability Committee* (FSC) comprises the Secretary for Financial Services and the Treasury as chair, and representatives from the Hong Kong Monetary Authority, Securities and Futures Commission and Insurance Authority.

The FSC is responsible for[33]

i. monitoring on a regular basis, the functioning of the financial system of Hong Kong, including banking, debt, equity, insurance and related markets;
ii. deliberating on matters or developments with possible cross market and systemic risk implications, and where appropriate, formulate and co-ordinate responses; and
iii. report regularly, and at any time where necessary, to the Financial Secretary matters in (i) and (ii) above.

The *Council of Financial Regulators* is an expanded FSC. It is made up of the Financial Secretary as chair, and representatives from the Hong Kong Monetary Authority, Securities and Futures Commission, Insurance Authority, the Mandatory Provident Fund Schemes Authority and Financial Services and Treasury Bureau. Its mandate is to[34]

i. facilitate cooperation and coordination among its members;
ii. share information and views on regulatory and supervisory issues and important trends in the financial system, particularly those which may have a cross-sectoral impact;
iii. minimize duplication or gaps in the regulation and supervision of financial institutions, paying close attention to the need to keep regulatory costs to a minimum;
iv. review international developments in financial sector regulation and to draw lessons for Hong Kong;
v. discuss regulatory and supervisory issues relating to individual financial institutions that may have a cross-sectoral impact; and
vi. oversee trends, issues and developments which may have implications for financial stability in Hong Kong.

3.5.4 FinTech Regulation

HKMA, the SFC and the IA are active in promoting FinTechs. The FinTech Supervisory platform launched by the HKMA in September 2016, allows banks and their partnering technology firms to conduct pilot trials of their FinTech initiatives involving a limited number of participating customers without the need to achieve full compliance with the HKMA's supervisory requirements. This arrangement enables banks and tech firms to gather data and user feedback so that they can make refinements to their new initiatives, thereby expediting the launch of new technology products and reducing the development cost.

To use the HKMA platform, safeguards have been put in place by HKMA. They include:

[33] Source: https://www.fso.gov.hk/pdf/fsc-tor_e.pdf
[34] Source: https://www.fso.gov.hk/pdf/CFR-TOR%20_Sep06_.pdf

i. Boundary – Clear definitions of the scope and phases (if any) of the pilot trial, the timing and termination arrangements;
ii. Customer protection measures – The selection of customers who understand the associated risks and voluntarily join the trial, complaint handling, compensation of any financial losses by customers, and arrangements for customers to withdraw from the trial;
iii. Risk management controls – Compensating controls for mitigating the risks arising from less than full compliance with supervisory requirements and the risks posed to the bank's production systems and other customers; and
iv. Readiness and monitoring – Readiness of the systems and processes involved in the trial and close monitoring of the trial;
v. The platform should not be used to bypass applicable supervisory requirements.

3.5.5 Financial Sector Stability Assessment (2014)

I. BASEL CORE PRINCIPLES FOR EFFECTIVE BANKING SUPERVISION DETAILED ASSESSMENT

The 2014 FSAP assessment reviewed the framework of laws, rules, and guidance. The assessment concluded that compliance with the Basel Core Principles was very high, and that HKMA was maintaining its commitment to the international regulatory reform agenda. Honk Kong Special Administrative Region had a well-established framework of fiscal, monetary and other macroeconomic policies.

Hong Kong had a large and well-developed open banking market system. By the time of this assessment, 201 deposit taking institutions had been licensed. Of these, 135 were branches of foreign banks and 14 were subsidiaries of foreign banks. There was a strong presence from global systemically important banks, as many as 27. The sector's assets are equivalent to 735 percent of GDP. Lending to the corporate sector represented about 50% of the banking system's total lending, while property-related lending accounts for about 30%. Hong Kong banks are well capitalized, profitable and have extremely low levels of nonperforming loans. The banking sector also appeared well placed to meet new Basel liquidity standards. Banks' capital adequacy remains robust at around 16 percent. The insurance sector too was large and well capitalized.

The stability of the monetary and financial systems was underpinned by the Exchange Fund. The Fund includes assets backing the monetary base (USD 0.17 trillion, June 2013), government reserves (USD $0.12 trillion), and other assets.

The HKMA had established its own Macro-Surveillance Committee to focus on financial stability and macro-prudential analysis.

A challenge identified during the assessment was that, while HKMA enjoyed operational independence, the independence was not as fully protected in law as could be. Also, HKMA needed to have the explicit power to remove the auditor of deposit-taking institution and to have direct access to the external auditors' working papers.

II. IOSCO OBJECTIVES AND PRINCIPLES OF SECURITIES REGULATION - DETAILED ASSESSMENT OF OBSERVANCE

The report asserted that Hong Kong Special Administrative Region had developed a sound framework for the regulation of securities markets, which exhibited a high level of implementation of the IOSCO principles. It concluded that both the Securities and Futures Commission and the Hong Kong Monetary Authority were sophisticated regulators, who had been able to leverage domestic and international expertise to develop sound supervisory practices. Further, experiences from the global financial crisis had led to material improvements in conduct supervision at both the SFC and the HKMA. Efforts were continuing to build up SFC's capacity to identify and monitor emerging risks, given Hong Kong's increased interconnection with the Mainland China, active presence by international players and increased regional competition as an International Financial Centre.

One challenge identified was the need for the regulatory and supervisory framework to be strengthened in respect of regulation and supervision of markets, auditors' oversight and enforcement of securities regulation. Another was translating the operational independence that the regulators had enjoyed into law by modifying legal governance arrangements for both SFC and HKMA.

Financial Stability Board, Peer Review of Hong Kong Review Report (2018)
The FSAP Update (February 2018) concluded that Hong Kong's financial system is one of the largest and most developed in the world. It found that the system was well-regulated and has the capacity to withstand a diversity of shocks. The FSAP assessment also found that the regulation and supervision framework is of a high calibre and displays a high level of compliance with international standards, but there is scope for further strengthening, particularly in the insurance sector, derivatives market reforms as well as the framework for resolution of financial institutions.

3.5.6 Lessons for Ghana

Hong Kong's financial system regulatory structure can be described as the silo system, the same as the current Ghanaian system. The Hong Kong system is different from the Singaporean system. However, both are successful. Thus, success cannot be attributed to the architecture. The common thread is highly disciplined world class regulation and effective regulatory coordination. Both Hong Kong and Singapore are international financial centres based on competitive advantages. They pay special attention to the international financial centres on a continuous basis. Both are taking pains to promote the FinTech subsector with unique regulations. The ability to maintain their competitive positions as international financial centres depends on maintaining the confidence of the international financial community in their regulatory systems.

3.6 United Kingdom

3.6.1 Introduction

London, in the United Kingdom (UK), is the leading global international financial services centre. For example, UK's trade surplus in financial services was USD 63 billion in 2015. This was more than the combined surpluses of the next three leading countries (United States, Switzerland and Luxembourg). UK's share of trade in many international financial markets is higher than any other country. Examples include cross-border bank lending (16%), international insurance premium income (29%) a foreign exchange trading (37%);

London also has the highest equity market capitalization relative to GDP among the largest countries. Assets under management totalled USD 7.1 trillion in 2012. Her competitive advantages derive from the stability of her financial system, transparency of transactions, fairness in the treatment of all parties, and availability of skills.

The FSA-UK was designed as a unified regulator and supervisor of the UK financial system. It performed both prudential and business conduct duties. Unfortunately, the Global Financial Crisis of 2007-2009, hit the UK very hard and the FSA-UK was blamed for this. Some of the accusations against FSA-UK were:

- The regulatory culture encouraged a focus on compliance and endless data collection, rather than fundamental issues, valuing process rather than outcomes. For example, in the three and a half years prior to the collapse of the Royal Bank of Scotland, the FSA-UK met with Royal Bank of Scotland staff 511 times[35]. FSA -UK had adopted the 'light touch' approach to regulation – an approach exemplified as one that regarded banking as a favoured industry and sought to impose the lowest possible regulatory burden on banks.[36]
- The UK regulatory authorities had moved to a principles-based as opposed to a rules-based approach to regulation. The FSA-UK laid out a set of principles, primarily related to risk, and allowed financial firms to decide how to address those principles. Firms' managements – not their regulators – were responsible for identifying and controlling risks. FSA-UK was said to have fallen prey to industry capture.[37]
- The FSA-UK had lost sight of its regulator's responsibility to regulate in order to prevent future crises, or at least to prevent systemic weaknesses. It had missed or not heeded warning signs.[38]

It was also thought that the FSA-UK legislation was not broad enough to punish some categories of wrong doers, and international capital requirements led to the FSA-UK becoming mired in the process of approving banks' internal models to the detriment of spotting what was going on in the real business. Finally, the multiple scandals also reflect their failure to regulate conduct effectively.

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[35] Financial Services Authority, Board Report (December 2011), Ch.3 p. 277
[36] The Economist, "Light Touch No More, Britain", (1 December 2012)
[37] Turner, J. (Chief Executive of the FSA), speaking in 2006, quoted in Treanor, J. "Farewell to the FSA – and the Bleak legacy of the Light-Touch Regulator", The Guardian/The Observer (24 March 2014)
[38] The Economist, op.cit

The crisis reflected a failure of the entire system of the UK's financial sector governance. After the crisis, the UK in 2013 adopted a new system for regulating and supervising her financial system.[39]

3.6.2 Regulation and Supervision

Since April 2013, the UK has operated a new financial system regulatory architecture. The new regulatory structure and the roles of the new bodies created are depicted in Figures 8 and 9 respectively.

The new system comprises the Bank of England, the Financial Conduct Authority, the Prudential Regulation Authority and the Financial Policy Committee. The new regulatory system emphasizes consumer protection, market stability, combating money laundering and promotion of open and transparent markets.

The Bank of England

The Bank of England Is responsible for overall financial stability, monetary policy, micro-prudential and macro-prudential regulation of the financial system.

Prudential Regulation Authority (PRA)

The PRA is an entity within the Bank of England and contributes to the Bank of England's responsibility for prudential regulation and supervision of all systemically important firms. In particular the PRA is to promote the safety and soundness of systemically important firms and contribute to securing an appropriate degree of protection for consumers of financial services.

PRA's approach to regulation and supervision is to be judgement-based, (using judgement in determining whether financial firms are safe and sound), forward-looking (assessing firms not just against current risks, but also against those that could plausibly arise in the future) and focused (focusing on those issues and those firms that pose the greatest risk to the stability of the UK financial system).

Financial Conduct Authority (FCA)

The FCA's principal objective is to 'ensure that the relevant markets function well'. To this end, it also has three operational objectives: consumer protection, integrity and promotion of competition. The FCA is required to report annually to Government and Parliament.

Pensions

In the UK, the Pensions Regulator regulates work-based pension schemes. It works with trustees, employers, pension specialists and business advisers. The Pensions Regulator is an agency of the Department for Work and Pensions.

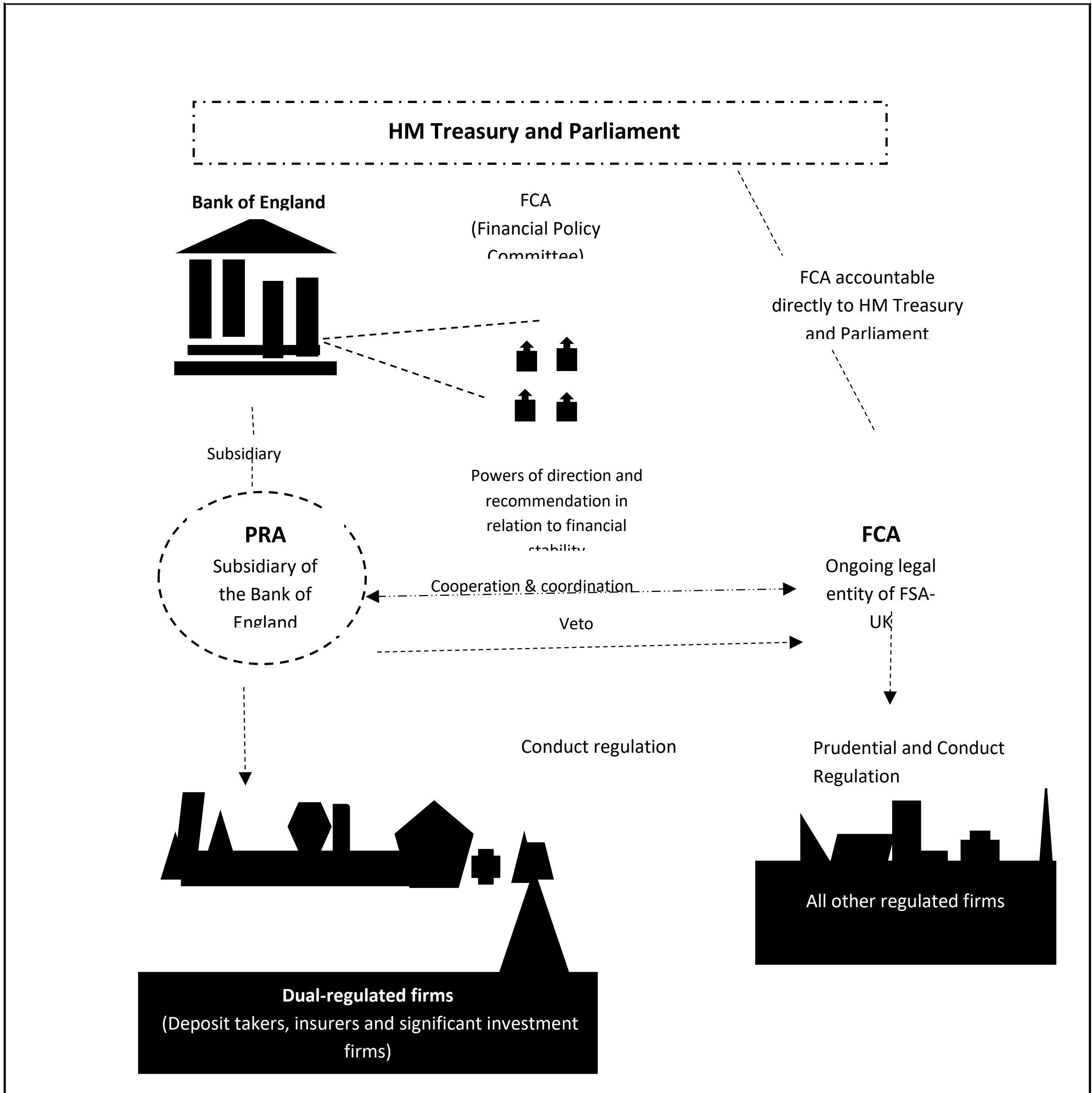
3.6.3 Coordination and Accountability

A statutory duty to coordinate their activities is imposed on both the FCA and PRA. They have an obligation to prepare a Memorandum of Understanding of how they will co-operate. Cross-membership of the two boards is imposed. PRA can direct the FCA to refrain from a particular action

[39] Commons Joint Select Committees, Parliament of the United Kingdom (12 June 2013) "Regulatory Failure", pp. 53-54

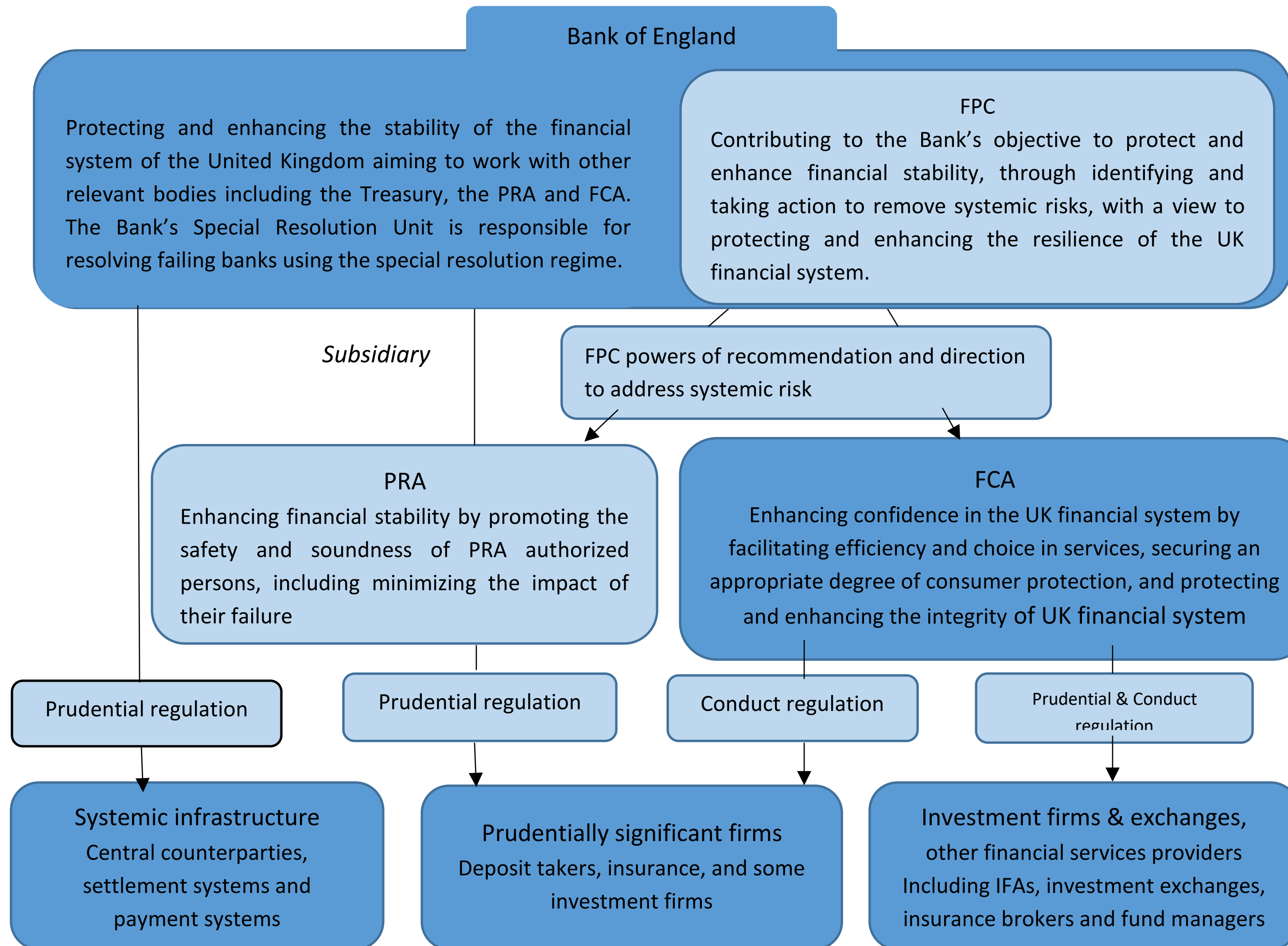
if PRA believes that action might threaten financial stability or result in the failure of a PRA-authorised entity.

FIGURE 8 THE NEW REGULATORY STRUCTURE



Financial Conduct Authority Diagram, from FCA Business Plan 2013/14, p.58

FIGURE 9 ROLES OF THE NEW BODIES IN THE NEW REGULATORY ARCHITECTURE



Financial Policy Committee (FPC)

The FPC Is a committee within the Bank of England responsible for 'horizon scanning for emerging risks to the financial system and providing strategic direction for the entire regulatory regime'[40]. The FPC has the power to use 'macro-prudential tools' to counteract systemic risk. The tools could include imposing leverage limits on banks or enforcing particular capital requirements for given asset classes.

Membership
Total membership of the FPC is 13, made up of

- 6 executives of the Bank of England (The Governor of the Bank, Chair; 4 Deputy Governors (Stability, Monetary Policy, Markets and Banking, Prudential Regulation, who is also chief executive officer of the PRA) and Executive Director for Stability;
- Chief Executive of FCA;
- 5 members from outside the Bank;
- 1 non-voting representative of the Treasury.

3.6.4 FinTech Regulation

The FCA has, as part of its governance, a mandate to promote innovation and competition, alongside the traditional mandates of financial stability and consumer protection. In 2014, the UK's FCA introduced the concept of a regulatory sandbox as a way of promoting FinTechs. The regulatory sandbox is an arrangement that allows firms to test new (financial) technological products with temporary regulatory approval. This way, both the regulator and the FinTech get to understand how the product will affect consumers and the financial system. The sandbox arrangement allows regulators to strike a balance between encouraging the growth of FinTechs and allowing innovation to flourish, while also ensuring financial stability.

UK regulators are considered the most FinTech friendly worldwide. For example, with the UK's FCA, *HM Revenue and Customs*, *HM Treasury* and the *Bank of England*, having worked with FinTechs in a sandbox for a while, the Bank of England announced in July 2017 that it would allow non-bank payment service providers access to the UK's sterling real-time gross settlement system.[41] This means that, after centuries of exclusive access to central bank reserves, commercial banks would now share this access with the growing FinTech community, broadly referred to as non-bank payment service providers. They would do so with an infrastructure created from scratch. This will enable payment service providers to offer more convenient and efficient payment services at very low cost. The payment service providers would be subject to supervisory assessment by both the Bank of England and the FCA.

[40] The Chartered Insurance Institute, (2013), The UK's New Financial Services Regulatory Landscape, Policy Briefing, (April), www.cii.co.uk/media/4372607/regulatory_landscape_update_april_2013_vfonline.pdf

[41] http://www.bankingtech.com/2017/07/bank-of-england-opens-up-rtgs-service-to-fintech-competition/

3.6.5 Financial System Stability Assessment (2016)

The June 2016 FSAP Report concluded that since the last FSAP in 2011, the UK financial system had put the global financial crisis behind it and had become stronger and more resilient and is now in position to serve the real economy better.

The reports say further that, the main parts of the U.K. financial system appear resilient. Banks had more than doubled their capital ratios from pre-crisis levels. Liquidity too had been strengthened. Stress tests by both the Bank of England and the FSAP show that the largest banks would be able 'to meet regulatory requirements and sustain the capacity to finance the economy in the face of severe shocks.'

The report said the resilience of the financial system reflects, to a large extent, a wave of regulatory reforms. The Bank of England's new liquidity framework was identified as a key shock absorber.

The report states that the UK's position as a global hub exposes the UK financial system to global risks and adds that, given its size, complexity, and global interconnectedness, if these risks were to materialize they could have a major impact not only on the UK but also on the global financial system. In fact, the report states that financial stability in the UK must be considered a global public good. It adds that, despite the apparent resilience of individual financial sectors, interconnectedness across sectors has the potential to amplify shocks and turn sector-specific distress systemic. While not specifically addressing the question of whether individual banks pose systemic risk or not, the report says there was need to ensure that the failure of a financial firm, regardless of its size, would not compromise financial stability or burden the taxpayer. It notes that the uncertainties associated with exit from the EU weigh heavily on future outlook.

3.6.6 Lessons for Ghana

The UK has re-modelled its financial regulatory and supervisory regimes a number of times in the recent past – in the 1980s, 1990s, 2000-2013, and 2013 to current to respond to global and national developments. Ghana should make a deliberate effort to subject the regulatory architecture to periodic reviews to rectify deficiencies in the existing system and to make the system forward-looking.

4.0 DIAGNOSTIC ANALYSIS OF FINANCIAL REGULATION IN GHANA

4.1 Bank and Non-bank Sector

4.1.1 History of the Regulator

The Bank of Ghana was established in 1957 by the Bank of Ghana Ordinance of 1957 (No. 34). The Bank commenced operations in 1957 with a seven-member board chaired by the Governor. Subsequent to the Bank of Ghana Ordinance, four revisions of the Ordinance/Act have taken place, in 1963, 1992, 2002 and 2016. Subsequent revisions of the Act have explicitly placed responsibility for the regulation and supervision of bank and non-bank institutions on the Bank of Ghana.

Under the Banks and Specialized Deposit-Taking Institutions Act, 2016 (Act 930), the Bank of Ghana's supervisory powers have been extended beyond safety and soundness of institutions to include making proposals for legal reform, anti-money laundering and financial crime supervision and consumer protection. The expansion of supervisory responsibility to include financial crime supervision and consumer protection was an attempt to recognize the growing role of market conduct supervision as a worthy counterpart of prudential supervision and to lay the clear basis for entrenching conduct supervision.

Apart from the responsibilities under the Bank of Ghana Act 2012 as amended and the Banks and Specialized Deposit-Taking Institutions (SDI) Act 2016, Act 930, oversight responsibilities have also emerged from the Payment Systems Act (under review) for oversight of the payment and settlement systems as well as for mobile money and electronic banking.

The Bank of Ghana has made significant strides in terms of its oversight of the bank and non-bank sector. The regulation and supervision function of the Bank of Ghana has gone through transformation, driven by a number of factors:

1. the Bank's own learning and experience in its oversight responsibilities, including policy actions initiated following recommendations contained in the Financial Sector Adjustment Programs (1988-1997),
2. the IMF/World Bank Financial Sector Assessment Programs of 2000 and 2011 and other innovations including the Financial Sector Strategic Plan (FINSSP) I and II.

Prior to 2007, the Bank practised what is termed compliance-based supervision. Oversight of regulated entities involved both on-site and off-site supervision. Institutions were required to submit a number of prudential returns which were reviewed by supervisors. This was complemented by an on-site visit at least once a year to review the books and records of the institution. While this was thought to be useful, it tended to be backward looking and akin to an audit. Since 2007, the focus of supervision has shifted to risk identification and risk mitigation, especially with the advent of Basel II and III and other regulatory responses brought on by the global financial crisis.

4.1.2 History of the Sector

The bank and non-bank sector have been dominant in Ghana's financial sector, commanding a significant percentage of total assets of the financial sector. During the 10-year period 2008-2017, the number of banks grew from 25 to 33 (excluding two closures in 2017 and another two licensed but yet to commence operations at year end). Savings and loans companies more than doubled from 16 to 37, while Finance Houses also grew from 20 to 23 (Table 4).

TABLE 4 GROWTH OF THE BANKING SECTOR

	2008			2017		
	Number of Institutions	**Total Assets (millions of GHS)**	**% Share**	**Num. of Institutions**	**Total Assets (millions of GHS)**	**% Share**
Banks	25	10,692.2	91.52	33	93,627.4	85.11
S & L	16	247.6	2.12	37	7,696.7	7.00
FH	20	281.1	2.41	23	3,756.6	3.41
CBS	128	462.0	3.95	141	3,644.0	3.31
MFIs	0	0	0	356	1,286.5	1.17
TOTAL	189.00	11,682.9	100.00	590.00	110,010.8	100.00

Microfinance institutions were given regulatory recognition in 2011 with the publication of the Rules and Guidelines for microfinance Institutions in July 2011. The numbers grew rapidly, exceeding 500 by 2016. A number of unviable or badly managed businesses sprang up and quickly closed shop faster than regulation and supervision could catch up. In 2013, the Bank set up a dedicated 'Other Financial Institutions Department' to focus attention on these entities, as well as rural and community banks and forex bureaus. The Bank has been sanitizing the sector, through stronger and better prudential oversight, pruning down of the numbers by removing unviable ones as well as investigating a number of them. As at December 2017 only 319 were in general compliance with the Bank's prudential norms.

4.1.2 The Legal Framework

The Banks and SDI Act, 2016, provides for licensing and authorization of banks and SDIs (other licensed deposit taking institutions), their on-going monitoring and supervision, including risk management and corporate governance as well their orderly winding up. The Act also provides for dealing with fraud and anti-money laundering in banks and SDIs as well as for consumer protection and market conduct supervision.

In terms of the legal framework, Ghana currently has one of the most recently reviewed Acts, which has taken on board recent developments and lessons in financial supervision, which makes it a fairly modern banking law, with broad powers of regulation and supervision given to the Bank of Ghana. Novel aspects of this Act include:

- provision for consolidated supervision of financial conglomerates;
- a registration requirement akin to licensing for bank holding companies to ensure that regulators have access to information for purposes of effective oversight over financial conglomerates;
- an elaborate prompt corrective action procedure, including the appointment of advisors, official administrators and receivers.

Furthermore, the Act provides that banks and bank holding companies can only invest and have controlling interest in institutions that undertake activities permitted under the Banking Act, in other words banking or financial sector related activities. As a result, banks and bank holding companies can no longer set up subsidiaries to engage in agriculture or industrial ventures as was previously the case.

Act 930 also expanded permissible activities under the Act to include non-interest banking, so-called Islamic banking and finance, to pave the way for the introduction of Islamic banking and finance.

The Act has benefited from key recommendations contained in the FSAPs (2000 and 2011) and the FINSSP II recommendations. As is the practice, the implementation of the financial sector laws is often assigned to the Bank. Following from this the Bank has been responsible for the creation of the Collateral Registry, with the passage of the Credit Reporting Act, 2010 and the initial set up of the Financial Intelligence Centre in 2010, complemented by the creation of a dedicated office initially in Banking Supervision, but later transferred to the Financial Stability Department to deal with Anti-Money Laundering (AML) issues in banks and other regulated entities. The Bank is also responsible for the oversight of the three credit reference bureaus licensed under the Credit Reporting Act.

The framework as designed and implemented has adopted the silo, incremental approach to supervision, and has seen the addition of rural banks in the mid-70s, non-bank institutions in 1993 and more recently anti-money laundering supervision, market conduct and payment systems oversight.

4.1.3 Relationship with The Ministry of Finance and Other Regulators

There is an on-going relationship between the central bank and the Ministry of Finance guided by both statute and good practice. The Bank of Ghana Act, 2002 (Act 612) as amended by the Bank of Ghana (Amendment) Act, 2016, Act 918, provides for a board of directors that includes a representative of the Ministry of Finance, usually a Deputy Minister which provides an opportunity for the Ministry to participate in some policy decisions of the Bank. However, experience has shown that board representation has not been an effective forum for substantive consultations on major regulatory policy issues. The Ministry of Finance has expressed concerns about the informality and inadequacy of consultations between the Ministry and the Bank of Ghana on major policy issues.

With regard to accountability and reporting, the Banks and SDI Act 2016 and its predecessor Acts provide that the Bank of Ghana, not later than four months (initially three months) after the end of the financial year, shall submit to the Minister a Report on the Trend and Progress of Banking. The Report covers developments in the banking industry and is expected to include such recommendations as are considered necessary in the interest of banking business.

In terms of relationships with other regulators, it is noteworthy that the Bank of Ghana remained a sole regulator of the banking and securities sub-sectors until the late 90s. The SEC, the NIC and more recently the NPRA, emerged later. In 2012, following recognition of the need for strong collaboration and coordination of regulatory and supervisory efforts, the four bodies came together and signed a Memorandum of Understanding that elicited regular meetings and consultations. Two organisations were set up under the MOU: A Regulators' Forum at the level of the heads of each regulatory authority (Bank of Ghana, Securities and Exchange Commission, National Insurance Commission and National Pensions Regulatory Authority) and a Technical Committee comprising the heads of supervision of these authorities. The Technical Committee was expected to meet quarterly while the Forum was slated to meet not less than twice a year to discuss work emanating from the Technical committee as well as other cross-cutting issues affecting the financial sector.

This model for collaboration in financial sector oversight however has not worked that well as meetings were not as frequent as anticipated. The lack of traction for the Technical Committee and the Forum could be attributed to the non-binding nature of the MOU, the exclusion of the Ministry of Finance from the Forum, and the overwhelming dominance of the Bank of Ghana compared to the other three regulators which meant that the success of the forum depended on Bank of Ghana's leadership.

It is regarding the foregoing that the FINSSP II document's proposal (April 2012) for the setting up of a Financial Services Board, comprising the heads of all regulatory agencies, and two or three selected experts drawn from academia and the private sector under the auspices of the Ministry of Finance is an idea worthy of consideration. The idea is for the Board to meet regularly (at least quarterly) to review developments in the financial sector and issue reports to the public and to Parliament as currently happens with the BoG Monetary Policy Committee. This may however require legal backing to make it effective. The World Bank, under its Governance Program with Ghana is considering a multi-sectoral committee along similar lines to ensure there is on-going engagement among regulatory and policy making institutions in the financial sector.

During the passage of the Banks and SDI Act, 2016, which coincided with a review of the Securities Industry Law, an effort was made to harmonize legislation surrounding take over or change in control of banking institutions. Taking a cue from the differences and controversies that arose from the take-over of HFC Bank by Republic Bank of Trinidad and Tobago, the new legislation was couched in such a way as to ensure that all approval processes are completed with the Bank of Ghana (as primary regulator of banks and SDIs) before seeking the authorization of SEC for listed institutions. This should minimize or eliminate turf wars and lead to orderly action in such matters.

4.1.4 Strengths, Weaknesses, Opportunities and Threats (SWOT) Analysis of the Regulatory Regime

STRENGTHS

1. *An elaborate Risk-based supervision system*. In 2007 the Bank of Ghana, with assistance from the Office of the Superintendent of Financial Institutions (OSFI) of Canada, transited to a Risk-based Supervision (RBS) framework. RBS involves knowing the institution, the business it undertakes, the risks inherent in those activities and how the management of the bank is managing these risks. RBS also involves assessing the capital cushion the institution is

holding towards absorbing any losses arising out of these risks when they do materialize. Thus, supervision has moved from an audit style-ticking activity to an evaluation/judgment of how the institution is being managed in the face of the risks inherent in its activities.

2. *A cadre of experienced supervisors*. Since the Bank adopted RBS, supervisors have re-focused their attention on sensitizing banks to identify and manage the risks emanating from their decisions in the deployment of financial resources mobilized from the general public and their shareholders. In the last ten years the bank has built capacity in RBS. This approach has helped to improve overall attention to risk by banks and supervisors.

3. *The e-FASS reporting system*. The Bank implemented the electronic Financial Analysis and Surveillance System (e-FASS) in 2006/7 and has over the last decade had a system for collecting periodic prudential and supervisory data from banks and other deposit taking financial intermediaries. e-FASS has created opportunities for prompt and comprehensive reporting by banks and scope for analysis of such data for prompt corrective action.

4. *A well-diversified banking and non-bank system*. One strength of Ghana's banking system is the diversity of its institution types – from universal banks to savings and loans companies to rural and community banks and microfinance companies, these institutions cater to the needs of all segments along the financial pyramid, from top to bottom. In the non-bank sector, insurance and capital market activities such as mutual funds, stock brokers and asset managers, provide savings and investment opportunities for savers. The diversity of financial intermediaries allows the sector to respond to the savings, investment and risk management and diversification needs of the various players in the financial market.

WEAKNESSES

1. *Regulatory forbearance*. Recent bank failures in Ghana have fostered the feeling that the Bank of Ghana tends to be forbearing and does not take corrective actions on banks promptly. Regulatory forbearance can be very costly in terms of the final clean up when institutions finally fail as a lot more assets that would have been available to meet obligations get dissipated. The challenge has been the ready source of resources to plug holes when institutions are distressed. Hopefully, when the deposit protection scheme takes off, combined with the prompt corrective actions in the Banks and SDI Act, 2016, interventions by the Regulator could be swifter.

2. *Regulatory overlaps/gaps in regulation*. Another challenge for Ghana is the multiplicity of regulators and the gaps/overlaps that this creates. Owing to opportunities created by financial technology the boundaries between intermediaries is eroding, while products with similar characteristics are being offered by intermediaries, subject to differing regulations. This is creating overlaps in regulation and in some cases gaps. For example, asset managers can mobilize savings from the public with an SEC investment advisor's licence thus avoiding the Bank of Ghana's supervision of deposit-taking.

3. *Coordination within the Bank of the disparate supervisory functions*. Even within the Bank of Ghana supervisory functions are spread across four departments, namely, Banking Supervision (primary oversight of banks and non-banks); Other Financial Institutions

Supervision (for rural and community banks, microfinance institutions and foreign exchange bureaus); Payments System Department (for payment system products including mobile money); and Financial Stability Department (for market conduct, money laundering and consumer protection). While by design all the four supervisory departments report to the same Governor, there are cross-cutting issues that require coordination, which could be done better. For instance, supervisory visits to the same institution by the different departments, information collection from regulated institutions etc. can sometimes get duplicated, much to the displeasure of regulated entities, with implications for some reputational damage to the central bank. This can be improved by a re-organization of the supervisory function.

4. *Capital adequacy and High non-performing Loans*. While at the industry level capital adequacy remains adequate and above the minimum requirements, pockets of capital inadequacy remain in a number of banks, exposing the industry to vulnerabilities. A key driver of the capital inadequacy is high non-performing loans. High Non-Performing Loans (NPL) pose a threat to not only the earnings of banks but also on-going solvency of the industry. High NPLs are underpinned by poor credit underwriting skills, although macroeconomic challenges and other structural factors are also contributory.

5. *Rapid growth in intermediaries and implications for industry skill set and supervisory capacity*. One of the challenges of the Ghanaian banking sector has been the rapid growth in numbers of financial intermediaries. This has pushed to the limit the availability of skilled personnel both for the banks and other intermediaries as well as for the regulator. It takes several years to build a core team of dedicated supervisors, just as it takes years of exposure to breed bankers. Growth in the numbers of banks and other intermediaries seemed to have outpaced the availability of skilled personnel. Also, weaknesses in corporate governance are traceable to the lack of skilled persons on the boards of banks.

OPPORTUNITIES

1. *Growing economy, especially with the advent of oil*. Ghana’s economy has seen fairly robust growth in the last few years and the trend is set to be maintained as oil exploration increases. These growth opportunities should boost both financial growth and development even as banks and other intermediaries innovate to develop the products and services needed by economic agents.

2. *Increasing educated youthful population*: The constantly growing educated youthful population of the country will create a middle class with high potential for increased income and savings, and consequently a growing demand for banking products.

3. *Relatively stable banking sector and currency*. The banking sector has seen consistent growth in nominal terms over the last few years, with a relatively stable domestic currency. These developments make the banking sector an attractive investment destination; no wonder the explosive growth in numbers of operators.

4. *Low but growing levels of financial depth*. Financial depth, as measured by M2/GDP ratio has been relatively low but on the rising trend, giving credence to the fact that there is scope for

growth in the banking sector. As policy continues to focus on increasing financial inclusion there is scope for innovation to bring more people into the banking sector. New actors and new products continue to be attracted into the sector, with implications for regulatory and supervisory policy and structures.

5. *FinTech Opportunities*. The adoption of information and communication technology has spawned a number of opportunities in the banking space. Technology companies are not only partnering banks to deliver better and readily available services but are also on their own developing savings and investment products and services that make the banking space exciting. Although some of these technologies such as cryptocurrencies are described as 'disrupting' they definitely present opportunities for banks to broaden not only their menu of products and services, but also channels of distribution.

THREATS

1. *Rapid pace of change in the financial sector*. The banking and financial system is going through rapid change, driven by technology and customer demands. Traditional boundaries between institutions are disappearing, imposing on banks and other intermediaries to continue to re-invent themselves or die. Growing cross-border activity, including the ability to deliver services without a physical presence is changing the face of competition. The growing use of technology has not only opened opportunities but also exposed institutions to all kinds of threats, including cyber threats. All these require focused and on-going attention as the banking sector continues to evolve.

2. *Supra-national regulatory reforms*. Since the global financial crisis, the financial sector has globally been buffeted by a plethora of regulations. From Basel II to III, through IFRS, Financial Action Task Force (FATF) regulations on Money Laundering and financial crime prevention, to Sarbanes Oxley, Supervisory Authorities, especially those in the developing world are caught in a constant web of catching up. Even before Ghana could prepare adequately for Basel II, there was Basel III and more. This creates challenges for subsidiaries of international banks that have to deal with differing regulatory regimes, and regulators.

3. *Fierce competition spurred by technology and the blurring of boundaries*. Competition between financial intermediaries has intensified from several sources: the very evolution of financial service delivery has blurred boundaries between financial intermediaries, with savings products, for instance, being delivered by traditional banks but also other non-traditional ones such as asset managers, insurance companies, mobile phone operators, etc. Secondly, technology platforms have expanded the sources of delivery of services through partnerships of all kinds, again denying traditional suppliers of such services the monopoly previously enjoyed. With the use of technology, a physical presence is no longer an advantage for banks. Also, electronic platforms have afforded the evolution of other intermediaries. Rural banks used to have a monopoly of geographical locations, but with the emergence of microfinance and other players, competition for customers has intensified in both rural and urban catchment areas for such institutions.

4. *Growing competition from international and regional banks*. Technology has and continues to blur boundaries between institutions and products, cutting across regulatory boundaries.

Products and services that used to be the preserve of banks are now being offered by other financial intermediaries, including technology companies. In Ghana, e-banking and mobile money developments have created partnerships but also competition between traditional providers and new entrants. Some activities cut across regulatory boundaries such as bancassurance, e-money credit by telcos, asset management etc. The question that arises is whether the silo system of regulation and supervision remains adequate or there is need for a re-alignment of regulation and supervision.

5. *The growing push for local content in financial services*. There is a growing push for local content in the banking and financial systems. While this by itself is not a bad idea, indigenous banks, whether public or private sector controlled come with their own challenges with respect to capitalization, governance and operations. A case in point is the 2007 recapitalization which saw a division between domestic and foreign banks, with the former given a longer time frame to re-capitalize. Arguably, this created two problems for the domestic banks: by the time they recapitalized, there had been an erosion in value of the new capital; secondly the foreign banks which recapitalized earlier had already taken a lot of the available business.

4.1.5 Conclusion

The Bank of Ghana's oversight of the bank and non-bank sector has evolved from compliance-based supervision to risk-based supervision. The Bank has over the years gathered experience in its oversight role even as the menu of supervised activities has expanded to include money laundering and market conduct supervision. The market conduct role is significant as seen from the list of market conduct legislation that have been entrusted to the Bank of Ghana for enforcement, namely,

i. Ghana Deposit Protection Act, 2016, Act 931
ii. Foreign Exchange Act, 2006, Act 723
iii. Credit Reporting Act, 2007, Act 726
iv. Anti-Money Laundering Act, 2009, Act 749
v. Borrowers and Lenders Act, 2008, Act 773
vi. Home Mortgage Finance Act, 2008, Act 770.

A notable point is that while the bank has been very much focused on prudential regulation and supervision, market conduct has not had as much attention. Yet conduct supervision is critical complement to prudential supervision as it ensures fair treatment of customers and compliance with rules that ensure safe financial products and proper conduct of a bank's affairs.

There are opportunities for growth in the bank and non-bank sector, given the evolving, growing economy, the multiplicity of financial intermediaries and the relatively low financial depth. Further, FinTech opens opportunities for achieving financial inclusion and improved financial services, but also presents risks in terms of cyber-attacks and fraud.

The 2011 FSAP Update identified the following as regulatory and supervisory challenges confronting the banking sector:

i. Weaknesses with respect to the use of the central bank's lender of last resort intervention in banks
ii. The lack of adequate resolution options

iii. The lack of a deposit protection scheme as one of the pillars of the financial safety net.
iv. The lack of formal procedures and contingency plans for information sharing and coordination of activities
v. The lack of communication across different responsible authorities at home and abroad.

The first three of the challenges have been tackled recently. The Bank of Ghana Amendment Act addressed the issue of lender of last resort by specifically providing in section 18 of the Amendment Act for Emergency Liquidity Assistance to banks, savings and loans companies and finance houses. The section sets out the terms and conditions for granting such assistance. The Banks and SDI Act 2016 also put in place an elaborate framework for resolution of banks. These include prompt corrective intervention actions, appointment of Advisors, Official Administrators and Receivers. The Banking Supervision Department has created a Resolution Office to implement the new Resolution Framework developed under the 2016 Act.

In 2016, the President also assented to the Ghana Deposit Protection Act to pave the way for the establishment of a deposit protection scheme in Ghana to strengthen the financial safety net. Arrangements are underway to set up the scheme in 2018/19.

4.2 Securities Sector

4.2.1 History of the Sector

The establishment of the Ghana Stock Exchange marked the introduction of a formal securities market in the country, with the Exchange commencing trading on November 12, 1990 with eleven equities. The operations of the Stock Exchange brought with it the development of securities market professionals like brokers, investment advisors, financial analysts, financial researchers, and portfolio managers.

In January 1993, the Securities Industry Act, 1993 (PNDCL 333) was passed, establishing the Securities Regulatory Commission (now Securities and Exchange Commission) and providing generally for the regulation of the securities market. The Act repealed the Stock Exchange Act of 1971, and brought under regulation stock exchanges, clearing and settlement institutions, investment advisers/fund managers, underwriters, issuing houses, registrars, primary dealers, and broker-dealers. The Act made the Governor of the Bank of Ghana the sole commissioner until the appointment and inauguration of members of the Board of the Commission. The Board was inaugurated in September 1998, marking the beginning of the operations of the Commission.

To ensure that the legal framework for the securities industry is robust to facilitate the orderly growth and development of the securities market, the Securities Industry Act of 1993 which was amended by the Securities Industry (Amendment) Act of 2000, principally to introduce collective investment schemes in the country was replaced with the Securities Industry Act of 2016. The Act allows the introduction of some new products and services into the securities market and brings new market operators under the regulation of the Commission.

Table 5 Industry Growth 2006 - 2016

Category	Position as at Dec 2006	Position as at Dec 2016	Growth
Publicly Listed Companies	32	41	28.13%
Investment Funds	10	44	340%
Market Operators	64	268	
Funds Under Management	GHS374,360,000	GHC14,603,994,850	3,801.06%
Investors in Investment Funds	99,167 (Dec '07)	511,458	415.75%
Stock Exchange Capitalization as a percentage of GDP	0.60%	0.29%	-51.67%
Source: SEC Publications and Consultant's calculations			

The securities industry has seen a dramatic increase in the number of operators in the last 10 years, rising from 64 in 2006 to 268 in 2016 (Tables 5 and 6). As at the end of September 2017 there were 272 market operators licensed by the Commission. The number of investors in collective investment schemes has risen from 99,187 to 511,458 during this same period. The rapid growth in the number of operators and investors has made significant demands on the regulatory capacity of the SEC.

Table 6 Market Operators Licensed by the Commission (September 2017)

Market Operator	Number
Broker-Dealers	23
Custodians	17
Exchange Traded Funds	1

Market Operator	Number
Investment Advisors	3
Fund Managers	145
Mutual Funds	34
Primary Dealers	17
Registrars	4
Securities Depositories	1
Stock Exchange	1
Trustees	6
Issuing House	1
Unit Trusts	19
Total	272

In Ghana's Financial System Stability Assessment Update 2011, the IMF made the following recommendations relating to the securities market:

a. expedite the regulatory reforms;
b. enhance supervisory capacity;
c. raise minimum capital requirement for intermediaries;
d. differentiate the capital according to business undertaking; and
e. ensure operational and financial independence of the Commission.

The securities industry law has been revised with the passage of a new law in 2016, the Securities Industry Act, 2016 (Act 929). The Commission has since the beginning of 2016 been able to raise sufficient funds for its operations without government subvention resulting in its being officially weaned off government subvention in 2018. The Commission is currently working on raising the minimum capital requirements for intermediaries and differentiating the capital according to business undertaking. The operational independence of the Commission remains to be fully achieved.

4.2.2 The Legal Framework

The SEC administers the underlisted legislation to regulate and promote the growth and development of an efficient, fair and transparent securities market in which investors and the integrity of the market are protected.

1. Securities Industry Act, 2016 (Act 929). The primary legislation for the regulation of the securities market. The Act revises and consolidates the Securities Industry Act, 1993 (PNDCL 333 and provide for related purposes.

2. Central Securities Depository Act, 2007 (Act 733). An Act which provides for the establishment of central securities depositories and related matters.

3. Unit Trusts and Mutual Funds Regulations, 2001 (L.I. 1695). A Legislative Instrument for the operation of unit trusts and mutual funds under the Securities Industry Act.

4. Securities and Exchange Commission Regulations, 2003 (L.I. 1728). A Legislative Instrument providing detailed regulation for market operators and disclosure of information by issuers of public securities.

The functions of the Commission under the Securities Industry Act are to:

- advise the Minister on matters relating to the securities industry
- maintain surveillance over activities in securities to ensure orderly, fair and equitable dealings in securities
- register, license, authorise or regulate all operators/ representatives in the securities market
- control and supervise the activities operators/representatives with a view to maintaining proper standards or conduct and acceptable practices in the securities business
- formulate principles for the guidance of the industry
- monitor the solvency of licence holders and take measures to protect the interest of customers where the solvency of a licence holder is in doubt
- protect the integrity of the securities market against any abuses arising from dealing in securities including insider trading
- adopt measures to minimise and resolve any conflict of interest that may arise for market operators
- review, approve and regulate takeovers, mergers, acquisitions and all forms of business combinations in accordance with any law or code of practice requiring it to do so
- create the necessary atmosphere for the orderly growth and development of the capital market
- examine and approve invitations to the public made by issuers other than the government
- authorize and regulate the issuing of securities in Ghana by foreign issuers
- undertake activities that are necessary or expedient for giving full effect to the provisions of the Act.

The functions of the Commission are both prudential and market conduct in nature, but its market conduct functions outweigh its prudential regulatory functions.

4.2.3 Relationship with Ministry of Finance and Other Regulators

The Commission and the Presidency

The President of the Republic is responsible for the appointment of members of the Board of the Commission. The President is also responsible for the appointment of the Director-General, the Deputy Directors-General and other staff of the Commission but may delegate the power of appointment of other staff of the Commission.

The Commission and the Ministry of Finance

The Ministry of Finance is the supervising ministry for the Commission. The Commission advises the Minister of Finance on matters relating to the securities industry.

The Ministry of Finance is responsible for the presentation of Bills to Cabinet for consideration and submission to Parliament for passage into law for the regulation of the market. The Ministry is also responsible for making Regulations by legislative instrument, on the recommendation of the Commission to prescribe the matters required or permitted by the Securities Industry Act to be prescribed, and for carrying out or giving effect to the Act. In practice, however, the policymaking role of the Ministry has been largely ceded to the SEC because of the limited technical capacity of the Ministry.

The Minister of Finance is empowered to give directives of a general nature to the Board of the Commission on matters of policy relating to the capital market and the Board is required to give effect to the directives.

Where the Commission gives a notice to a securities exchange to prohibit trading in any securities on the exchange, the Commission is required to furnish the Minister with a written report setting out the reasons for the prohibition.

The Minister of Finance has the power to, by notice in the Gazette designate any person operating in the securities market to be a person required to hold a licence under the Securities Industry Act. The Minister also has the power to, by notice in the Gazette upon the recommendation of the Commission, designate any instruments as securities.

The Commission is required to consult the Minister of Finance before altering the capital requirements as well as any other pre-licensing requirements for market operators.

The Commission and Parliament

The annual report of the Commission is submitted to Parliament by the Minister of Finance within one month after the receipt of the annual report from the Commission with a statement that the Minister considers necessary.

Relationship with Other Financial Sector Regulators

The Commission is expected to relate to other financial sector regulators through the Financial Sector Regulators Forum made up of the heads of the Bank of Ghana, SEC, NIC and the NPRA. However, the Forum has no statutory backing and has been inactive for a few years.

The governing body of the Commission, as prescribed by Securities Industry Act, has one representative of the Bank of Ghana who is not below the rank of a Director of the Bank. However, there is evidence that Board representation is not a substitute for substantive deliberations and exchange of information between regulators.

4.2.4 SWOT Analysis

STRENGTHS

1. *Revised Securities Law*: The new securities law is in accord with international standards and best practice and in conformity with the IOSCO principles and objectives of securities regulation and is to ensure the facilitation of securities market development.

2. *Professionalism and commitment of staff:* Despite the limited staffing, the Commission has a motivated workforce with diverse professional backgrounds and skills needed for the work of the Commission, and that can be developed further through training.

3. *Ability to be financially independent*: The new securities law makes provision for the imposition of various market levies payable to the Commission to meet its expenses without government subvention. This will enable the Commission to be financially independent. The Commission has since the beginning of 2016 weaned itself off the government's budget.

4. *Dispute settlement mechanism*: The Commission has an Administrative Hearings Committee which determines all complaints, disputes or violations arising under the securities law before any redress is sought in the courts. This promotes speedy resolution of market disputes to avoid the negative effects of prolonged dispute on the securities market.

5. *Power to prosecute*: The Attorney-General is empowered to authorise the Commission to prosecute offences under this Act in accordance with article 88 (4) on the Constitution and section 56 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30). This will ensure the speedy prosecution of offences committed under the law to enhance market integrity.

6. *Membership/cooperation with International Bodies.* The Commission is a member of IOSCO and its relevant committees. It is also a member of the West Africa Securities Regulators Association. Membership with these international bodies exposes the Commission to current trends and best practices in securities regulation. The Commission has also signed bilateral Memoranda of Understanding with a number of foreign regulatory authorities. These arrangements afford the Commission the opportunity to learn and share experiences with other jurisdictions regarding regulation and development of the securities markets.

WEAKNESSES

1. *Inadequate staffing levels*. As a result of the reliance of the Commission on government subvention until very recently, the Commission has not been able to employ adequate staff. The Commission therefore currently operates with inadequate staffing levels.

2. *Limited ability to recruit and retain right calibre of staff*. The remuneration levels and conditions of service at the Commission are not competitive with the industry, disabling the Commission from recruiting and retaining the right calibre of staff needed for the professional services performed by the Commission.

3. *Inadequate regulatory capacity*. The regulatory capacity of the Commission has always fallen behind the growth of the market. The Commission faces logistic challenges and has no structures in place in other regions of the country.

4. *Corporate governance challenges*. Members of the Board of Directors of the Commission, including the Director-General and two Deputy Directors-General do not have secure

tenures of office. Members of the Board are changed upon the assumption of office by a new government. This situation creates the impression that appointments to the Board are based on political affiliation. The frequent changes in, and the political nature of appointment of members of the Board, including the top executives weakens the independence of the Board and introduces discontinuities in regulatory policies and practice.

OPPORTUNITIES

1. *Increasing educated youthful population*: A crucial part of the long-term demand for capital market products and services comes from a growing educated youthful population. The constantly increasing educated youthful population of the country will create a middle class with high potential for increased income and savings, and consequently investment in the capital market for its development.

2. *Political stability and steady economic growth***.** The political stability experienced in the country and the expansion in the Ghanaian economy give opportunity for long-term investment in various economic projects making the Ghanaian securities market attractive to both local and foreign investors.

3. *Improving legal framework and investment environment:* The legal framework and investment environment in the country continues to be improved through reviews and implementation of various government policies. These create favourable conditions for investors and businesses to operate in the long run raising long term capital from the market.

4. *Emergence of private pension funds:* Reform of the pension sector has brought about private pension funds and tremendously increase funds available for investment in the capital market. The flow of pension funds into the capital market is expected to grow as more people are employed and incomes from employment increases.

THREATS

1. *Judicial system is not familiar with capital market.* The knowledge of judges and lawyers in capital market operations is generally low. This affects the efficient resolution of capital market issues by the courts.

2. *Low financial literacy level in the country***.** The low level of financial literacy in the country limits the ability of the population to effectively engage in capital market activities. This also does not afford a large proportion of the population to take the necessary steps to protect themselves against market abuses.

3. *Emergence of financial conglomerates*. Financial market supervision can be impeded by complex structures. The emergence of financial conglomerates creates supervisory arbitrage. Supervisors can also face a situation of ‘moral hazard’ with the emergence of such financial conglomerates which include unregulated entities.

4. *Blurring of boundaries between activities of various types of financial institutions.* Because of competition, financial institutions have encroached increasingly on each other’s territory resulting in the blurring of boundaries between activities of different financial institutions.

This makes the boundaries between regulators to also get blurred in the absence of consolidated supervision of financial services.

5. *Governance Challenges*: Best practices indicate that a regulatory agency such as the Securities and Exchange Commission should be politically independent so that the members of the Board are able to act in an independent manner. However, the Securities Industry Act mandates the representation of the Ministry of Finance on the Board of the SEC. The profile of the SEC as an independent regulator is undermined by this provision.

4.2.5 Regulatory Overlaps and Gaps

Fund managers are licensed by the Commission under the Securities Industry Act and registered by the National Pensions Regulatory Authority under the National Pensions Act, 2008 (Act 766) to manage pension funds. The Securities Industry Act provides for the Commission to supervise the activities of fund managers; however, the Commission does not undertake the supervision of activities of fund managers relating to the management of pension funds. The activities of fund managers relating to the management of pension funds are supervised by the NPRA. When the Commission revokes the licence of a fund manager, the NPRA cancels the fund manager's registration for the management of pension funds. The NPRA may on its own cancel the registration of a fund manager for stated reasons.

Primary dealers that are banks are first licensed as banks by the Bank of Ghana under the Banks and Specialised Deposit-Institutions Act before they apply to be licensed by the Commission under the Securities Industry Act as primary dealers to enable them deal in government securities. The Bank of registers them to deal in government securities after they have been licensed as primary dealers by the Commission. The Securities Industry Act provides for the Commission to supervise the activities of primary dealers; however, it is the Bank of Ghana that supervises the activities of primary dealers and sets the minimum value of transactions to be undertaken to remain registered as a dealer in government securities.

Custodians for pension funds that are banks are first licensed as banks by the Bank of Ghana under the Banks and Specialised Deposit-Institutions Act before they apply to be licensed by the Commission under the Securities Industry Act as custodians and subsequently registered by the NPRA under the National Pensions Act to operate as custodians for pension funds. The Securities Industry Act provides for the Commission to supervise the activities of custodians; however, it is the NPRA that supervises the services of custodians relating to pension funds and sets operational rules for them. When the Commission revokes the licence of a custodian, the NPRA cancels the custodian's registration for pension funds custodial services. The NPRA may on its own cancel the registration of a custodian for stated reasons.

The Securities Industry Act provides for the Commission to license and supervise the activities of trustees while at the same time the National Pensions Act provides for the National Pensions Regulatory Authority to license and supervise the activities of trustees for pension funds. The Securities Industry Act defines a trustee as a corporate body in which the property subject to a trust created is or may be vested in accordance with the terms of the trust deed, while the National Pensions Act defines a trustee as an individual or company appointed to carry out the purpose of a trust in accordance with the provisions of the trust instrument and general principles of trust law. A corporate body which intends to provide trustee services which includes those of pension funds is

required to hold two licences, one from the Commission, and one from the National Pensions Regulatory Authority.

The Commission regulates banks and other financial institutions with respect to the businesses of trustees, custodians, primary dealers, nominees, registrars, issuing houses and underwriters conducted by them. The securities law allows banks to undertake these businesses in the securities market on their own without incorporating subsidiaries for such businesses. They are required to apply for licences from the Commission to be able to undertake these businesses and have to comply with regulations issued by the Commission to control and supervise them in the performance of their activities in the securities industry. When the operating licence of a bank or other financial institution is revoked by the primary regulator, the Commission also revokes any licence granted to the institution to conduct securities market business.

Banks are allowed to undertake the business of portfolio management and advice as well as trading in transferable securities for their own accounts or for accounts of customers, but the securities law requires a bank or any other financial institution which intends to undertake the business of fund manager or investment adviser or broker-dealer to incorporate a subsidiary company and apply for the relevant licence from the Commission.

Banks and other financial institutions are under the securities law to incorporate a subsidiary company and apply for the relevant licence from the Commission to undertake other businesses including, securities exchange, hedge fund, private equity fund, venture capital fund, clearing and settlement and securities depository.

The Commission regulates and supervises subsidiaries of banks and other financial institutions established to conduct businesses in the securities industry to ensure among other things that inter-company transactions are carried out at arm’s length.

Banks and other financial institutions are required to meet the requirements of takeover, merger or amalgamation under the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930) and thereafter meet the requirements for takeover, merger or amalgamation under the Securities Industry Act, 2016 (Act 929).

In the regulation of financial conglomerates, securities industry players licensed and regulated by the Commission, and who have subsidiaries licensed under Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930) are also to be regulated by the Bank of Ghana as financial holding companies. Financial conglomerates who have subsidiaries in the insurance, securities, and pensions sectors, but do not have any subsidiaries licensed under the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930) do not come under the regulation of any of the financial sector regulators.

4.2.6 Conclusion

Since the introduction of a formal securities market in the country, the market has seen tremendous growth which requires significant resources to regulate. The Commission has however, since the beginning of its operations, faced human and financial resources challenges. Despite these limitations, the Commission has been able to generally strengthen its supervision and regulation of the market. It has also been able to offer the needed education to market operators and other

professionals, as well as issuers of securities, and investors on their respective rights and responsibilities. These efforts have to a large extent created the necessary basis for a positive development in the mobilization of savings and further development of the capital market.

The Commission is faced with several challenges including lack of adequate financial resources, inadequate staffing levels, poor staff salaries and service conditions, inadequate manpower development, limited ability to recruit and retain the right calibre of staff, lack of independence and inadequate regulatory capacity.

4.3 Insurance Sector

4.3.1 History of the Sector

Insurance was introduced into Ghana in the late 19th Century by the British merchants who were bound by the British merchant shipping laws. The law basically states that all goods being shipped into the British colonies should be carried by ships owned by British citizens. By implication, the goods being carried by ships owned by its citizens were insured by insurance companies in the United Kingdom. Consequently, there was a need for these insurance companies in the United Kingdom to have agents in Ghana where the goods were sent. Thus, insurance transactions were done through the foreign trading companies in Ghana acting as chief agents of insurance companies in the United Kingdom and other foreign countries.

All insurance companies in Ghana from the period up to 1961 were British and subject to the United Kingdom Board of Trade regulations. Because all insurance transactions were done in the United Kingdom and elsewhere, there was no local insurance legislation in Ghana. Towards Ghana's independence, local insurance companies began to emerge. The first among them was Gold Coast Insurance Company which was formed in 1955. In 1958, the Motor Vehicles (Third Party Insurance) Act, 1958 was promulgated and made third party motor insurance compulsory. The period between 1962 and 1970 saw remarkable changes in Ghanaian insurance industry. A lot of rules and regulations were introduced, and Acts were passed into laws in the insurance industry. The Insurance Commissioner was then operating as a department of the Ministry of Finance.

Prior to 1990, there were syndicates of lawyers, doctors and insurance personnel who were abusing the claims process. The syndicates created accidents that never happened and made false insurance claims. Government then set up the Gepi-Atee Committee of Enquiry to investigate the malpractices in insurance claims. The Committee's findings culminated in the promulgation of the Insurance Act, 1989 (PNDCL 227) under which the National Insurance Commission (NIC) as a regulatory agency was established.

Ghana Reinsurance Company was the product of a drive to minimize the outflow of hard currency into the developed world in payment for reinsurance services rendered by reinsurance companies in the developed world. Ghana Reinsurance Organization (GRO), as it was then called, started operation as a unit of the State Insurance Corporation of Ghana, now SIC Insurance Company Limited in October 1972. The promoters of Ghana Reinsurance Organization opted for setting up a company to which a fixed percentage of all risks written in country ought to be ceded. In 1984, per the Ghana Reinsurance Organization Law, 1984 (P. N. D. C. L 79) legal effect was given to the formation of the Company, thus converting it from being a Unit of State Insurance Corporation of Ghana into fully fledged legal entity or company. Section 5 of the PNDCL 79, 1984 legalized the 20 percent policy cession and 5 percent treaty cession of all businesses and treaties written by all insurance companies operating in the country to GRO. The company was converted into a limited liability company in 1995 with 100 percent state ownership. It was during the conversion that the name of the company was changed to Ghana Reinsurance Company Limited. The compulsory legal cession, which contributed over 60 percent income of the company, was eventually removed in December 2008.

In 1994, a private reinsurance company by name Mainstream Reinsurance Company with shareholding from private individuals and some direct insurance companies was licensed. As the

market opened up, the third reinsurance company, GN Reinsurance was also licensed in October 2014 to operate.

Reinsurance provides capacity to insurers and helps to smoothen out irregular performance. With three Reinsurance companies operating in Ghana, the National Insurance Commission has issued its Reinsurance Guidelines in a bid to develop the sector by ensuring that local capacity is fully utilized before any recourse to overseas reinsurance.

The development of the local insurance industry has been slow by global standards. In 2016, insurance penetration, which is defined as the contribution of total insurance premiums to Gross Domestic Product (GDP) was 1.10% compared to 2.83% in Kenya and 16.99% in South Africa.[42] However, locally, the growth rate of the industry has been significant. As at 31st December 2016, the Industry gross premium amounted to GHC1,929 million representing a compounded annual growth rate of 28% since 2007 (Table 7). Industry assets have grown at a compounded annual rate of 25.9% during the same period (Table 8).

TABLE 7 PREMIUM INCOME GROWTH

YEAR	PREMIUM INCOME(GHS)
2016	1,928,838,573
2015	1,560,679,185
2014	1,239,853,442
2013	1,052,090,981
2012	850,657,054
2011	628,528,775
2010	458,117,746
2009	342,973,719
2008	278,255,336
2007	209,554,718

TABLE 8 GROWTH OF THE INSURANCE SECTOR

NO OF COMPANIES			TOTAL ASSETS GHS		
	2008	2017	2008	2017	Compounded Annual Growth Rate
LIFE	17	26	193,600,000	2,842,491,335	34.8%
NON-LIFE	21	28	405,500,000	1,779,042,420	17.9%
REINSURANCE	2	3	70,153,655	708,932,599	29.3%
			669,253,655	5,330,466,354	25.9%

4.3.2 The Legal Framework

The Insurance Act, 2006 (Act 724) replaced the Insurance Act, 1989 (PNDCL 227). The Act states that the object of the Commission is to ensure effective administration, supervision, regulation,

[42] https://infogram.com/insurance-penetration-and-emerging-markets-in-sub-saharan-africa-1gv02gy6oq8j21x

monitoring and control of the business of insurance to protect insurance policy holders and the insurance industry other than health insurance under the National Health Insurance Act, 2003 (Act 650). The Commission's functions are specified as follows:

(a) license insurers and insurance intermediaries who transact insurance business in Ghana;
(b) in consultation with relevant bodies approve and set standards for the conduct of insurance business and insurance intermediary business;
(c) encourage the development of and compliance with the insurance industry's codes of conduct;
(d) approve, where appropriate, the rate of insurance premiums and commissions in respect of any class of insurance;
(e) provide a bureau to which complaints may be submitted by members of the public for resolution;
(f) arbitrate insurance claims referred to the Commission by any party to an insurance contract;
(g) recommend to the Minister proposals for the formulation of policies for the promotion of a sound and efficient insurance market in the country;
(h) supervise and approve transactions between insurers and their re-insurers;
(i) undertake sustained and methodical public education on insurance;
(j) take action against any person carrying on insurance business or the business of insurance intermediaries without a licence;
(k) maintain contact and develop relations with foreign insurance regulators and international associations of insurance supervisors and maintain a general review of internationally accepted standards for the supervision of insurers and insurance intermediaries;
(l) supervise, regulate and control compliance with the provisions of the Act and Regulations made under it and any other enactment relating to insurance; and
(m) perform other functions that are incidental to the carrying out of its functions under the Act.

The Commission is given a broad consumer protection and prudential regulation mandate by Section 2(3) of the Act which states that in performing its functions under the Act the Commission shall have regard to the protection of the public against financial loss arising out of the dishonesty, incompetence, malpractice or insolvency of insurers or insurance intermediaries.

Section 114 of Act 724 stipulates that a person may apply to the Commission for an insurance intermediary's licence in one of the following categories: (a) insurance broker; (b) insurance agent; (c) insurance sub-agent; or (d) insurance loss adjuster.

4.3.3 Relationship to Other Regulators and the Ministry of Finance

The members of the Board of National Insurance Commission are appointed by the President. The President also appoints a Commissioner of Insurance and a Deputy Commissioner of Insurance.

The Commission is to submit an annual report to the Minister of Finance covering the activities and the operations of the Commission for the year to which the report relates. The annual report is to include the report of the Auditor-General. The Minister of Finance has within two months after the receipt of the annual report submit the report to Parliament with a statement that the Minister of

Finance may consider necessary. The Commission is also required to submit to the Minister of Finance other reports that the Minister may require in writing.

The governing body of the NIC has one representative of the Ministry of Finance not below the rank of Principal Economic Officer. The Commission is required to recommend to the Minister of Finance proposals for the formulation of policies for the promotion of a sound and efficient insurance market in the country. The Minister may give directives to the Board on matters of policy for the Commission in the performance of its function.

4.3.4 SWOT Analysis of The Regulatory Regime

STRENGTHS

1. *Human Resource.* The National Insurance Commission has a young and motivated workforce with diverse professional backgrounds that can be trained and developed.

2. *Financial Independence.* The Commission has weaned itself off the government's budget. The financial independence of the Commission enables it to avoid the delays and bureaucracies associated with waiting for subventions from government before carrying out regulatory activities. The Commission therefore has some amount of resources to carry out a reasonable level of work.

3. *Good Relationship with Development Partners*. The Commission has very good relationships with international development partners who make available technical and financial assistance to improve regulatory capacity and practices. For example, the German Development Cooperation supported the implementation of micro insurance, actuarial capacity development and an RBS project. The Commission also received technical assistance from the Toronto Centre for the design and implementation of RBS.

4. *Membership with International Bodies and Associations.* The NIC is a member of various local, regional and international associations such as the West African Insurance Supervisors, IAIS, and the Association of African Insurance Supervisory Authorities. Membership with these international bodies and associations exposes the NIC to current trends and best practices in insurance regulation.

The NIC has also signed bilateral Memoranda of Understanding with countries such as Nigeria, Kenya, and Uganda that enables the sharing of information and ideas.

WEAKNESSES

1. *Frequent change in leadership*. Although the representation on the Board of the National Insurance Commission is written in the Act establishing the Commission, the tenure of the Commissioners is not guaranteed, and commissioners are replaced when there is a change of government. As such there is no reasonable degree of independence from the political process. The supervising Ministry which is the Ministry of Finance has a representation on the Board. This representation poses the challenge of conflict of interest when the policy of government is not aligned to those of the Board of Directors.

2. *Limited resources to regulate*. Although the National Insurance Commission has weaned itself off Central government funding, it lacks the financial resources and budgetary independence to ensure that regulation is adequately funded. The Commission is funded through market levy and donor support. There are logistics challenges. The World Bank supported the Commission with the provision of Regulatory Software on Prudential issues.

   There are too many players in the market for the size of the nation's economy. The regulatory resources are therefore spread so thin and not allowing for effective regulation. The fragmentation permits price undercutting and does not allow for appropriate risk pricing. As at December 2016, there were 26 Non-Life Companies, 24 Life Companies, 78 Broking Companies, 3 Reinsurance Companies and 3 Loss Adjusting Companies. These numbers are rather too large for the limited resources of the Commission.

3. *Weak legal systems*. The spine of regulation and supervision is for the Regulatory Agency to have legal backing to get work done. The Insurance Act, 2006 (Act 724) has been reviewed and a draft is pending to be passed into law. Under the auspices of three Commissioners, spanning over five years, the draft is yet to be passed into law. Section 69 of Act 724 has a prescribed minimum capital of the Cedi equivalent of USD1,000,000 but this did not have the flexibility of being increased to reflect the increasing level of business being done. A key component of the Risk Based Solvency Regime is Risk Based Capital Requirement. The latter seeks to ensure that the capital requirement of an insurer is commensurate with the risks the insurer faces. Despite the limitation of Act 724, the Commission introduced a one-size-fits-all increase in regulatory capital. The introduction of the Risk Based Capital requirements will ensure that the regulation of insurance in Ghana is in line with international best practices and in compliance with Insurance Core Principles.

   Act 724 is not compliant with the most recent Insurance Core Principles of the International Association of Insurance Supervisors (IAIS). The Commission has introduced Risk based capital, but this does not seem to be grounded in law. It is anticipated that the frameworks, directives and guidelines that the National Insurance Commission has issued in the recent past will be included in the new Insurance Act if passed into law.

OPPORTUNITIES

1. *A growing economy.* The expansion in the Ghanaian economy makes room for potential growth of the insurance industry. With inflation trending downwards, a well-regulated industry can be a source for mobilisation of investible funds.

2. *Increasing educated youthful population*: The constantly growing educated youthful population of the country will create a middle class with high potential for increased income and savings, and consequently a growing demand for insurance products.

3. *Burgeoning Pensions Industry.* The sturdy growth of the pension industry offers the opportunity for the development of offshoot products such as annuities

4. *Potential for Life Insurance.* Ghana's penetration of insurance is under 2%. This is largely due to the fact that life insurance still has room for growth to become the dominant contributor to premium income. There are signs of this happening. Beginning from 2013, a life insurance

company has emerged and maintained the position of the highest contributor to consolidated gross premium.

5. *Opportunity to Reorganise*. The insurance industry can take advantage of the changing structure of the financial system to reorganize. For example, the growing importance of financial groups that combine banking and insurance activities provides such an opportunity.

THREATS

1. *The emergence of financial conglomerate groups.* There are emerging conglomerates like Beige Group; Star Life, Star Assurance, Unibank and UniCredit; Ivory Finance and Phoenix Insurance, Ideal Finance, First Trust and Ideal Brokerage. The threat is how a regulatory agency is capable of reviewing the activities of these groups in the same way as a group management, without being constrained by legal form. In the absence of a unified regulator, it is difficult for the regulator to have a 'groupwide perspective'.

   It is worth noting that the National Insurance Commission has acknowledged in its own documentation the challenge posed by the emergence of financial conglomerates. The Commission states that it is generally accepted that the stand-alone view of an insurance company, which is part of a group of companies, does not give a full picture of the risks that the Insurance Core Principles (ICP) seek to mitigate:

   - ICP 23: Group Wide Supervision
   - ICP 24: Macro Prudential Surveillance and Insurance Supervision
   - ICP 25 & 26 Cross Border Collaboration of the Supervision of Insurance Groups that are in more than one country

   The Commission acknowledges that a group-wide approach to the regulation of Insurance group is not currently part of the insurance regulations in Ghana.

2. *Blurring of Boundaries.* Institutionally-based regulation was also seen as a constraint where a 'blurring of boundaries' had occurred between different types of financial products, for example, banks being licensed as corporate agents by the National Insurance Commission to earn commissions for distributing insurance products known as bancassurance or Universal Life Products which have an investment component.

3. *FinTech.* From artificial intelligence to cryptography, rapid advances in digital technology are transforming the financial services landscape, creating opportunities and challenges for consumers, service providers, and regulators alike. Regulatory authorities need to balance carefully efficiency and stability trade-offs in the face of rapid changes. The National Insurance Commission needs to be assured that risks to stability and integrity – including from cyberattacks, money-laundering and terrorism financing - can be effectively managed without stifling innovation. The Commission needs to ensure that trust is maintained in an evolving financial system.

4. *Financial Reporting.* Financial Reporting is very weak and quality compliance with International Financial Reporting Standards (IFRS) is low. The quality of Audited Financial

Statements requires improvement as the current state of financial reporting does not support effective regulation. The compliance capacity of some licensee companies requires improvement.

5. *Lack of financial instruments and markets to hedge financial risks*. The rate of development of products to hedge financial risks is slow. The establishment of a national pension scheme offers the opportunity for the development of Disability insurance and Deferred Annuity products. The use of regulation to support the penetration of Group Life Insurance is also missing.
6. *Market Conduct.* The practice of insurance in a developing country where regulators grapple with teething problems lends itself to market conduct risk. In 2016, the National Insurance Commission levied penalties against four (4) insurance companies. The breaches involved the placement of facultative reinsurance without approval, violation of market conduct rules in respect of motor insurance, resignation of a Board Chairman without informing the Commission and violation of the 'No Premium No Cover' directive. The Commission also received 354 complaints from the public in 2016. Most of the complaints received related to motor claims. The areas of common complaints from persons pursuing motor claims were as follows: repudiation of claim by insurers, delay in settlement of claims, dispute over quantum and delay in payment of settled claims. The complaints received from life policyholders centred on the following areas; benefits promised by insurers differ from benefits on policy documents, insurance company's failure to cease deductions after policy had been surrendered, payment of low surrender values, delay in processing matured policies for payment; delay in returning refund of wrongful deductions, unauthorised premium deductions and failure by insurance companies to submit policy documents.
7. *Prudential Challenges.* There are prudential challenges as there are notable losses of Profit after Tax from some Life Companies resulting in erosion of capital. It is also common to see Non-Life companies recording Underwriting losses. With the high fixed costs of running an insurance business and the downward trend of interest rates but increasing liabilities, the balance sheets of insurance companies is under a lot of stress.

4.3.5 Regulatory Overlaps and Gaps

The Insurance Industry has a natural linkage with the Pensions Industry. Insurance companies provide annuity products which are offshoot products from pensions. The National Pensions Regulatory Authority relies on the National Insurance Commission to regulate annuity products. The National Pensions Act, 2008 (Act 766) requires that the National Pensions Regulatory Authority in consultation with the National Insurance Commission ensure that a life insurance company which provides annuity is capable of meeting its liabilities.

There are gaps in regulation. The Commission has a challenging situation of regulating licensed insurance companies who are listed on the Ghana Stock Exchange. The acquisition of significant shares in such companies requires approval from both the Securities and Exchange Commission and the National Insurance Commission. However, there are challenges with the process sometimes. There are similar challenges with investment linked insurance products which could fall under the Securities and Exchange Commission and/or the National Insurance Commission. There are regulatory gaps with such products and it is a threat to institutionally-based regulation.

Bancassurance products are an example that fall under 'blurring of boundaries'. However, the Bank of Ghana has issued guideline to banks on the distribution of these products.

4.3.6 Conclusion

The National Insurance Commission was set up in 1989 after a Committee of Enquiry established an abuse of the claims process. The experience showed that there were challenges with market conduct and the resultant mistrust remains with the sector. Insurance regulation has always played second fiddle to the banking regulation and in the face of limited resources. Insurance products are currently distributed through some banks, but the Bank of Ghana remains the regulator of the distribution banks.

With high cost of running insurance companies, falling interest rates and reduction of profit level of insurance companies, more attention should be given to prudential issues. If insurance penetration is to see any meaningful growth, the common market conduct challenges will have to be approached with a sharper focus

Bancassurance introduces 'blurring of boundaries'. Additionally, insurance companies are selling investment linked products and investments products are regulated by the Securities and Exchange Commission.

Pension benefits terminate at the insurance industry and to ensure that the ultimate consumer gets the deserved benefit, it is desirable to have a common market conduct and prudential regulation from the beginning to termination of pension contributions. There is some collaboration between the National Pensions Regulatory Authority and the National Insurance Commission. Combining their resources and reconfiguring the regulatory architecture will close the gaps and bring sharper focus to regulation. The flow of insurance premiums from underwriters through fund managers, banks and ultimate investment assets requires that the supervision of insurance premiums should have a unified character so as to avoid gaps and cracks. In our recent history, insurance companies have lost monies invested with some non-bank financial institutions supervised by the Bank of Ghana.

The emergence of conglomerates in our financial system requires that our attitude to regulations should be reshaped to focus on how conglomerates are managed.

The governance challenge of the regulatory environment however needs to be improved to achieve the independence that is required for regulation.

4.4 Pensions Sector

4.4.1 History of The Pensions Sector

Over the years, concerns have been raised by public servants over the inadequacies of level of pensions to sustain a respectable life for retired public servants. There were also concerns over the low pensions received by workers under the Social Security National Insurance Trust pension scheme compared to Pensions Ordinance No 42 of 1950 (Cap 30). There were agitations and protests by workers' organisations for the restoration of public service pensions to the level of Cap 30. It was also noted that, the existing pension schemes did not cater for workers in the informal sector.

In responding to the agitation of workers and to ensure a universal pension scheme for all employees in the country, Government initiated a major reform of the Pension system in Ghana in July 2004. A Presidential Commission on Pensions was established, and their findings were reported in March 2006. Government subsequently issued a White Paper in July 2006 and appointed Pension Reforms Implementation Committee in October 2006. National Pension Reform Bill was submitted in 2007 which culminated into the promulgation of the National Pensions Act, 2008 (Act 766) promulgated on 12th December 2008.

Act 766 provides for pension reform in the country by the introduction of a contributory three-tier pension scheme; the establishment of a National Pensions Regulatory Authority (NPRA) to oversee the administration and management of registered pension schemes and trustees of registered schemes, the establishment of a Social Security and National Insurance Trust (SSNIT) to manage the basic national social security scheme, and to provide for related matters.

Since the commencement of the new pension schemes in 2010, the private pension funds have seen exponential growth. Table 9 shows growth of pension assets from 2013 to 2016.

TABLE 9 GROWTH OF PRIVATE PENSION FUNDS (GHS)

Source of Funds	2013	2014	2015	2016
Temporary Pension Fund Account[43]	914,132,017	1,465,015,858	2,313,553,357	2,670,454,240
Assets Under Management by Trustees	429,110,869	1,116,492,197	2,358,555,107	4,122,492,022
TOTAL	1,343,242,886	2,581,508,055	4,672,108,464	6,792,946,262

[43] The Temporary Pension Fund Account holds pension contributions awaiting transfer to a Trustee. The funds are held in trust by the government.

4.4.2 The Legal Framework

The National Pensions Act, 2008 (Act 766) [44]establishes a contributory three-tier pension scheme consisting of

(a) a mandatory Basic National Social Security Scheme;
(b) a mandatory fully funded and privately managed occupational pension scheme, and
(c) a voluntary fully funded and privately managed provident fund and personal pension scheme.

The Act establishes a body to be known as the National Pensions Regulatory Authority whose object is to regulate and monitor the operation of the Scheme, including the Basic National Social Security Scheme and ensure the effective administration of pensions in the country.

The Basic National Social Security Scheme shall operate under the Trust established under section 32 of the Act. Each worker of an establishment or an institution shall pay a monthly contribution to the social security scheme. Self-employed persons who opt to join the scheme shall pay a monthly contribution to the social security scheme.

Act 766 defines 'occupational pension scheme' as a pension scheme that is work-based, established under a trust which provides benefits based on a defined contribution formula in the form of a lump sum

(a) payable on termination of service, death or retirement, or in respect of persons covered under section 58 of the Act; and
(b) payable to or in respect of other persons specified under the second tier of the Scheme as provided for under section 1 of the Act.

The Act provides that Trustees occupational pension schemes, provident fund schemes, personal pension schemes and other privately-managed pension schemes shall only be managed by trustees licensed approved by the Authority. A trustee licensed under this Act shall perform core functions that include the following:

(a) secure scheme registration;
(b) appoint pension fund managers, custodians and other service providers and ensure their compliance with regulatory requirements or guidelines;
(c) maintain investment policy statements and internal control procedures that may be prescribed by the Board;
(d) ensure that the investment of funds of the scheme is diversified to minimise investment risk;
(e) process transfer and payment requests as contained in the trust;
(f) keep proper accounting records and a members' register;
(g) prepare and lodge annual audited financial statements, scheme and investment reports and other relevant records that the Authority may require.

[44] See https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=88539

Pension fund managers and custodians appointed by the Trustees are required to be licensed by the Securities and Exchange Commission and registered by the Authority.

4.4.3 Relationship to Other Regulators and the Ministry of Finance

The members of the Board of the National Pensions Regulatory Authority are appointed by the President. The President also appoints the Chief Executive Officer and the Deputy Chief Executive Officer.

The Board will submit an annual report to the Minister covering the activities and the operations of the Authority which includes the report of the Auditor-General. The Minister, within one month of receipt of the annual report, will submit the report to Parliament with a statement that the Minister considers necessary. The Board will also provide any other reports which may be required following a written request from the Minister in writing.

It is worth noting that the National Pensions Act did not assign the pension portfolio to an existing Ministry. Section 211 of Act 766 interpreted 'Minister' to mean the Minister responsible for pensions.

The Authority currently reports to two ministries - the Ministry of Finance and the Ministry of Employment and Labour Relations. There is a case to be made for formally designating the Ministry of Finance as the Ministry responsible for Pensions.

- Section 177(2) of the National Pensions Act, 2008 (Act 766) states the Board (of the Authority) may recommend to the President through the Minister responsible for Finance for approval, the investment of pension fund assets outside the country except that any amount to be invested outside, shall not exceed a percentage of total funds available for investment as determined by the Board.
- Section 24 of the Act requires the Board to submit an annual report to the Minister covering the activities and operations of the Authority. The report shall include the report of the Auditor-General.
- The regulatory agency, of pension fund managers and custodians, the SEC, reports to the Ministry of Finance.
- The Basic National Social Security Scheme which pre-dates the National Pensions Regulatory Authority has a representative of the Ministry of Finance not below the rank of Director on its governing body. However, the Ministry is not represented on the Board of the NPRA.
- Section 15 of the Act states 'the Minister may give directives to the Board on matters of policy'. Given the responsibilities assigned to the Minister of Finance under the Act, the Minister of Finance may be best-placed to give directives on matters of policy with regard to pensions.

The governing body of the National Pensions Regulatory Authority has one representative from the Ministry responsible for pensions, not below the rank of a Director, a representative of the Bank of Ghana, and a representative of the Securities and Exchange Commission among others. The presence of the representative of the Bank of Ghana and the Securities and Exchange Commission is to help coordinate the relationship between pension trusteeship, fund management and custody.

Pension Fund Managers are licensed and regulated by the Securities and Exchange Commission. It is worth noting that the National Pensions Regulatory Authority does not license Pension Fund Managers but rather registers licensed Pension Fund Managers.

Pension Fund Custodians are licensed and regulated by the Securities and Exchange Commission. The National Pensions Regulatory Authority only registers licensed Pension Fund Custodians.

4.4.4 SWOT Analysis of The Regulatory Regime

STRENGTHS

1. *Human Resource.* The National Pensions Regulatory Authority has a young and motivated workforce with diverse professional backgrounds that can be trained and developed.
2. *Partial Financial Independence.* The government has permitted NPRA to keep 64% of Internally Generated Funds (fees and percentage of funds under management) for its own use. This enables the Authority to avoid the delays and bureaucracies associated with waiting for subventions before carrying out regulatory activities. Switzerland's State Secretariat for Economic Affairs, a donor agency, supports the Authority. The Authority therefore has some amount of resources to carry out some level of work.
3. *Membership of International Organisation of Pensions Supervisors (IOPS).* The NPRA is a member of IOPS. Membership with this international body exposes the Authority to current trends and best practices in pension regulation. The Authority also benefits from the publications of the Organization for Economic Co-Operation and Development (OECD).

WEAKNESSES

1. *Corporate Governance*. Although the representation on the Board of the National Pensions Regulatory Authority is written in the Act establishing the Authority, the tenure of the Board of Directors is not guaranteed. Section 8(2) of the Act states that – the Chairperson and the other members of the Board shall be appointed by the President in accordance with article 70 of the Constitution. The tenures of the appointees are therefore tied to that of the President. As such there is no reasonable degree of independence from the political process. In addition, there are long delays in the appointment of directors when there is a change of government. For example, the NPRA did not have a board until eighteen months into the tenure of current government.

   In the past there was the scenario where the Chief Executive of the Employers' Association and the General Secretary of the Trade Union Congress served on the Board of the Social Security and Insurance Trust, a licensee of the NPRA, while their representatives or subordinates served on the NPRA Board. The Board Chairmanship of SSNIT is always reserved for a high-profile political figure who politically dwarfs the Board Chairman of the Regulatory Authority. It is therefore difficult for NPRA to regulate SSNIT.

2. *Limited resources to regulate.* The growth of the pensions sector is phenomenal. This requires a commensurate level of resources and capacity to regulate/supervise. There are 261 Schemes, 1,256 Trustees, 28 Corporate Trustees and Social Security and National Insurance Trust (SSNIT) who are to be supervised directly by the NPRA, but the Authority lacks the financial resources and budgetary independence to ensure that regulation is adequately funded. The licensee, (particularly the SSNIT scheme) is better resourced and more powerful than the Authority.

   There are too many players in the market for the size of the nation's economy. This spreads the regulatory resources so thin and does not allow for effective regulation.

3. *Capacity.* The resource challenge of the Authority can be extended to the availability of a certain calibre of staff at the Authority. The work of the Authority requires the services of well trained, experienced and motivated staff but the relatively low remuneration as compared to the licensees does not make it possible for the Authority to attract that calibre of personnel.
4. *Weak legal systems.* The spine of regulation and supervision is for the Regulatory Agency to have legal backing to get the work done. The National Pensions Act, 2008 (Act 766) lacks clarity and has become a source of controversies. The major players in the pensions industry like pension fund managers and custodians are not licensed and regulated by the Authority.

OPPORTUNITIES

1. *A growing economy.* The expansion in the Ghanaian economy comes with investment opportunities for pension funds. The growth in the economy gives opportunities for long-term investment projects for pension funds to invest in. What is required is a well-structured capital market that is conscious of monthly cash flows from pension contributors as well as their retirement needs. With inflation trending downwards, a well-regulated pension industry can be an economic game changer.

2. *Increasing educated youthful population*: The constantly growing educated youthful population of the country will create a middle class with high potential for increased income and savings, and consequently a growing demand for pension products.

3. *Burgeoning Industry.* The sturdy growth of the pension industry offers the opportunity for the development of off shoot products such as annuities.

4. *Potential to Influence the Investment Landscape*. The Authority has the opportunity to shape how pension funds can be invested in catalytic projects through the Investment Guidelines it sets for pension schemes.

5. *Opportunity to Reorganise.* There is an opportunity to take advantage of the changing structures of the financial system such as the growing importance of financial groups that combine custody service, fund management, banking and insurance activities, to reorganise. This is an opportunity to review the pension law and to reorganise with the overall configuration of pension service providers (custodian, fund managers and administrators) to achieve economies in the regulation of the sector.

THREATS

1. *The emergence of financial conglomerate groups.* There are groups of companies like Beige Group, Enterprise Group, Glico Group, Ideal Group, Tobinco Group, among others that are rapidly emerging as conglomerate groups. One would expect Pension Trustees and Pension Funds Management to be distinct and unrelated functions, but it is emerging that some are located under Groups. The threat is to create a regulatory agency that can review the activities of these groups in the same way as group management, without being constrained by legal form.

2. *Blurring of Boundaries.* Institutionally-based regulation was also seen as a constraint where ‘blurring of boundaries’ had occurred between different types of financial products. For example, the Social Security Scheme Regulation 2011 states that a contributor who is above the maximum age of joining the basic national social security scheme and makes mandatory contributions under section 63(8) and (9) of the Act shall on retirement utilise seventy-five percent of accrued benefits to purchase an annuity for life guaranteed for fifteen years and payable monthly from a Life Insurance Company licensed by the National Insurance Commission. In addition to pension benefits being converted into annuity, there is the lack of distinction between the role of pension fund administrators and pension fund trustees and pension fund managers. There are regulatory gaps with these developments and a threat to institutionally-based regulation.

4.4.5 Regulatory Overlaps and Gaps

The Bank of Ghana gives the primary license to a bank and the bank subsequently applies to the Securities and Exchange Commission for a secondary license to operate as a custodian.

Pension Fund Managers are licensed and regulated by the Securities and Exchange Commission. It is worth noting that the National Pensions Regulatory Authority does not license Pension Fund Managers but rather registers licensed Pension Fund Managers.

Pension Fund Custodians are licensed and regulated by the Securities and Exchange Commission. The National Pensions Regulatory Authority only registers licensed Pension Fund Custodians.

The arrangement of NPRA registering entities licensed by another regulatory authority is not without its problems of territory protection. For instance, the Securities and Exchange Commission which actually licenses and regulates pension fund managers is seeking a stake in the fees charged by NPRA on Fund Managers.

Insurance companies provide annuity products which are an offshoot product from pensions. The National Pensions Regulatory Authority in consultation with the National Insurance Commission ensure that a Life Insurance Company which provides annuity is capable of meeting its liabilities. Group Life Insurance, Disability Insurance and Deferred Annuity are insurance products that complement pensions, but the development and the deepening of these products remains the initiative of the National Insurance Commission.

Pension assets are held in custody by Custodians who are banks. Pension funds are managed by Fund Managers. Where there are regulatory challenges with any of these entities, the NPRA only complains to the Securities and Exchange Commission and the Bank of Ghana.

4.4.6 Conclusion

The huge potential of assets under management requires that the regulatory architecture should cover adequately the prudential concerns as well as market conduct. The inability to regulate the Social Security scheme along the lines of prudence and conduct has left the scheme in a rather weak state. Market conduct in the pension sector is rather mute but considering the exponential growth in assets under management and the consequences of its failure, it is important market conduct be elevated.

The flow of pension funds from Trustees through Fund Managers, Banks and ultimate investment assets requires that the supervision of pensions should have a unified character so as to avoid gaps and cracks.

Due to the growth potential and the role of pension funds in the broader financial services sector as well as the national economy, the regulatory Authority should not be left alone as an orphan or made to report to two ministries with conflicting interests. While the Ministry of Finance is represented on the Board of SSNIT, it is missing on the Board of the regulatory authority.

The emergence of conglomerates in Ghana's financial system requires that the approach to regulation should be reshaped to focus on how conglomerates are managed.

5.0 Summary of Findings

Ghana's financial sector is broad, comprising the banking sector and the non-bank sector, rural and community banks and microfinance companies, securities market players led by the Ghana Stock Exchange, the insurance sector comprising life and non-life companies and brokers, and the pensions sector. There are four regulators organized by subsector, namely The Bank of Ghana, the SEC, the NIC and the NPRA. The Ministry of Finance is responsible for overall policy direction of the sector.

5.1 Financial System Assessment Program (Update 2011).

The FSAP Update 2011 followed Ghana's last *FSAP* in 2003. It reported that since 2003, the financial system in Ghana had undergone rapid growth and structural transformation mainly in banking, insurance, capital markets, and microfinance. For example, the number of intermediaries had increased; so, had the scale of operations of intermediaries and the range of financial services. Additionally, corporate structures were becoming complex, conglomerates were becoming important, foreign shareholding in the banking and insurance sectors (particularly from other African countries) was on the increase.

Secondly, the Ghanaian system had undergone financial reforms to enhance the financial system's resilience to shocks and its contribution to growth. For example, new regulations for banks, insurance, pensions, and AML had been enacted; trading and settlement infrastructure for capital markets, the national payments system, and accounting standards had been modernized; the framework for systemic liquidity management had improved; and institutions to improve the enforcement of creditor rights had been established.

However, the FSAP Report found that, financial stability risks had increased. Nonperforming loans were very high, and a significant segment of the banking industry was fragile although, in the aggregate, the banking system was liquid, profitable and highly capitalized. Stress tests results suggested that even a moderate deterioration in asset quality of banks would have led to insolvency of several banks. Also, there were gaps in the frameworks for bank resolution, systemic risk analysis, and crisis management. These vulnerabilities are due to several factors, especially the involvement of the state. Other factors include deficiencies in banks' internal controls and risk management practices, weaknesses in enforcing prudential regulations and deficiencies in analysing individual bank risk and systemic risks. Credit risk is high, and is compounded by time consuming, legally complex, costly, and unpredictable procedures for taking collateral and enforcing creditor rights.

While, the nonbanking sector does not pose systemic risk, a number of constraints undermine its efficient functioning and contribution to economic development. Constraints include scarce long-term finance, limited access to financial services, and high intermediation costs, inadequate compliance with International Financial Reporting Standards, inadequate compliance with Financial Action Task Force's standards, shallow foreign exchange markets and domestic interbank markets, and inadequate liquidity in the capital market.

Recent developments suggest that all is not well with the oversight of Ghana's financial system. In August 2017, two banks, namely, Capital Bank and UT Bank, had their licences revoked and a

purchase and assumption arrangement was put into effect to enable GCB Bank to take over selected assets and liabilities. In March 2018, UniBank was put into administration following an extended period of capital inadequacy. In addition, the Bank of Ghana is reporting that many microfinance companies are struggling to fund their withdrawals.[45]

Summaries of the SWOT analysis of the four regulatory sectors are presented in Tables 10- 13

Table 10 Summary of SWOT Analysis - Bank and Non-Bank

STRENGTHS	WEAKNESSES
• An elaborate Risk-based Supervision system • A cadre of experienced supervisors • An elaborate e-FASS reporting system • A well-diversified bank and non-bank sector	• Tendency for regulatory forbearance • Regulatory weaknesses and gaps in regulation • Coordination within the Bank of the disparate supervisory functions • Capital Inadequacy and high Non-performing loans
OPPORTUNITIES	**THREATS**
• Growing economy, especially with the advent of oil • Relatively stable banking sector and currency • Low but growing financial depth • FinTech opportunities	• Rapid pace of change in the financial sector • Pressures from supra-national regulatory reforms • Fierce competition spurred by technology and blurring of boundaries among intermediaries • Growing competition from international and regional banks • Push for local content in banking and financial services

Table 11 Summary of SWOT Analysis – Securities

STRENGTHS	WEAKNESSES
• Revised Securities Law • Professionalism and commitment of staff • Ability to be financially independent • Dispute settlement mechanism • Power to prosecute • Membership/cooperation with International Bodies	• Inadequate staffing levels • Limited ability to recruit and retain right calibre of staff • Inadequate regulatory capacity • Corporate governance challenges
OPPORTUNITIES	**THREATS**
• Increasing educated youthful population • Political stability and steady economic growth • Improving legal framework and investment environment • Emergence of private pension funds	• Judicial system not familiar with capital market • Low financial literacy level in the country • Emergence of financial conglomerates • Blurring of boundaries between activities of various types of financial institutions

[45] www.ghanaweb.com "Bank of Ghana drags 30 Microfinance Companies to EOCO", 12 March,.2018

TABLE 12 SUMMARY OF SWOT ANALYSIS – INSURANCE

STRENGTHS	WEAKNESSES
• Trainable young workforce with diverse background. • Obtained approval for the use of 64% of internally generated funds. This eliminates delays with subventions. • Membership with International Organization of Pensions Supervisors offers exposure to current trends and best practices.	• Tenure of appointees are tied to that of the politically elected President of Ghana. • Non-commensurate level of resources and capacity to regulate a burgeoning industry. • Loss of staff to licensee companies due to relatively low remuneration. • Weak legal system resulting in regulatory gaps.
OPPORTUNITIES	**THREATS**
• A growing economy with opportunities for long-term investment projects. • Opportunity to develop offshoot products like annuities. • Opportunity to direct pension funds into productive investment projects. • Opportunity to reorganize with the overall configuration of all pension service providers to achieve economies of scale.	• The emergence of financial conglomerate groups with group management but without group regulation. • Constraint on institutionally-based regulation where 'blurring of boundaries' exist.

TABLE 13: SUMMARY OF SWOT ANALYSIS – PENSIONS

STRENGTHS	WEAKNESSES
• Trainable young, vibrant and loyal work force • Commission weaned itself off government subvention. • Very good relationship with international donors and development partners. • Benefits from current trends and practices through membership of international bodies and associations.	• Tenure of Commissioners are linked to the tenure of a sitting government. • Lack of financial resources ad budgetary independence for holistic regulation. • Weak legal system lagging behind market developments.
OPPORTUNITIES	**THREATS**
• A growing economy with potential demand for insurance products and services. • Burgeoning pensions industry offering opportunity for offshoot products. • Potential for life insurance to become the dominant contributor to premium income. • Changing structure of financial systems avail the industry the opportunity to reorganize to achieve efficiency	• Emergence of financial conglomerates without the corresponding group-wide regulation. • Constraints on institutionally-based regulations where 'blurring of boundaries' exist. • Rapid advances in digital technology and the challenge it poses to regulation without stifling innovation. • Weak financial reporting which does not support effective regulation. • Slow rate of developing products that hedge financial risk.

5.2 Developments in the Ghanaian Financial Regulation

The regulation of the financial sector has evolved historically on a piecemeal basis in response to exigencies of the day. At independence, the central bank, Bank of Ghana, was the regulator of the banking system. At that time there were about five banks in Ghana. Insurance, securities and pensions regulation were established as those sectors developed and the first Insurance Act was not passed until 1989. The Securities Industry Law was passed in 1993 after the stock exchange had been in operation under Bank of Ghana from 1990. Even after the Securities Industry law was passed, the Governor of the Bank of Ghana served as sole Commissioner until 1998 when a substantive Commission was appointed. The pensions regulator was established in 2008 as the sector developed. The fact that Ghana's financial sector regulation is a 'silo' system was thus an accident of history and was not thought through as the preferred model for financial sector regulation.

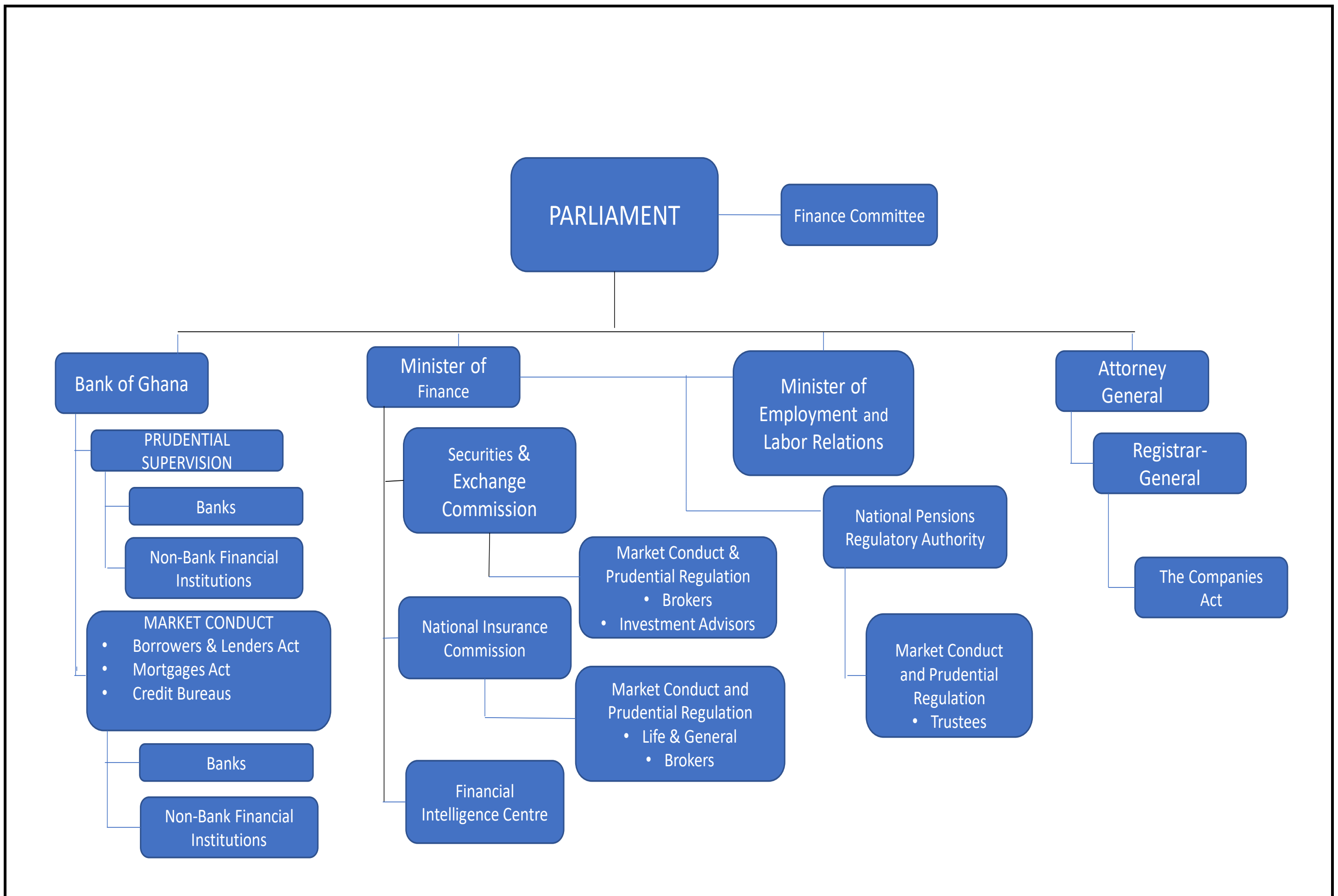
Given the silo approach to supervision, the emergence of four regulators and the blurring of boundaries between regulated activities, there is a growing tendency for activities to criss-cross regulatory boundaries. In the absence of effective consolidated supervision or joint supervisions by two or more regulators, regulatory gaps are bound to emerge or regulatory arbitrage, whereby market players move activities to areas of weaker or no supervision at all. The current emerging trend, whereby financial conglomerates, (small, closely held groups) are holding licenses from multiple regulators and engaging in deposit taking, asset management and insurance and co-mingling resources, is not only exacerbating this problem but posing serious risks to customers and the wider financial system. The Banks and SDI Act 2016 provides explicitly for both consolidated supervision as well as registration of bank holding companies to address this challenge, but this is yet to see full implementation.

Ghana currently operates a 'silo' system as in Figure 10. The current configuration of regulators is largely a historical accident. As the economy developed and the financial system expanded new regulatory agencies were created for emerging segments of the financial sector. To date no attempt has been made to take a high-level look at the broad architecture to identify its strengths and weaknesses.

The silo system has served Ghana well. The fact that there are four regulators respectively focused on banking, securities and capital markets, insurance and pensions has made it possible for necessary attention to be paid to the development of each sub-sector. Each of the four regulators is responsible for both prudential regulation and market conduct regulation in its sub-sector. When there is need for action, each can act swiftly without the need to involve others. A unified regulator's attention may have been divided across the four sub-sectors. In addition, regulatory staff and their superiors have developed specialist expertise in their sub-sectors.

However, the silo system is plagued by challenges as detailed below:

Figure 10 Financial Sector Regulatory Organogram of Ghana – 2018



Lack of Coordination

The silo system tends to evolve towards a fragmentation of the regulatory system. The system does not provide much room for consultations between regulatory agencies.

An informal Regulators Forum was initiated under FINSSP I but did not gain any traction. Under FINSSP II, a recommendation (Recommendation 74) was put forward for the establishment of a Financial Services Board as follows:

Recommendation 74: Establish a Financial Services Board comprising the Heads of Bank of Ghana, National Insurance Commission, the Securities and Exchange Commission and the National Pensions Regulatory Authority and chaired by the Minister of Finance to serve as a forum for coordinating regulatory integration and consistency in the financial sector. Ministry of Finance and Economic Planning. Financial Sector Division (FSD) should provide secretariat support.

However, the FINSSP II recommendation was not implemented.

The lack of coordination has led to widespread regulatory arbitrage, that is, structuring of financial products to minimize the regulatory burden or avoid regulation altogether. The practice of regulatory arbitrage abounds in Ghana. Examples include the following:

1. Because of the lower capital requirements for investment advisors under the Securities and Exchange Commission, many would-be finance houses obtain a SEC investment advisers licence, mobilize investment funds from clients and then provide the same credit services that a finance house would offer. Bank of Ghana is unable to act against such participation in the distribution of credit because the licensee is licensed by the Securities and Exchange Commission.

2. Insurance companies provide asset management products to the market, services that are regulated by the Securities and Exchange Commission. However, insurance companies are able to avoid the SEC license by attaching a life insurance rider to the investment product.

The diagnostic study of the regulatory system in Ghana has thrown up so many grey areas that would require regular consultation among all regulators to resolve. The following are illustrative:

1. Fund managers are licensed by the Commission under the Securities Industry Act and registered by the National Pensions Regulatory Authority under the National Pensions Act, 2008 (Act 766) to manage pension funds. However, the Commission does not supervise the activities of fund managers relating to the management of pension funds.

2. Primary dealers that are banks are first licensed as banks by the Bank of Ghana under the Banks and Specialised Deposit-Institutions Act before they apply to be licensed by the Commission under the Securities Industry Act as primary dealers to enable them deal in government securities, However, it is the Bank of Ghana that supervises the activities of primary dealers and sets the minimum value of transactions to be undertaken to remain registered as a dealer in government securities.

3. Custodians for pension funds that are banks are first licensed as banks by the Bank of Ghana under the Banks and Specialised Deposit Institutions Act before they apply to be licensed by

the Commission under the Securities Industry Act as custodians and subsequently registered by the National Pensions Regulatory Authority under the National Pensions Act to operate as custodians for pension funds

Conglomeration of the Financial Sector

Ghana's financial sector is undergoing conglomeration. Some conglomerate groups have banks and insurance companies within their groups, whereas some insurance companies form groups with financial institutions which are engaged in different types of business. Box 4 provides a partial listing of emerging conglomerate groups in Ghana with significant interests in the financial sector.

BOX 4:SOME CONGLOMERATE GROUPS WITH FINANCIAL SECTOR INTERESTS

- Despite Group of Companies
- Beige Group
- GLICO Group
- Group Ideal
- CDH Financial Holdings Limited (Ivory Finance)
- Tobinco Group
- Enterprise Group
- Jospong Group
- Groupe Nduom

Regulators consider it important to identify the unique risks arising in connection with conglomeration and properly cope with them from the standpoint of ensuring the soundness and appropriateness of financial institutions. While financial conglomeration may help strengthen the business structure of financial institutions and improve the quality of services new risks associated with the grouping of companies may surface. For example, it has been pointed out that among the risks associated with financial conglomerates are inefficient business operations resulting from the complex organizational structures, occurrence of conflicts of interest, increased inducements for tie-in sales, intra-group risk contagion, risk concentration and so on.[46] The presence of these risks may make it impossible to ensure the financial soundness and operational appropriateness of the group as a whole by solely pursuing the soundness, etc. of individual financial institutions, and as a result, it may affect the group financial institutions and the financial system as a whole. Consequently, for the purpose of enabling individual financial institutions or the group to appropriately cope with the foregoing risks associated with financial conglomerates, it is important for financial authorities to fully grasp the actual state of affairs concerning the management system of the group as a whole, and the financial soundness and operational appropriateness as a group.

Imbalance Between Prudential and Market Conduct Regulation

The regulatory agencies in Ghana are overwhelmingly focused on prudential regulation. Although each regulator's enabling Act provides for the agency to have market conduct responsibilities, there is relatively little attention given to market conduct. Prudential regulation and market conduct under the same regulator create a conflict of interest especially in situations where prudential goals have a negative impact on consumer protection. This suggests that in Ghana, it might be desirable to have a separate market conduct regulator.

[46] Guideline for Financial Conglomerate Supervision, Financial Services Agency, Japan, March 2007

Limited Capacity of Regulatory Agencies

Regulatory capacity differs widely among the regulatory agencies. Bank of Ghana is better resourced and has a lot more capacity than the National Insurance Commission, Securities and Exchange Commission and the National Pensions Regulatory Authority.

Weak Policy Role of Government

Discussions with the Ministry of Finance indicated that the Ministry believes that the regulatory agencies have taken over the policy responsibilities of the Ministry, Consultations on major policy matters such as increasing the requirements for licensing of financial institutions (e.g. capital requirements) are informal. While recognising that a lot of informal consultations take place, it would be desirable to formalize such consultation.

The Ministry of Finance has limited capacity compared to the regulatory institutions that for which it has policy responsibility. The establishment of the Financial Sector Division has enhanced the Ministry's ability to provide policy direction. However, the Division lacks the financial expertise needed to be an effective dialogue with both the regulators and the industry participants. Policy proposals submitted to the Ministry by regulatory agencies do not receive high level attention and analytical rigour.

5.3 Distillation of Best Practices

Case studies of the selected countries have generated some broad generalizations that can assist Ghana to review and if necessary redesign its financial sector regulatory architecture. The regulatory architectures of the case study countries fall into a wide number of categories as in Table 14:

TABLE 13 SUMMARY OF REGULATORY MODELS

Country	Type of System	Lessons for Ghana – advantages	Lessons for Ghana – Risks
Canada	Hybrid with unified Prudential Regulation	• Strong policy role for Minister of Finance • Unified prudential regulator provides better information sharing	• Unification difficult with already existing four regulators
Singapore	Unified	• Regulatory discipline	• In Singapore, a single regulator has existed from beginning. Moving to unified regulator when separate ones exist is a challenge.
Malaysia	Partially unified (Banking and Insurance)	• Only two regulators as opposed to four for Ghana • Separate law on Islamic Finance	• Central bank regulation of insurance will be a significant change for central bank.
South Africa	Twin Peaks	• Too early to assess • Careful planning and implementation over six years. • Significant emphasis on regulatory coordination	• Ghana has a short electoral cycle. Incoming governments are unlikely to carry through initiatives of their predecessors from another party
Hong Kong	Silo	• Silo system can also be successful if underpinned by	• Poor record of regulatory coordination in Ghana.

Country	Type of System	Lessons for Ghana – advantages	Lessons for Ghana – Risks
		regulatory discipline and cooperation among regulators	• Excessive regulatory forbearance
United Kingdom	Twin Peaks	• Regulatory architecture is subject to periodic reviews. Ghana's has not made an attempt to subject the regulatory architecture to periodic reviews.	• Twin-Peaks is a major change from present silo system. • Requires a culture of periodically subjecting the regulatory architecture to review.

The following observations can be made:

1. Effective financial regulation cannot be identified with any particular model. Across the variety of models, there are countries that have been widely acclaimed as having sound regulatory systems such as Canada, Hong Kong and Singapore.
2. Nearly all the countries have coordinating mechanisms to enable regulators and related agencies to share information and to take concerted action to manage systemic risks and to maintain financial stability. Table 15 is a summary of the coordinating mechanisms in each country.

TABLE 14 CASE STUDY COORDINATING MECHANISMS

Country	Coordinating Mechanism
Canada	• Financial Institutions and Supervisory Committee • Senior Advisory Committee (focused on financial sector policy issues, including financial stability and systemic vulnerabilities)
Singapore	• Financial Stability Committee
Malaysia	• Financial Stability Executive Committee
South Africa	• Financial Stability Oversight Committee • Financial Sector Contingency Forum • Financial System Council of Regulators • Financial Sector Inter-Ministerial Council
Hong Kong	• Cross-Market Surveillance Committee • Financial Stability Committee • Council of Financial Regulators
United Kingdom	• Statutory duty of Financial Conduct Authority and Prudential Regulation Authority to enter into a Memorandum of Understanding on how they will cooperate. • Financial Policy Committee

3. Following the Global Financial Crisis, there has been a significant movement towards improving the framework for the identification and measurement of systemic risk as well as coordination and implementation of macroprudential policy rules that reduce instability across the financial system.

   Many countries have established Financial Stability Committees for this purpose. It is noteworthy that all the case study countries have Financial Stability Committees, although the institutional design and governance differ across countries. In all cases, the Financial Stability Committee provides a forum for sharing information about evolving risks, developing monitoring and mitigating tools, and defining the decision-making authority, accountability and communication to the general public. Financial Stability Committees

involve all stakeholders, including central banks, ministries of finance and financial sector regulators. The governance differences often relate to existing institutional arrangements, different trade-offs with other policies (monetary and micro prudential) as well as legal and institutional constraints. However, in most cases, central banks play a central role in the coordination of stability mandates because of their expertise, credibility and independence.

4. Effective regulatory systems work actively with the Minister of Finance on key policy matters. This kind of policy coordination is achieved in a number of ways:

   a. Minister/ Ministry of Finance is a member of the coordinating committees either in a voting or non-voting capacity. In South Africa, the Treasury chairs the Council of Regulators;

   b. The law assigns specific responsibilities of a policy nature to the Minister. For example, in Malaysia, the Minister is the approving authority for banking licences and in Canada bank mergers are approved by the Minister.

5. Regardless of the regulatory model, a reputation of regulatory discipline enhances the effectiveness of regulation. Singapore's MAS, for example, is noted for its strong focus on risk management systems, strict enforcement of penalties for breaking the rules and in general an aggressive and no-nonsense approach.

6.0 CONCLUSIONS AND RECOMMENDATIONS

The broad conclusions from this study are as follows:

1. The literature on financial sector regulation confirms the consensus that financial markets support the growth of economies by offering intermediation and ancillary services to the users of financial products. However, because of imperfections in the market financial markets are susceptible to market failure. The regulation of financial markets is justified in terms of interventions to mitigate market failure, leading to an overall increase in economic welfare.
2. The case studies confirm that regulatory effectiveness is not necessarily associated with particular regulatory regimes. Empirically, many countries operating widely different regulatory systems have both been successful and unsuccessful. Rather the core ingredients for success are as follows:
    a. Effective coordination among the regulatory agencies
    b. Effective coordination between the regulatory agencies and the Government through the Minister of Finance, who provides overall policy direction
    c. A balanced approach which covers both prudential regulation and market conduct regulation
    d. A reputation of regulatory discipline reflected in a focus on risk and an aggressive no-nonsense approach to dealing with defaulters
3. The diagnostic study of Ghana's regulatory system indicates that there are several regulatory overlaps that require a concerted approach by regulators. These include the convergence of products such as insurance and banking (Bancassurance), insurance and investments and insurance and pensions. The growth of financial conglomerates in Ghana requires a regulatory architecture that can have a group view of conglomerates.

These conclusions provide a justification for a reform of the current regulatory regime to improve its effectiveness. The direction of reform should address the key problem of lack of coordination among regulators. Our recommendations are designed to mitigate the problems created by the uncoordinated manner in which the regulatory framework of Ghana's financial sector has evolved. In addition, the regulatory architecture should provide for the effectiveness of both market conduct and prudential regulation. Opportunities for the reduction of the overall cost of regulation through economies of scale should be exploited.

We recognize that these recommendations will not necessarily eliminate all the problems of the regulatory framework. However, we also believe that they represent changes that will collectively amount to a significant improvement on the existing system.

In order to address the weakness identified in the diagnostic studies, the following recommendations are proposed:

1. Ghana should work towards the implementation of a Twin Peaks regulatory system over the next two years as depicted in Figure 11.
2. A Financial Markets Conduct Authority should be established to take over market conduct regulation over banking, credit, securities, insurance and pensions. This is designed to give regulatory focus to consumer protection
3. A Financial Sector Prudential Regulatory Authority should be established under the control of the Bank of Ghana to take over the prudential regulation responsibilities of the following regulatory bodies:

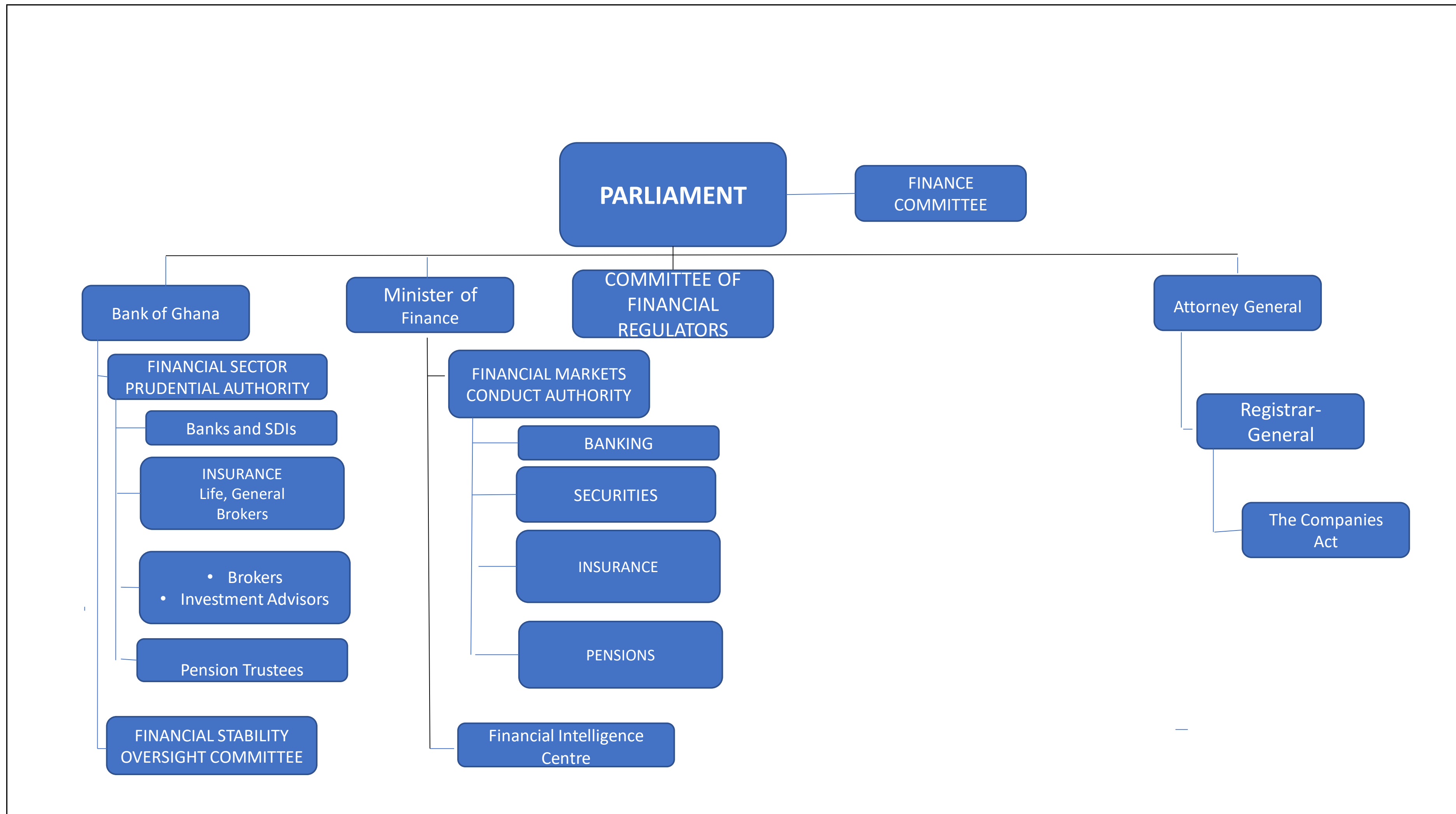
   a) Bank of Ghana (Banking Supervision)

   b) Securities and Exchange Commission

   c) National Pensions Regulatory Authority

   d) National Insurance Commission

FIGURE 11 TWIN PEAKS FINANCIAL SECTOR REGULATORY ORGANOGRAM



Coordination can be improved by adopting the South African model and establishing the following interdepartmental bodies:

a) Committee of Financial Regulators
b) Financial Stability Oversight Committee under the Central Bank.

The Committee of Financial Regulators will be a statutory body and will be constituted as a forum for senior policymakers to discuss regulatory policy and inform themselves about matters of common interest. The suggested composition is as follows:

a. Chief Director, Ministry of Finance (Chair)
b. Bank of Ghana (Deputy Governor)
c. Financial Markets Conduct Authority (Chief Executive Officer)
d. Financial Sector Prudential Authority (Chief Executive Officer)
e. Financial Intelligence Centre (FIC) (Chief Executive Officer)
f. Registrar-General

The role of the Financial Stability Oversight Committee is to assist the Bank of Ghana in the performance of its stability functions. In particular it will promote collaboration between financial sector regulators and policymakers in respect of matters relating to financial stability.

The Financial Stability Oversight Committee will have the following indicative composition:

a. Governor (Chair)
b. Ministry of Finance
c. Financial Sector Prudential Authority
d. Financial Markets Conduct Authority
e. 2-3 independent appointees.

The inclusion of the Ministry of Finance in the two committees is to strengthen the policy role of the Ministry, particularly as it pertains to prudential and market conduct regulation as well as macroprudential management.

In advancing these recommendations we took a look at the alternative of an integrated/unified regulator but chose the Twin Peaks for the following reasons:

1. Among the regulatory agencies, the Bank of Ghana is the best resourced. Centralizing prudential regulation under the Bank of Ghana would enable the country as a whole to benefit from the Bank of Ghana's experience and capacity in prudential regulation. The economies of scale to be realized by centralizing prudential regulation at the Bank of Ghana would represent savings for the country.

2. Prudential regulation and financial stability are complementary. Therefore, the Bank of Ghana would have more information for its financial stability management

3. A unified regulator for both prudential and market conduct regulation would risk becoming an oversized agency further removed from the central bank's financial stability management

Because of the significant amount of work that would go into making the transition into a Twin Peaks regulatory system, it is recommended that Government should set up a Steering Committee on Financial Sector Regulation to prepare and implement a plan for the reform over a two-year period. It is worthy of note that in South Africa, discussions on migrating to a Twin Peaks system were initiated in 2011. This was followed by a draft legislation (a Parliamentary bill) in 2013. Finally, the ***Financial Sector Regulation Act, 2017*** was passed in 2017, after more than six years of consultations and planning. This approach is more difficult in Ghana because of a shorter electoral cycle. However, the South African approach underlines the need for thorough preparation.

In the transition, it is anticipated that:

1. Bank of Ghana takes on the prudential regulation currently being undertaken by the Bank of Ghana (Banking Supervision), NPRA, SEC and NIC under the Financial Sector Prudential Authority; and
2. SEC, NPRA, NIC and the Market Conduct Department of Bank of Ghana merge to become the new Financial Markets Conduct Authority.

In addition to architectural issues, other regulatory challenges were identified during discussions with experts and industry players. Some of these nagging regulatory issues are noted below

1. *Ministerial Responsibility for NPRA:* The Pensions Act does not specify who the 'responsible' Minister is. Ministerial responsibility has moved from the Minister of Employment and Labour, Minister of State at the Presidency and the Minister of Finance. Currently, it is jointly supervised by the Minister of Finance and the Minister of Employment and Labour Relationships.

2. *FinTech Regulation*. Regulators need to streamline their regulatory procedures to create room for FinTechs. The latter are expected to revolutionize the delivery of financial services through technological innovation. Because the pace of change is rapid with many of the products not fully tried and tested, regulators need to create space for FinTechs to deploy their services in a controlled setting.

3. *Board Representation of the Ministry of Finance*. The practice whereby representatives of the Ministry of Finance are appointed to the Boards of regulatory agencies should be reviewed and possibly stopped. There is ample evidence that board representation of the Ministry of Finance has not been an effective way of involving the Ministry in key policy decisions. Consultation can only be achieved by i) requiring regulators to consult with the Ministry on major policy issues and ii) active involvement of the Ministry in the Committee of Financial Regulators and the Financial Stability Oversight Committee.

An initial draft of this report was presented and discussed at a number of forums including separate presentations to the staff of the Financial Sector Division, Ministry of Finance, and senior management of the Ministry. In addition, a forum of regulators was held on 28 June 2018. In attendance were the Bank of Ghana, National Insurance Commission, National Pensions Regulatory Commission, Financial Intelligence Centre, Securities and Exchange Commission and the Ministry of Finance.

The Ministry of Finance agreed that the report had addressed the objectives stated in the Terms of Reference. An issue was raised about the timing of implementation, particularly how to ensure that there is adequate time for implementation of major reforms during the term of the current government. For this reason, a two-year time frame was seen as the most feasible for putting the new regulatory framework into place.

The feedback from stakeholders' consultative workshops was generally positive. Participants acknowledged the weaknesses of the existing regulatory architecture and the need for reform. Concerns were, however, raised about implementation issues such as timing and how to ensure a smooth transition to a twin peaks system. Additionally, participants were of the view that reforms are unlikely to succeed unless the issues of limited capacity of regulators and poor enforcement of regulatory sanctions are addressed.

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APPENDIX A: TERMS OF REFERENCE

Consultancy to conduct a Comprehensive Financial Sector Regulatory Framework Study for Ghana

BACKGROUND

The development and expansion of the financial sector of every nation largely depends on the regulatory and supervisory framework underlying the sector. After the 2007-2009 financial crisis, several forms of regulation have been instituted in many countries including Ghana to protect the financial environment from illegal dealings and transactions and ensure that instability in the financial sector does not contribute to economic crises. This study will make recommendations to strengthen the regulatory and supervisory framework of the financial sector in Ghana highlighting the strengths, weaknesses, opportunities and threats.

In Ghana, sustained financial sector restructuring and transformation has succeeded in creating a vibrant financial system in the sub region. Ghana's financial system has undergone rapid growth and major structural transformation over decades, which has brought new opportunities and risks. The Bank of Ghana has been implementing reforms to strengthen the regulatory and banking supervisory framework and financial infrastructures. The Securities and Exchanges Commission is strengthening regulation and supervision of capital markets. However, there remain cross-cutting challenges that need to be addressed such as the regulation of non-bank financial institutions, the interaction of insurance markets with the banking sector, the regulation of mobile money, etc.

The Department for International Development UK (DFID) is collaborating with the Ministry of Finance (MOF) to provide technical assistance and support that will contribute to macroeconomic stability and economic growth in Ghana.

DFID support under the Macroeconomic Technical Assistance programme aims to provide support for the implementation of some of the reforms under the IMF programme, and more broadly to contribute to macroeconomic stability. This will contribute to the overall objectives on sustainable economic growth and poverty reduction by helping to reduce inflation, encouraging inward investment flows and enabling better use of government resources

PURPOSE

The purpose of the consultancy is to conduct a Comprehensive Financial Sector Regulatory Framework Study for Ghana in order to provide support and recommendations for action to the Ministry of Finance.

OBJECTIVE

This study will draw on international evidence and compare experiences from other countries (advanced and developing economies) to identify the features of an effective financial sector regulatory system and make recommendations for how Ghana's regulatory framework can be further developed.

SPECIFIC TASK

The consultant is expected to produce a study which addresses the following key questions:

1. What are the main objectives and functions of a comprehensive financial sector regulatory framework? This question should consider what the essential functions of a successful financial sector regulatory system should be – e.g. how far government authorities should focus on a broad or narrow set of objectives, and what the scope of a financial sector regulatory framework is.

2. Based on international evidence and country studies, what is the best way to divide these functions among different regulatory bodies? For example, what are the advantages and disadvantages of an integrated financial services authority compared with multiple agencies and regulatory bodies?

3. What are the incentives, checks and balances for different regulatory bodies to ensure that they are delivering successfully on their objectives?

4. How can risks around coordination failure, lack of clarity on functions, and overlapping remits among different regulatory agencies be addressed and minimised?

The analysis should include consideration of institutional factors that are allowing sub-optimal regulatory frameworks to persist and draw on international evidence for effective actions to address these institutional barriers.

The study should culminate in a report summarising the analysis and recommendations for future financial sector regulation and it should be accompanied by a presentation and dissemination of headline findings and recommendations to key stakeholders.

METHODOLOGY AND SCOPE OF WORK

This study is proposed as a secondary research method study, using a non-systematic review method to synthesise literature and should follow DFID research guidelines to assess the quality of studies used. The literature review should be complemented by qualitative consultation with experts and stakeholders in Ghana.

The team's key activities will include the following:

1. Literature review synthesising evidence on the features of effective financial sector regulatory frameworks (international)

2. A 'deep dive' into how Ghana's financial sector regulatory framework is organised and the key features that contribute to its effectiveness or hinder its function. This deep dive should draw on existing research on Ghana's financial sector regulation and expertise from institutions such as the International Growth Centre Ghana team and the Africa Centre for Economic Transformation.

3. Desk-based work to gather case studies or examples of approaches to different aspects on financial regulation adopted by other countries. The countries should include the UK, and a few other advanced and middle-income economies that emerge from the literature review as having international best practice or innovative solutions to financial sector regulation. These

case studies and examples should inform recommendations for action for improving Ghana's regulatory framework in future.

4. The literature review should be complemented by a consultation with stakeholders (heads of banks and other private financial sector institutions, heads of regulatory bodies, central bank senior leadership, academic and research institutions etc.) in Ghana. If feasible, the research team should include consultations in one or two of the countries drawn on for examples. The consultations in Ghana should include one consultation towards the beginning of the study to inform the analysis, and one consultation towards completion to validate and test findings and recommendations.

5. Producing the report and presenting findings to key stakeholders

The final report is proposed to be a published document with DFID branding, and as such should conform to DFID research standards on strength of evidence.

REPORTING AND TIMEFRAME

A proposed timeline for key activities is set out below:

Item/Activities	To be completed by	Responsibility
Complete recruitment and contracting of study team	10 Nov 2017	DFID Ghana Economic Advisor
Kick-off meeting with Ministry of Finance/FSD and some selected regulators	22 Nov 2017	DFID Ghana Economic Adviser, MoF/FSD key contact
Literature review and collation of existing data	25 Jan 2018	Study team
Consultations to refine scope and key questions	25 Jan 2018	Study Team and Ministry of Finance/FSD
Delivery of report outline and refined key questions	7 Feb 2018	Study Team
Agree dissemination and communication approach for report recommendations	7 Feb 2018	Study team, DFID Ghana, MoF/FSD
Early draft of report shared with MoF/FSD and DFID	7 Mar 2018	Study team
Validation workshop with key stakeholders – consultation on initial findings and recommendations	15 Mar 2018	Study team and Ministry of Finance (FSD)
Full draft of report to MoF/FSD and DFID	5 Apr 2018	Study team
Final Report – presentation to high-level stakeholders	27 Apr 2018	Study team and Ministry of Finance/FSD

- The suggested timeline above should be finalised and agreed between the MoF/FSD, DFID and the study team within two weeks of completing the recruitment of the team

- The study team is expected to provide updates on progress regularly – once every two weeks for the first three months of the project and monthly thereafter – to the MoF/FSD key contact and the DFID Ghana Economic Advisor

CAPABILITIES

The Consultant should propose a team structure that demonstrates the skills set demanded a specialised study on financial sector regulation. This is likely to include:

- Expertise and knowledge of financial sector development and regulatory frameworks in the context of developing, middle-income economies.
- Expertise in identifying and drawing on international best practice on banking and broader financial sector regulation.
- Demonstrated experience working with financial sector institutions such as central banks, capital market regulators, pension funds and others to shape policy and regulations.
- Demonstrated experience and expertise in financial sector issues in Ghana

CONTRACTUAL ARRANGEMENTS AND SUPERVISION

- Payments will be linked to successful delivery of programme outputs, and the Supplier accepts the risk of non-delivery.

- DFID, in consultation with the MoF/FSD, reserves the right to scale back or discontinue this contract at any point (in line with our Terms and Conditions) if it is not achieving the objectives anticipated.

- The primary client for this work will be the MOF/FSD and the contract will be coordinated by DFID Ghana. DFID Ghana's Economic Advisor will coordinate the study.

APPENDIX B: INSTITUTIONS AND EXPERTS

Institution	Persons
BANK OF GHANA	1. Elsie Awadzi, Deputy Governor 2. Joseph Kofi Taiwan, Head, Other Financial Institutions
NATIONAL INSURANCE COMMISSION	1. Mr. Justice Ofori - Commissioner
	2. Mr. Michael Andoh- Deputy Commissioner
	3. Mrs Emma Ocran - Director, Legal Services
	4. Mr. Seth Eshun - Head of Supervision
	5. Mr. Joseph Benton - Head, Marketing, Research and External Relations
	6. Mr. Martin Amateye - Internal Auditor
	7. Mr. Moses Ackah-Jayne - Head, Finance and Admin
	8. Mrs Esther Armah - Head Reinsurance and ALMA
	9. Mrs Stella Jonah - Secretary to the Commissioner
SECURITIES AND EXCHANGE COMMISSION	1. Rev. Daniel Ogbamey Tetteh – Director General
NATIONAL PENSIONS REGULATORY AUTHORITY	2. Mr. Ernest Amartey-Vondee - NPRA Director, Planning, Research, Monitoring and Evaluation.
INSTITUTE OF FISCAL STUDIES (IFS)	1. Mr. De her –Program Manager
	2. Dr. Kwakye
	3. Dr. Kusi
	4. Ebow Duncan
	5. Said Boakye, Research
	6. Dr. Duffuor, Chairman
FINANCIAL INTELLIGENCE CENTRE	1. William Mutator, Head of Research
	2. Emil Needy, Compliance
	3. Lucy Abrebese, Head of Analysis
INSTITUTE OF ECONOMIC ANALYSIS (IEA)	1. Dr. Insaidu
	2. Dr. Osei Asibey
FIDELITY BANK	1. Edward Opare Donkor, Chief Operating Officer
	2. Atta Yeboah Gyan, Finance Director
EXPERTS	1. Joshua Abor, Dean, University of Ghana Business School
	2. Dr Richmond Atuahene – Expert, Universal Capital Management Ltd
	3. Mrs Nyamikeh Kyiamah- Former Commissioner NIC
	4. Dan Aidoo Mensah, Insurance & Pensions Consultant
	5. Dr. Nii Sowa, Former Director-General, Securities & Exchange Commission