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Financial Sector Regulation in Ghana: “Twin Peaks Model a New Regulatory Paradigm.”

1.0 Introduction

The recent global financial crises and its fall out have tested the integrity and resilience of financial systems and have led to significant reforms to regulatory model around the world. As financial market spreads across the globe, regulators, supervisors, policy makers and the public at large have been questioning the effectiveness of financial regulation and whether changes to existing supervisory models are needed. History has shown that financial market disruptions have often been followed by regulatory reforms (Group,30: 2008). Some of these reforms were incremental, with targeted changes made to oversight regimes, while others, however, have adopted wholesale approach to regulatory models. All reforms shared a common goal to regulate and supervise the financial

markets and institutions in an optimal manner. Regulatory frameworks in many jurisdictions are increasingly being shaped by financial crises.

The USA which is home to the world's developed financial market is the "locus classicus" illustration of the discontinuous approach to regulatory modernization. Significantly, the USA Securities Act of 1933, Securities Exchange Act of 1934 and Banking Act of 1933 (Glass Steagall Act were promulgated after the economic depression of 1929 -1930. The Sarbanes Oxley Act (SOX) of 2002 was enacted after the unprecedented collapse of high-profile companies such as Enron and Worldcom. In USA, the Dodd -Frank Act of 2010 was enacted after the 2007-2008 global financial crises which saw the collapse of Lehmann brother. In UK, the centre of European financial markets, the failure of Northern Rock and distresses of Royal Bank of Scotland PLC, Barclays Bank PLC and Lloyds Bank PLC (FSA report, 2008) necessitated the enactment of UK Banking Act 2009 and changed from an integrated regulator to the Twin Peaks model of financial regulation in 2013.Over the last two decades, one model that has attracted a high degree of attention since its inception in 1988. The twin peaks model of financial regulation was pioneered in Australia and see regulation split into two broad functions: market conduct regulation and prudential regulation. This model has since been adopted by Netherlands, Belgium and United Kingdom.

As Ghana's financial system has become complex and integrated in respect of financial products and services calls for paradigm shift from the current silo-based approach to the twin peaks model of financial regulation. The recent collapse of UT bank ltd and Capital Bank ltd and distresses in the banking sector over the period 2009 -2017 have necessitated the need for Ghana to change from institutional model to the Twin Peaks model. This article identified various challenges and issues associated with Ghana's current regulatory system and consider the insight of twin peaks jurisdiction might offer as Ghana's contemplate paradigm shift.

2.0 Rationale for regulation

Governments primarily regulate markets to protect consumers. In the financial sector, an additional motivation for regulation is maintaining financial stability, which is a clear public good. Financial sector supervision thus requires a more elaborate framework and tends to be more rigorous and intensive than is the case in other sectors. The specific manner in which an international, regional, national, or market sector regulatory authority regulates depends on a variety of factors. Though there is admittedly no unified theory of financial services regulation, some of the broad objectives for regulation include protecting investors to help build their confidence in the market, ensuring that the markets are fair,

efficient, and transparent, reducing systemic risk, protecting financial services from malpractice by some consumers such as money laundering and maintaining consumer confidence in the financial system. Invariably, the structure and objectives supporting the regulatory framework differ from one jurisdiction to another. One key objective of regulation is to redress the information imbalance that sometimes exists between consumers and financial services. This is usually done by imposing upon financial services entities the minimum standards of business conduct. Moreover, the fairness of the financial markets depends in part on the degree of consumer protection. Overall, regulation attempts to strike a balance of protecting the markets, without stifling legitimate business. This may be achieved through preventing business failures by imposing capital and internal control requirements, such as ensuring that entities have sufficient liquidity to meet their obligations. Regulation is therefore necessary to ensure and maintain consumer confidence in the financial industry.

2.i Policy Goals of Financial Sector Regulation

According to Group 30 (2008), financial sector regulation is designed to achieve four key policy goals including: (i) safety and soundness of financial institutions, (ii) mitigation of systemic risk; (iii) fairness and efficiency of markets, and (iv) the protection of customers and investors.

2.ii Safety and soundness of financial institutions

Effective regulation is designed to promote the safety and soundness of individual financial institution. Regulatory oversight focuses on the solvency of institutions and the protection of customer assets which are critical to a well -functioning financial system. Traditionally, banks and insurance companies have been regulated through the combination of rules and prudential examinations and supervisions, while securities companies have been regulated on a more rule-based enforcement, with prescriptive rules relating to capital requirements, customer protection and business conduct regulation (Group, 30; 2008). In Ghana, prudential regulation is in the purview of the four regulators, the Bank of Ghana, Securities and Exchange Commission, National Insurance Commission and the National Pensions Regulatory Authority and they aim to ensure that financial firms it regulates and supervises are financially sound. This includes specifying standards covering risk management practices and other related requirements.

2.iii Mitigation of Systemic risk

An overarching goal of financial supervision is to monitor the overall functioning of the financial system as a whole and to mitigate systemic risk. For some regulators, this goal is statutorily mandated while others, it is implicitly understood and adopted. Financial systems cannot function

effectively without confidence in the financial markets and financial institutions. A major disruption to the financial system as experienced in 2007-2008 could reduce confidence in the ability of the market to function and also impaired the availability of credit and equity and adversely impact negatively on the real economic activity. Systemic risk generally refers to impairment of the overall functioning of the financial system caused by the breakdown of the key market players which include large, multinational banks, securities firms, hedge funds and insurance companies. In addition, there are systemically markets and infrastructures in particular the payment and settlement systems (Group, 30;2008).

2.iv Fairness and Efficiency of Financial Markets

Well- functioning financial markets are characterised by efficient pricing, which is achieved through market rules concerning the wide availability of pricing information and prohibitions against insider dealing and anti-competitive behaviour. For financial regulators to address the above issues, the financial markets require transparency of all material information to investors. Regulatory schemes further that these goals by mandating disclosures of key information, whether it is about business and financial performance or about prices at which securities are bought or sold, or other key information that is important to investors. Disclosures

permit the market participants to make optimal decisions with complete information.

2.v Business Conduct Regulation

Financial regulation is also designed to protect customers and investors through business conduct rules and regulation (Group, 30, 2008). Particularly, in cases where transparency and disclosure requirements are insufficient and incomplete, investors and customers are protected by rules that mandate fair treatment and high standards of business conducts by financial intermediaries. Conduct of business rules ultimately lead to greater confidence in the financial system and therefore potentially greater market participation. Business conduct regulation has a quite different focus from safety and soundness oversight. Business conduct regulation emphasizes on transparency, disclosure, suitability and investor protection. It is designed to ensure fair dealings. Classic examples of business conduct rules in Ghana include conflict of interest, insider dealing, not treating customer fairly, advertising restrictions and unsuitability standards.

3. An Overview: Models of Financial Services Regulation and Supervision.

There are four approaches to financial supervision currently employed across the world. These include functional regulation, institutional or regulation by silos, twin peaks regulation and single or unified regulation. The choice of a specific regulatory framework depends on different factors, some of which may be unique to a specific country (Group 30; 2008). Before designing any framework, a country must understand the role of the proposed regulator, the size and structure of the sector. It may also be important to take into consideration the economic, political, legal and historic considerations. The choice of regulatory framework should ultimately be one that will be effective and efficient. It must be able to lay down rules or principles of conduct of financial services, as well as ensuring that there are high levels of compliance and supervision in the sector. The theoretical underpinning for public intervention in economic matters is traditionally based on the need to correct market imperfections and unfair distribution of the resources. There are three general objectives of public intervention derived from the pursuit of stability, equity in the distribution of resources and the efficient use of those resources. The regulation and supervision of the financial system can be viewed as a particularly important case of public control over the economy. The accumulation of capital and the allocation of financial resources constitute an essential aspect in the process of the economic development of a nation. The peculiarities of the financial intermediation and of the

operators who perform this function justify the existence of a broader systems of controls with respect to other forms of economic activity. Various theoretical motivations have been advanced to support the opportunity of a particularly stringent regulation for banks and other financial intermediaries. Such motivations are based on the existence of particular form of market failure in credit and financial sector (White, 1996). There are three main objectives for financial market regulation and supervision (Giorgio, Di Noia, and Piatti, 2000). A primary objective of financial market regulation and supervision is in the pursuit of macro-economic and micro-economic stability. Safeguarding the stability of the financial system translate into macro-controls over the financial exchanges, clearing house and securities settlement systems. Measures pertaining to the micro-stability of the intermediaries can be divided into two categories: general rules on the stability of all business enterprises and entrepreneurial activities such as the legally required amount of capital, borrowing limits and integrity requirements; and more specific rules due to special nature of financial intermediation, such as risk based capital ratios, limits to portfolio investment and the regulation on off balance sheet activities. The second objective of the financial regulation is transparency in the market, and in intermediaries and investor protection. This is linked to the general objective of equity in the distribution of the available resources and may be mapped into the search

for “equity in the distribution of information as a precious good” among operators (Allan and Santemero, 1997).

3.i **Institutional approach to regulation**

The institutional approach is where an organization’s legal status determines the regulator which is tasked to oversee its activities from both a safety and soundness and a business conduct perspective. This model is deemed to be under strain, given the recent developments in the financial sector. Some of the jurisdictions that adopt this approach include China, Hong Kong, and Mexico. Institutional regulation facilitates the effective realization of controls, being performed with regards to subjects that are regulated as to every aspect of their activity and as to all the objectives of regulation. Each financial intermediary and market has only one regulatory authority as a counterpart. As a result, duplication of controls can be avoided and the costs of regulation can be considerably reduced. The institutional approach seems to be particularly effective in cases of intermediaries of a very similar type and that do operate in just one of the four traditional segments of financial intermediation (banks, insurance, securities and pension).

This approach suffers from potential inconsistency in the application of rules and regulations by disparate regulators. There are also challenges associated with inter agency coordination, which may include duplicity of

regulation. Because the same or economically similar activity may be conducted by entities that are legally authorized and overseen as banks, insurance companies, or securities firms, the separate institutional regulators may regulate the activity differently. This different regulatory treatment may take the form of different capital treatment or consumer protection. The institutional approach is limited from not having a single regulator with an all-round overview of a regulated entity's business or of the market as a whole. It also suffers from not having a single regulator that can mandate actions designed to mitigate systemic risk.

3.ii **Functional approach to regulation**

This is where the supervisory oversight is determined by the business that is being transacted by the entity, without regard to its legal status. Each type of business in an organization may have its own functional regulator. This approach to supervision remains quite common and appears to work well, so long as coordination among agencies is achieved and maintained. However, there is a general awareness that this may be a somewhat suboptimal structure. Because of this, a number of jurisdictions are moving away from functional approach towards twin peaks or integrated systems. Some of the jurisdictions that apply the functional approach include Brazil, France, Italy, and Spain. In the functional supervisory model, each type of such financial services is

regulated by a given authority independently of the operator who offers it. Hence, also this approach has important advantage that it calls for the same rules to be applied to intermediaries who perform the same activity of financial intermediation even though such operator may fall into different categories from a legal stand point. For example, activities including investment management, the gathering of deposits, lending, savings invested in insurance/ pension funds are each subject to homogeneous rules established by individual regulatory agencies, which independently supervises such activities regardless of the financial institutions engaged. This approach fosters economies of specialization within the supervisory authorities and might also represent a rather attractive solution for integrated, advanced financial markets. Another benefit of this approach to supervision is that, a single, technically expert regulator will apply consistent rules to the same activity regardless of the entity in which it is conducted. Regulatory arbitrage is avoided under this approach. The regulator is able to attract and retain highly qualified experts who can interpret and apply applicable rules to the same functions across different legal entities.

However, it is not without drawbacks, this model envisions an overlapping of bodies controlling the same product or service; there is the risk of excessive division of competencies among the regulatory agencies

(Oldfield and Santomero, 1997). Another disadvantage of the functional approach is that finally what is subject to failure is not the activity performed, but the financial institution. In case of serious problems of stability, it would be essential to guarantee protection and oversight with regards to the institutions rather than to individual operations (Padoa-Schioppa, 1998). A third objective of the financial market regulation and supervision is linked with general objective of efficiency, is the safeguarding and promotion of competition in the financial markets and at the micro level, regulation in the matter of concentrations, cartels and abuse of dominant positions.

As regulators expand the scope of permissible activities of the entities, there is a general reluctance to cede to another agency's authority. A related and quite significant concern with the functional approach is that product innovation can be inhibited as functional regulators spar over jurisdiction. Another disadvantage is that it forces financial institutions to deal with multiple regulators, which is often more costly in terms of time and effort. There is a tendency for multiple regulators to duplicate efforts to some degree. In rare instances, supervisors may take disparate regulatory positions relative to the same activity, putting the regulated institution in an untenable situation. Multiple regulatory agencies also

expend much time and effort coordinating and communicating among themselves.

Regulatory competition among the multiple regulators in a functional approach may lead to a race to the bottom effect. This is particularly where an institution has a choice of regulator for a particular activity and the regulator's budget is funded by the entities it oversees. At its worst, a regulator highly reliant on funding may be particularly vulnerable to regulatory capture, which can compromise its vigilance. Another disadvantage is that no regulator has sufficient information concerning all the activities of the entities to enable them monitor for systemic risk. Also, addressing systemic risk may require having a single regulator with authority to mandate actions across the entire financial system. No functional regulator may be in a position to fulfil that role.

3. iii **Integrated approach to regulation**

This is where a single regulator conducts both safety and soundness oversight and conduct of business regulation for all the sectors of financial services. This approach can be effective and efficient in smaller markets, where oversight of the broad spectrum of financial services can be successfully conducted by one regulator. It has also been adopted in larger, complex markets where it is viewed as a flexible and streamlined approach to regulation. This approach has the advantage of providing a

unified focus to regulation and supervision without confusion or conflict over jurisdictional lines. This clarity potentially leads to higher quality regulatory outcomes. According to Briault (1998), the advantages of integrated model include harmonization, consolidation and rationalization of principles, rules and guidance issued by the existing regulators or embedded within existing legislation. There is a single process for the authorization of firms, and for the approval of some employees, using standard processes and single database. A more consistent and coherent approach to enforcement and discipline, while recognising the need for appropriate differentiation. Some of the jurisdictions which apply this approach include Canada, Germany, and Switzerland. Another significant advantage of this approach is that it provides a more comprehensive, panoramic view of the regulated entity's business. The regulator can test for compliance with regulatory requirements also review business issues, management quality, risk management, and control issues on a prudential basis. It essentially gives the regulator the ability to look holistically at an entity and to respond to changes in a timely manner.

On the other hand, there are also arguments against creating a single unified agency responsible for all aspects of regulation and supervision and in particular for both prudential and conduct of business. Prudential

and conduct of business dimension to regulation require fundamentally different approaches and cultures and there is doubt whether a single regulator would in practice, be able to effectively encompass these to the necessary degree (Taylor, 1997). Abrams and Taylor (2000) posit that there is a potential conflict of interest between prudential and conduct of business regulation and supervision because of the different nature of their objectives. A single unified agency responsible for all aspects of regulation and supervision might be considered to be excessively powerful and yet more so than a more limited integrated agency.

Oversight of financial institutions that are involved in multiple business lines can be vastly simplified and presumably more efficient and cost effective with a single regulator. This is due to the consistent application of rules leading to fewer jurisdictional disputes between regulators. In terms of challenges of the integrated approach, some observers suggest there are concerns related to having a single point of failure. If an integrated regulator fails to identify an issue, there is not another agency to potentially fill the void. Defenders of fragmented regulation additionally maintain that overlapping jurisdiction potentially may increase the likelihood of a supervisor recognizing a problem or issue, due to lack of checks and balances.

A large integrated supervisor that regulates across all sectors will likely still have to divide its workflows into manageable functional or other business units. For example, BaFin, as the integrated regulator in Germany, is generally organized along sectoral lines, with separate departments created to handle entities that cross various lines. Thus, communication among the various functional divisions of a large, unified regulator is as important and may be as challenging as it would be across separate organizations.

Internally, this model lacks regulatory competition. Some commentators advocate for competition among regulators to ensure that they are challenged to outperform their competitors. Others also observe that there is no certainty that the opposite will not occur, where there will be a race to the bottom as regulators compete to be in the favour of the firms they oversee.

3.iv Twin Peaks Model of Financial Regulation

This is a type of regulation by objective where there is a demarcation of regulatory functions between two regulators; the first oversees the safety and soundness supervision function and the other to focus on conduct of business regulation. Twin peaks model (regulation by objective) Twin peaks model of financial supervision is an alternative approach to regulation and supervision which was proposed by Taylor [1995] and

Goodhart [2000]. Such supervision means creating two separate integrated bodies. The twin peaks model is a framework where one supervisory agency is in charge of all prudential supervision in the four main sectors (banking, securities, insurance and pensions), and another one is responsible for market conduct, consumer protection, and corporate governance. This approach was taken by: Netherlands (The Dutch Central Bank, The Netherlands Authority for the Financial Markets AFM), Australia (Australian Prudential Regulation Authority APRA, Australian Securities and Investments Commission ASIC), United Kingdom (Financial Conduct Authority, Prudential Regulation Authority) etc. Lately, as we can see in the section of the analysis of global trends, this model is not gaining greater prevalence. Although OECD estimation from 2009 was that this is a solid supervisory model with the emphasis on the Australian model. Prudential regulation is focused on the safety and soundness of the individual financial institutions while business conduct regulation if focused on the company's business with its clients. Business conduct regulation is designed to establish rules and guidelines about appropriate behaviour and business practices in dealing with customers. Prudential peak can be positioned inside or outside the central bank. Netherlands has chosen the twin peaks model with the central bank in charge of macro and micro prudential regulation, while Australia has chosen different twin peaks model in which the prudential supervisor,

Australian Prudential Regulation Authority APRA, is located outside the central bank, and another independent body, Australian Securities and Investments Commission ASIC, is in charge of business conduct regulation. A key issue in the Twin peaks model is whether or not the central bank is to be the prudential agency. The twin peaks model possesses the advantages of the integrated model, and corrects some disadvantages of the previous. It has two institutions which are two autonomous bodies, which means that they have clear goals that they are fully committed to and the responsibility is clearly defined. Countries identified as using the Twin Peaks model since the 2007-2009 global financial crises are UK and South Africa. The twin peaks model is characterized by separate prudential and market conduct regulation, it is regarded as the optimal way to ensure that consumer protection and market integrity receive sufficient priority and are not routinely presumed to be subservient to prudential concerns.

The main argument against the twin peaks model would generate significant inefficiencies, as conglomerate firms require both conduct of business and prudential regulation, and would, therefore, continue to deal with multiple agencies. Furthermore, the likely hood of communication, coordination and consistency problems would be more prevalent. It is also argued that there is in any case of a significant overlap of "conduct of

business" and "prudential" regulation, both of which go towards making up the compliance culture of the firm. Another advantage is the lack of danger that one type of regulation and goals will overpower the other one. But as the first two models, the twin peaks model meets the potential dangers. The problem is that both institutions monitor the same subjects but they have very different requirements. Some critics of this model also cite externalization of the conflict as the bad side. They emphasize that this model actually doesn't eliminate the conflicts between different supervisors, but only externalizes them. A review of international experience indicates a wide variety of regulatory structures (Goodhart et al, 1998). Some countries have created a single agency for prudential supervision, other have opted for multiple agencies and some have also twin peaks with two separate agencies. It is argued above that there is a spectrum of alternatives rather than an either-or choice, and there is considerable variety within the spectrum and even within the same basic model (Llewellyn, 1998). However, national differences reflect a multitude of factors such as historical evolution, the structure of the financial system, political structures and traditions, and the size of the country and financial sector.

From the literature review is visible that Group 30; (2008) mostly investigate 4 supervisory models: functional, integrated, institutional and

the twin peaks. The emphasis is on the purity of the models with clearly highlighted advantages and disadvantages of the each model. However, in order to establish the effective regulatory and supervisory architecture, an increasing number of countries are establishing the models which do not strictly belong to any of the described models. They establish the hybrid regulatory and supervisory architectures which best match their financial, economic, cultural, political, historical, expertise, technical and other systems and capacities.

4.0. Structure of the Financial System in Ghana: An Overview

Ghana's financial sector has been undergoing extensive restructuring and transformation during the last two decades as an integral part of a comprehensive growth agenda. Liberalisation has perhaps had telling effect on the financial system in Ghana. The financial system, once the epitome of state control, has been rapidly freed of many of its constraints. Interest and foreign exchange rates have been freed, foreign and private domestic investors have been allowed into areas hitherto reserved for the state and the pre-emption of resources by the state has been curtailed. Financial markets have changed beyond recognition. While these changes have ushered in a new era of opportunities for entities in the financial sector, however it has also exposed the system to higher risks. Competition has dramatically increased. New kinds of players have

appeared, such as non-bank financial institutions, mutual funds, mortgage companies, foreign institutional investors, overseas and regional corporate bodies. The dismantling of controls has increased the need for effective regulation.

The market place has seen a market shift from state-controlled firms engaged in distinct banking and insurance businesses to more integrated financial services with significant participation of both foreign and private domestic investors and financial services conglomerates offering a broad range of financial products and services across the financial market place. The traditional demarcations among products and services offered by Ghanaian banks, insurance, securities firms and pension funds have blurred, as each has sought to maximize profits through business expansion and financial innovations. The days when banks primarily took deposits and created loans, investment banking firms engaged in a narrow range of securities businesses such as underwriting, brokerage and advisory work while insurance companies only issued life policies, property policies and car insurance policies are almost long past. Today in Ghana, each of these sectors engages in businesses that offer complex and sophisticated products. The financial innovations had enhanced the profitability of the financial sector for a period of time, but has also created

significant challenges in the managing of the risks of the cutting- edge products (i.e. mobile banking, bancassurance,).

Although the financial system remains relatively under-developed, the number of financial intermediaries and their scale of operations have increased, most notably in banking, insurance, capital markets and micro-finance companies (IMF country assessment report,2013/13/187). The range of financial services has also broadened and corporate structures are becoming complex, with financial conglomerates gaining importance. In addition, foreign shareholdings from within Africa has increased in banking and insurance sectors. Ghana's financial sector is bank dominated. Deposit money banks accounted for more than 85% of total financial sector assets, followed distantly by rural and community banks with 3%, while pension funds, the insurance sector, securities sector and other sectors such as leasing are still at a nascent stage (IMF Country assessment reports on Ghana, 2013,13/187; 2014, IMF, 2014 14/129). The main financial institutions in the Ghanaian economy are the deposit money banks. They are the main mobilizers of funds, providers of risk management services and financiers of medium and large- scale enterprises and government. It is through deposit money banks that finance and makes its major contribution to sustained economic growth, development and stability in the country (FINSSP 11, 2012). Banks also

play an important role in ensuring an efficient and effective payment systems and transaction processing. While playing the foregoing role, the banking industry is also the medium through which monetary policy is implemented by the Bank of Ghana. The effectiveness and efficiency with which the Central Bank is able to implement monetary policy depends on the character of the banking industry. In this respect, the Ghanaian banking system has been less than effective in the transmission of monetary policy as reflected in muted response of banks to changes in the policy rate of the Bank of Ghana, especially when it involves in the lowering of lending rates (FINSSP, 11, 2012)

According to the Bank of Ghana annual report (2016) there were 33 deposit money banks made up of 16 local banks and 17 foreign controlled banks as at the end of December,2016. There were also 64 non-bank financial institutions (NBFIs), 141 rural and community banks, 564 micro-finance companies, 420 forex bureaux and 3 credit reference bureaux. The aggregate assets of the industry stood at GHC 96,529. 30 million by the close of December 2016 (Bank of Ghana annual report, 2016). The Deposit money banks accounted for GHC 82,644 million, with the NBFIs accounting for GHC 9,560 million, Rural and Community banks also accounted for GHC 3052 million while Micro-finance institution (MFIs) assets stood at GHC 1, 272 million. Ghana’s financial industry is

dominated by deposit money banks whose share of the total asset is about 85%. The deposit money banks operated 1341 branches in the 10 regions and employed 19977 staffs across the country (Bank of Ghana's annual report,2016). In addition to the main banks, the NBFIs contributed about 9,9% of the industry asset base, followed by the RCB with about 3.1%.

While banks only provide loans (i.e. debt capital) to firms for investment, the securities industry enables firms to acquire equity and debt capital to finance their operations. In so doing, the securities industry provides businesses the opportunities to achieve appropriate mix of debt and equity capital. The Ghana Stock Exchange has been operating since 1990 and as at December 2016 had 37 listed companies with total market capitalization of GHC 52, 690 million. The funds under management of licensed fund managers (pension, collective investment schemes and others) as at December 2016 stood at GHC 20, 158, 878, 786. The total capital market operators were 273 as at December, 2016 (SEC Quarterly bulletin, Vol, 3, 2016). The insurance industry is another emerging sector of the Ghanaian financial sector. As at December, 2016, the industry was made up of 26 non-life insurance companies, 24 life insurance companies and 3 reinsurance companies. The bulk of the business is in non-life insurance. The insurance market penetration in Ghana is relatively low.

Ghana's insurance penetration stood at less than 2% of GDP, according to the African Insurance Organisation report (2016) well below that of Kenya (3.2%), Namibia (7.5%) and South Africa (14.5%)

Regulation of the Ghanaian financial sector has been in consonance with its compartmentalised financial system. The traditional method of regulating Ghana's financial services is the "entity" approach in which the regulator regulates everything that the entity does. Under this approach there is a regulator for banks, one for insurance companies, one for securities markets and one for pension funds, or in short, one regulator for each market segment. As mentioned above, the fragmented structure of regulation of financial services is based on sectoral divisions has become increasingly outdated. For instance, some Ghanaian banks have moved into insurance business, what is known as the bancassurance model. Many of the banks have their own asset management subsidiaries or associated with securities markets, housing financing or investment banking units. The entity approach to financial regulation under these circumstances had resulted in regulatory overlaps and arbitrages. Financial services players in Ghana are today facing far more complex risks- the distinction between financial sectors in finance, such as banking and securities business, is blurring and there has been rapid integration in the Ghanaian financial markets. For regulators such as Bank of Ghana,

Securities and Exchange Commission and National Insurance Commission, this poses several challenges. The bodies such as the Ministry of Finance and Economic Planning, and Bank of Ghana who are presently responsible for financial stability have to consider far more parameters and have to be prepared for distresses, failures, shocks and crises from many more quarters. The manners in which supervisory activities affect financial firms has changed dramatically over the past two decades and in complex ways. Rules and regulations have, therefore, to be devised need to be consistent across all four sectors (banking, securities, insurance and pension), leave no gaps and are implemented effectively and fairly. Otherwise, regulators will be exposed to the danger of regulatory arbitrages and overlaps. This occurs when financial conglomerate moves away from strictly regulated sector to one which are comparatively lightly regulated. This could lead, for example, to a focus away from banking which is currently highly regulated to other sectors where the regulatory environment may be less regulated.

Over the past two decades, there has also been explosive change in the Ghanaian financial system due to the influx of information technology facilities, telecommunications and information processing sectors. The Ghanaian financial sector has been information intensive and the greatest innovations of recent years have been in the processing and transmission

of information. For example, the National Switch (the common platform); biometric smart cards, code-line cheque truncation facilities, real time gross settlement and automated clearing systems have provided Ghana with an efficient, robust and modern payment system infrastructure (Bawumia, 2010). The post financial sector reform period also witnessed the deregulation of the sector which has resulted in the influx of foreign banks and insurance companies, private domestic banks, the development of an organised capital market with establishment of the Ghana Stock Exchange in the 1990s and an increased in the number of non-bank financial institutions among others (FINSSP, 11, 2012).

The emergence of the universal banking license concept in 2003 also helped to the dynamics in the Ghanaian financial markets. The drive towards universal banking concept could be understood by appealing to either demand or supply forces. On the demand side, customers found complementarities arising from reductions customer and search costs. For instance, retail customers found the convenience of one stop shopping for commercial banking and insurance needs; while corporate customers preferred their private information to a single consolidated entity that meets their commercial and investment banking needs. On the supply side, benefits derived from synergistic gains and revenue diversification. Synergistic gains were obtained by spreading fixed costs or by reusability

of information obtained through a banking relationship which lowered the costs of providing ancillary securities and insurance services. Alternatively, by integrating imperfectly correlation between banking, securities and insurance that might reduce the universal banks' risk exposures, thereby allowed the risk exposures, thereby the financial institution economised on bank risk management costs.

5. Current Regulatory Arrangements in the Ghanaian Financial Systems.

To date, Ghana's financial regulatory approach has been close to the traditional approach in China and Mexico where the regulatory authorities have been established alongside institutional or sector-based lines and separate regulatory authorities have established to regulate and supervise the banking sector; insurance sector; securities sector and pension sector. The current financial regulatory structure follows the traditional segmentation of financial systems based on four main sectors (banking, insurance, securities and pension) and based on strict of competence. The current regulatory structure can be described as a sectoral regulation which maintains separate regulatory agencies across segregated institutional lines of financial services such as banking, securities, insurance and pension (Group, 30, 2008). The existing regulatory arrangements for financial services involve four regulators

exercising jurisdiction over different sectors of the financial industry. It is fragmented with each regulatory agency being responsible for a particular segment. Under the Silo model of financial regulation, regulatory oversight is determined by the business that is being transacted by an entity without regard to its legal status. Each type of business has its own institutional regulator and is responsible for both prudential regulation and business conduct regulation.

The Ministry of Finance and Economic Planning is the apex body regulatory structure that has the overall regulatory oversight over all financial intermediaries in Ghana. This Sector Ministry has the overall responsibilities to develop, implement and supervise the financial governance structure in Ghana (FINSSP11, 2012). The Sector Ministry is assigned the responsibility for also providing the policy framework for the financial sector while the actual regulation of the sector within the policy framework is assigned to the Bank of Ghana, Securities and Exchange Commission, National Insurance Authority and the National Pension Regulatory Authority. The Minister of Finance and Economic Planning has ministerial responsibility for regulatory agencies in the Ghanaian financial sector. In addition, the Minster is the portfolio manager for government shares in some financial institutions. The Ministry recently established the Financial Sector Division. This division advises the Minister in respect of

matters affecting the financial sector. The regulatory objectives of each of the Ghanaian financial regulators are clearly expressed by laws and are broadly consistent with international standards.

The Bank of Ghana is responsible for regulating and supervising deposit money banks and non-bank financial institutions. In the case of banking and non-banking financial institutions, Bank of Ghana Act 2002 Act 612 as amended as Bank of Ghana (Amendment Act 2016 Act 918); Deposit Protection Act 2016 Act 931; Banks and Specialised Deposit Taking Institutions Act 2016 Act 930; Borrowers and Lenders Act 2008 Act 778 and ARB Apex Banking Regulation provide a set of objectives of regulation and supervision over the banking and non-banking industries in Ghana. These set of laws and regulations are meant to promote the lawful, sound and steady operation of the industry and preserve public confidence and trust in the industry. Under the Silo model of financial regulation, the Bank of Ghana focusses on prudential regulation (focussing on the safety and soundness of individual bank and non- bank financial institution as well as on systemic regulation and supervision to ensure stability of the banking system and payment systems. In addition, Bank of Ghana also focusses on conduct of business regulation to ensure that customers are prevented from factors such as incomplete

information, not treating customers fairly and bad practices by financial firms.

In the case of the securities sector, Securities Industry Act 2016 Act 929 provides the Securities and Exchange Commission the power to supervise and regulate the securities market according the law, maintain order of the securities market, and also ensures its lawful operation. The core functions of the SEC include the maintenance or surveillance over activities in the securities industry to ensure orderly, fair and equitable dealings in securities, the licensing of market operators and collective investment schemes (unit trust and mutual funds), the examination and approval of invitations to the public, and most important of all protection of investors (SEC Notice no. SEC/PN/001/09/2017). Other relevant legislations and regulation include Securities and Exchange Commission regulations (2003) L.I. 1728; Central Depository Act 2007 Act 733; and Unit Trusts and Mutual Funds regulation L.I. 1695. Broadly the SEC licenses and regulates the capital market, promotes development of securities industry and advises the Ministry of Finance and Economic Planning on the matters relating to securities industry. In addition to approvals and licensing, a major part of the work of the SEC involves surveillance of the market operators and enforcement of the securities

laws and regulations. The SEC carries out both on -site and off- site surveillance of market operators.

For the insurance sector, the Insurance Act 2006 Act 724 provides the National Insurance Commission the powers to regulate and supervise the insurance industry, safeguard the order of insurance market, and protect the lawful rights and interests of the proposers, the insured and the beneficiaries. Under the law, no one entity may undertake both life and non-life business. The National Insurance Authority is responsible for both prudential regulation and market conduct regulation in the insurance industry. The aggregate assets of the insurance industry are relatively small.

In the case of the pension industry, the National Pension Act 2008 Act 766 provides the National Pension Regulatory Authority the power to regulate and supervise the pension industry. The Act 766 increased pension contributions in the name of employees to 18.5% of employee salary, of which the employer contributes 13.5% and the employee contributes 5.5%. Currently. There are three tier systems. Tier 1 is mandatory contribution. Basic state social security scheme fully funded and administered by SSNIT. SSNIT receives 13.5% and passes on 2.5% out of the 13.5% that it receives to the National Health Insurance Scheme, leaving 11% for SSNIT for the individual contributor. The Tier 2 mandatory

contributions are privately managed occupational pension scheme of 5% contribution by employee salary. Tier 3 is a voluntary occupational and personal pension scheme and this scheme is meant for the informal sector of the economy. The Act 2008 Act 766 provides for Trustees as managers of the Tier 2 and 3 schemes and they are assisted fund managers and custodians who are banks, insurance companies, or non -bank financial institutions. Under the law, trustees provide professional indemnity to the National Pensions Regulatory Authority, while custodians provide performance guarantees up to the value of assets under management (FINSSP,11/ 2012). NPRA licenses trustees and register fund managers and custodians for pension plans. The NPRA also ensures that entities can play one of the three roles (trustee, fund manager or custodian) for a particular pension scheme.

The existing regulatory arrangement for financial services involves four regulators exercising jurisdiction over different sectors of the financial industry. It is fragmented with each regulatory agency being responsible for a particular segment. In many areas of financial sector operations, reasonably good laws and regulations exist. However, the difficulty has been the capacity of regulatory agencies to enforce the existing rules. According to FINSSP 11, (2012), the search for growth and economies of scale and scope has led to a breakdown of barriers in the financial sector.

Universalization of banking, for example, is reflected in the fact that banks are offering a variety of non-banking services alongside their traditional banking services. Such services include insurance, stock brokerage, investment management, investment banking and financial advisory services. Similarly, insurance companies are offering investment related retirement products. Ghana’s regulatory structure has not caught up with this convergence. Fragmentation of regulation has resulted in the following anomalies: (i) Insurance companies offer investment management services and retirement plans but are not subject to the regulatory oversight of the SEC and NPRA which have regulatory responsibilities for investment advisory services and pension plans. (ii) Accountants, lawyers and banks are exempted from licensing as investment advisers while management consultants who offer the same services are not, (iii) Banks are dealers in the government securities market but are not subject to regulatory oversight by the SEC, thus leaving investors in the government securities market with less protection than what is envisaged in the Security Industry Law (FINSSP 11, 2012). The regulatory response to this has been a trend in a number of jurisdictions towards the move to the twin peaks model of financial regulation. This allows a prudential regulator to supervise the range of activities more efficiently by taking a holistic view of the financial services market and

market conduct regulator to ensure that customers and investor are well protected.

This largely politicised regulatory structure is a product of piece meal reform and gradual evolution as opposed to deliberate planning. Although, it is not as fragmented as that of the United States of America, commentators' postulate that a system of multiple regulatory agencies is defined by regulatory gaps, duplication, overlaps and inconsistent regulations and cost of ineffectiveness (Schooner, 1998). Unfortunately, the Ghanaian regulatory system has been caught napping several times in the last decade, for example, the recent collapse of UT Bank ltd, Capital Bank ltd and DKM micro finance company ltd. Indeed, it will appear that the authorities were not fully aware of the systemic risks that the reform would introduce. Had they been, it seems likely that the frequency and intensity of the bank distresses and failures witnessed during the last decade would have been greatly mitigated. In the circumstances, there is an urgent need to work out the kind of regulatory structure, with a view of to anticipate and diffuse the problems and challenges in the Ghanaian financial sector. Over the past two decades, developments of the financial sector have led to the formation of financial conglomerates, whose activities overlap the current regulatory structure. Such developments in some countries such as UK, South Africa and Uganda have led to the

setting up of twin peaks model of financial regulation. Since the extensive reforms of the financial sector in the 1990s, the sector had seen rapid development in terms of growth in the number and variety of financial institutions. Further, as the impact of financial innovation, universal banking concept in 2003 and financial conglomerates had increased, the weaknesses in the current regulatory structure have become evident, particularly in the areas of regulatory arbitrages, regulatory overlaps, and coordination, ten challenges and issues that are outlined below.

5.i. Challenges in the Ghana's Current Silo based Model of Financial Regulation

The main arguments against the Ghanaian silo-based approach to financial regulation is that it has led to fragmentation of regulatory arrangements between regulators and confusion of the regulated population as a result of different objectives, styles, staff and IT systems between regulators, with flow on effects on the wider population. The current silo approach model of financial regulation has been a recipe for regulatory arbitrage. A potential danger with the multiplicity of agencies as experienced in the Ghanaian financial system is that overall effectiveness was impaired as financial institutions engaged in various forms of regulatory and supervisory arbitrages (Llewellyn, 1998). This problem has been put by Abrams and Taylor (2000) in the following way: regulatory

arbitrage "can involve the placement of a particular financial service or product in that part of given financial conglomerates where the supervisory costs are lowest, or supervisory oversight is least intrusive. It has also led financial firms to design new financial institutions or redesign existing ones strictly to minimize or avoid supervisory oversight (Abrams and Taylor, 2000). This has induced "competition in laxity" as different agencies competed to avoid a migration of financial institutions to the competing agencies.

First, the growing internationalization and regionalization of the Ghanaian financial system over the last two decades had provided the financial markets with cross border contagion issues, cross border supervisory and consolidated problems, pricing efficiency and risk dispersion and also encouraged product innovation and complexities. Even though the Bank of Ghana since 2014 had reviewed its cross- border supervision and consolidated supervision, but other regulators such as National Insurance Commission and Securities and Exchange Commission are yet to undertake consolidated supervision despite the presence of foreign subsidiaries of insurance companies and the growing importance of financial conglomerates in Ghana (IMF, 2011;2012). The increasing internationalization and regionalization of the Ghanaian financial markets had also accentuated the international dimension to regulation which in

turn has implications for the institutional structure of multiple agencies both at the national and international levels.

Second, another area of consideration is the most challenging, having plagued financial regulation since medieval times when usury restrictions were circumvented. For example, bank loans are not properly classified as required by Bank of Ghana's regulations and IFRS rules. In some case some banks transferred bad loans to their Assets Management Companies subsidiaries of the banks. Goodhart (2010) has emphasized that as a result of boundary issues (the ability of the regulated entities to shift prohibited activities to unregulated domains, whether in another part of the financial system or another location it is better to think of controls as continuous variables rather than on or off switches, to lessen these concerns.

Third, the current fragmented approach is discredited for inefficiency, complexity, confusion and cost ineffectiveness to the regulated and government. The hallmark of fragmented regulatory regime is their inability to anticipate how to address future financial distress or crisis or adapt to market innovation and development. Additionally, it is argued that they are susceptible to capture by the regulated (Hupke, 2009). Conceivably, because none of the regulators has capacity to "look at the financial market as a whole" no governmental agency commands all the

necessary information to monitor systemic financial risk (Cunningham and Zaring,2009). The cardinal question is whether the foregoing challenges are sufficiently weighty to constitute the impetus for shift in regulatory paradigm. Fourth, the institutional approach was devised from a different structure of the financial system than exist in the 2017, The universal banking license adopted in 2003, financial innovations and the structural changes over the last decade had challenged many of the assumptions made at the time when the institutional model of financial regulation was created. This has raised issue of whether institutional regulatory structure mirrored the evolution of the structure of the financial system and the business of regulated firms (Llewellyn, 2006).

Fifth, the emergence of financial conglomerates and universal banking licensing concept in 2003 had challenged the traditional demarcation between multiple regulatory agencies and had made the business of regulation more complex. In particular, the issue arises as to whether a structure based on specialist agencies supervising different parts of the business of a financial conglomerate might lose oversight of the financial institution as a whole (Llewellyn, 2006). According to IMF country assessment report (2011) on Ghana's financial stability, it opined that the exact scope of financial conglomerates in the financial sector was not fully known. However, the IMF noted that nine universal banks which

accounted for about 55% of the total banking assets, had subsidiaries securities firms as well as insurance companies. Since the banks were not supervised on a consolidated basis and there were also no mapping of shareholders and common directors. There could be possibility that the affiliated companies existed which could allow for related or connected lending without the notice of the regulator. These growing inter-linkages had increased the potential of contagion risk on the entire system.

Sixth, under the current fragmented regulatory structure, the distinction between different financial products and services have become blurred which had questioned the case for regulating them differently. The potential danger of a fragmented structure is that similar products are regulated differently because they are supplied by different types of financial firms. These have impaired competitive neutrality. In the post-financial sector period, financial innovation and the emergence of new financial markets have made the risk characteristics of financial firms generally more complex. In particular, the systemic dimension of regulation and supervision were no longer exclusively focused on the banking sector. Banks in Ghana have lost some of their uniqueness which had traditionally a case for supervision by the central bank.

Seventh, regulatory overlap remained another challenge in the Ghanaian financial services sector. The overlap between the regulatory objectives

of financial regulators in Ghana appears to be more critical issue in a practical sense. Regulatory overlap refers to the situation where products or services, transactions and other activities undertaken in the financial services sector are subject to the regulation of two or more regulators, giving rise to potential conflict and difficulties in compliance. Eighth, regulatory coordination has also been a major challenge for the multiple regulators in Ghana. There are no informal bilateral arrangements between each of the four regulators as well as no formal Council of Financial Regulators to facilitate coordination amongst the four Ghanaian regulators. There is a challenge of providing the effective coordination mechanisms required of a multi-agency system. It is broadly recognized that regulatory frameworks that divide authority between multiple agencies require strong coordination mechanisms to ensure that issues needing regulatory oversight do not fall through the gaps (BCBS Core Principles, 2006). There are no coordination mechanisms that would have added significance with the recognition that would have taken into account of systemic risk and macro-prudential concerns that would have addressed the integrated nature of the Ghanaian financial system.

Ninth, there has been potential conflict between regulatory and economic objectives among the four regulators in Ghana. The Social Security and National Insurance Trust dominance in the financial sector had posed

major conflicts between all the four regulators (BOG; SEC; NIC and NPRA). It is currently the main provider of pension in Ghana. It also has a significant shareholding in 8 of the 33 universal banks and holds a significant level of deposits in the banking system. In the securities market, SSNIT also holds position in 22 of the 33 listed companies on the Ghana Stock Exchange (IMF, 2011, IMF 2013; 2014). The SSNIT also holds equity in two insurance companies and also acts as primary dealer in the Government gilt edged securities and Treasury bills. The SSNIT dominance in the financial sector of the economy had created conflict between regulatory and economic objectives for the four regulators. The ownership role of the state, especially of the Bank of Ghana, in the financial sector raises concern about a level playing field and reputational risks to the Bank of Ghana's credibility as an independent regulator and supervisor (IMF, 2011/11/121; IMF, 2013/13/187).

Tenth, regulatory independence has been a major challenge in the Ghanaian financial system. Regulatory independence implies that regulator has a wide autonomy in setting a minimum prudential rules and regulations that follow from the special nature of financial intermediation. Independence is looked at from four related angles which include regulatory, supervisory, institutional and budgetary. Supervisory independence suffers from political influences. Political pressure not only

weaken financial regulation but also hinders supervisors who enforce the regulations from action. It is now increasingly recognized that political meddling has consistently caused or worsened financial instability. For example, forbearances have remained feature of Bank of Ghana's supervision as evidenced by its approach to weak or undercapitalized banks and readiness to grant waivers from large exposures (single obligor) limit (IMF, 2011/11/121; IMF, 2013, 13/187; IMF, 2016/16/116). The weak enforcement of prudential regulations by the regulators-known as regulatory forbearance is described by Honoham (1997) as the "Achilles" heel of any regulatory system. Regulatory forbearance took a number of forms, for example, Bank of Ghana did not strictly enforce loan classification requirements, or loan exposure limits, but it became particularly crucial when regulator had to deal with current bank distresses and failures in Ghana.

Eleventh, another important factor to be considered is the environment in which the Ghanaian regulators operate. No regulator operates in a vacuum, and weaknesses in the infrastructure can render useless the most careful supervisory oversight. Weak accounting and audit practices and poor corporate governance practices, for instance, have scuttled the best plans of Bank of Ghana, Securities and Exchange Commission, National Insurance Commission and National Pension Regulatory

Authority. It is also no use blaming regulators if the laws and regulations are defective. To take just one example, improved insolvency arrangements are critical; the absence of satisfactory bankruptcy arrangement that permit the orderly restructuring corporate debt has been an important market development. This has certainly been the case in Ghana, where there is at present no satisfactory exist for capital, and as a consequence, billions of cedis are locked up in the non-performing assets of Ghanaian banks.

Institutional independence has to do with the regulatory agencies (Bank of Ghana, Securities and Exchange Commission, National Insurance Commission and National Pensions Regulatory Authority) status outside the executive and legislative branches of government. There are three critical elements in the institutional independence-: (i) job security and tenure of the senior management and boards of directors; (ii) regulator' governance structure and (iii) the transparency, openness and disclosure in the regulatory decisions. However, regulatory agencies in Ghana have been subjected to political interference and pressures over the years. Any change in the government in power has resulted in the dismissal and sacking of boards of directors, CEOs and sometimes executive directors especially with particular reference to SEC, NIC and NPRA because these actions strategic planning has been very poor

In conclusion, the main arguments against the silo based model included the fragmentation of regulatory arrangements, competition between regulators and confusion for the regulated population as a result of different objectives, staff, styles and Information technology systems between regulators, with flow on-effects on the wider population and hence therefore a **call for regulatory paradigm shift to the twin peaks model.**

5.0 Twin Peaks Model a New Regulatory Paradigm for Ghana.

The twin peaks model of regulation in Ghana will seek to create a stable and more inclusive financial sector which is needed to support increased economic growth and development in Ghana. At a macroeconomic level, a stable and well-developed financial sector will support real economic activity through the efficient channeling of savings into productive forms of investment, contributing to the country's objectives on job creation and a more inclusive economy. For individuals and firms, access to affordable and reliable financial products and services enables people to engage in economic transactions on a daily basis, to save for retirement and other long- term goals, to insure against varied risks and avoid an over reliance on debt and exploitative or reckless lending practices in Ghana. Access to appropriate financial products and services in Ghana is necessary for economic growth and well -being is to be genuinely inclusive. The twin

peaks model of regulation of financial institutions and markets seeks to respond to the market failures that can arise due to particular nature of risks and challenges in the financial sector.

The Ghanaian financial system has a number of features that suggest that a twin peaks model of financial regulation would be best suited. In particular, the Ghanaian financial sector is increasingly become interconnected and dominated by large foreign groups, with each group typically comprising at least a bank, brokerage firms, investment advisors, fund managers and insurance company. This number of financial groups also lead to increased competition. Many financial institutions sell complex products such as bancassurance and pension schemes with opaque fee structures, often higher than they would be if the system was more competitive, and financial institutions do not necessary provide services to all Ghanaians, but to major corporate customers and urban customers tend to get a wide range of suitable services and products, while poor and rural folks do not enjoy any financial services at all. The regulatory landscape for the financial services sector is also fragmented and based on a range of different laws and regulations applied at an industry level- for example, legislation for banking, insurance, pensions and capital markets. This has resulted in a silo based approach to regulation of various industries, with different standards, and requirements applying to

different financial sectors and have allowed for regulatory arbitrages and overlaps.

The rationale underpinning the adoption of the Twin Peaks model of financial regulation in Ghana should be encapsulated by South Africa and other countries such as Australia and UK, the rationale for Twin Peaks Model reflects four primary considerations. First, market developments in the post financial sector reform period in Ghana, increases in financial conglomerates and the blurring of the boundaries between financial products and services. Second, the availability of economies of scope and the importance of allocating scare regulatory resources efficiently and effectively. Third, the benefits of setting a twin peaks model would improve coordination and cooperation among regulators and fourth, the clarity of making both prudential regulator and market conduct regulator accountable for its performance against statutory objectives for the twin peaks regulatory model. Twin peaks model is a comprehensive and complete system for regulating the Ghanaian financial sector. It aims to ensure better outcomes for financial customers and the wider economy, by ensuring that customers are treated fairly, that their funds are protected against risk of institutions failing, and by reducing risk of using public funds to protect the economy from systemic failures. A twin peaks system also represents a decisive shift from the existing fragmented regulatory

approach, minimizing regulatory arbitrages and overlaps or forum shopping. It will also focus on implementing a more streamlined system of licensing, supervision, enforcement, customers complain, and customer advice as well as education across the Ghanaian financial system.

The twin peaks model of financial regulation is a regulatory model which creates two regulators for the financial services sector: A prudential regulator regulating the solvency and liquidity of the financial service sectors A market conduct regulator who regulates how financial services institutions (i.e. Banks, insurance, capital market and pension funds) conduct their business, design and price their products and treat their customers. Bailey (2010) cites the following arguments for the Twin Peaks Model: (i) reduces the risk of regulatory overlaps and duplication that can arises with multiple regulators and conversely, the risk of gaps in the regulatory coverage and enforcement, (ii) strengthen the accountability of regulator (accountability does not diffuse across multiple regulators) and reduces the potential for blame shifting, (iii) increase economies of scale and scope in market supervision, potentially contributing to better use of resources, regulatory effectiveness and reduces administrative costs. This is particularly important for small country and financial market such as Ghana, (iv) allow development and implementation of a unified and consistent approach to market conduct regulation, supervision and

enforcement across the entire Ghanaian financial system reducing regulatory arbitrage, (v) allow better monitoring of issues affecting the entire financial system, as well as rapid policy responses, (vi) facilitates the regulation and supervision of financial conglomerates, where financial firms are operating in more than one segment of the financial market, and (vii) eliminates potential conflicts that can arise from different regulatory objectives between multiple regulators. In this article, the writer provides a new paradigm for thinking about the way jurisdiction like Ghana can create and organize regulatory agencies. The move towards a twin peaks financial regulatory approach will require far more than just adding and moving competencies between agencies. An objective- based approach to legislation would challenge the fundamentals of legislative and administrative jurisprudence in Ghana. The twin peaks model is regarded as hybrid approach which is designed to achieve the benefits and efficiencies of the integrated approach, while minimizing the conflicts that may arise between the objectives of safety and soundness regulation and consumer protection transparency.

6.i**. The twin peaks model has the following broad objectives:**

A. To strengthen Ghana's approach to market conduct regulation which is non-existent in the financial services sector in Ghana hereby improve confidence and create a sustainable financial services sector.

B. To create a more resilient, stable financial system that will help prevent distresses and crises from developing and more easily resolve those distresses and crises that occur, at a lower cost to customers, consumers and tax payers.

C. To expand access to the financial services sector through financial inclusion and

D. To combat financial crimes and money laundering activities in Ghana

6.ii. Four key motivations for a twin peaks model of financial regulation:

A. The need for regulator to deal with market abuses such as insider dealings and ensure adequate investors and consumer protection in the Ghanaian financial services sector.

B. The need for legislation when financial services institutions experiences capital, liquidity or solvency pressures

C. Under the twin peaks model of regulation there will be consistent regulatory standards for all financial services institutions

D. Cooperation and coordination between regulators will minimize the regulatory gaps and arbitrages

6.iii **Prudential Regulation Authority (PRA)**

The prudential regulator's strategic objective will be to maintain and enhance the safety and soundness of the regulated financial institutions. This will include macro and micro prudential regulation and supervision. The prudential regulator will be responsible for assessing and addressing system risk across the financial services sectors and for the prudential regulation of banks insurances, pension funds and capital markets. The new regulatory architecture will ensure that macro-prudential regulation of the Ghanaian financial system is coordinated effectively with the prudential regulation of individual financial firms, and that a new, more judgement focused approach to regulation of firm is adopted so that business models can be challenged, risks identified and actions taken to preserve financial stability. Macro-prudential policy has two main objectives: (i) improving the overall resilience of the Ghanaian financial system by addressing aggregate risks and vulnerabilities across the financial system that have potential to threaten stability, and (ii) enhancing macroeconomic stability by addressing cyclical imbalances through financial system. e.g. by damping the credit cycle. These objectives are complementary- success in managing systemic risks in the financial sector should contribute to wider economic stability. That is why that Government through Ministry of Finance and Economic Planning will transfer operational responsibilities from the current multiple regulators to the newly single regulator who will be have regulatory and supervisory

oversight of all deposit- taking institutions, insurers, pension funds and capital markets. By placing firm specific prudential regulation under the auspices of a single body, the Government through Ministry of Finance and Economic Planning will bring together responsibility for both macro and micro prudential in a single institution. There will longer be no gap in which responsibilities are unclear and regulatory powers uncertain.

6.iv **Financial Sector Conduct Authority (FSCA)**

The market conduct regulations strategic objective will be to protect consumers, and customers of financial services institutions and promote confidence in the Ghanaian financial service sectors. The regulation of business conduct within the entire financial system, including the conduct of firms towards their retail customers and the conduct of participants in the wholesale financial markets will be carried out by a dedicated single body with focused and clear statutory objectives and regulatory functions. The Government through the Ministry of Finance and Economic Planning will therefore create dedicated consumer protection and market authority with primary responsibility to promote confidence in the financial services and markets. This objective will have two important components. First, the protection of consumer through a strong consumer regulator, and second, through promoting confidence in the integrity and efficiency of the Ghana's financial markets.

The mandate for Financial Sector Conduct Authority will: -

A. Promote the fairly treatment of financial services customers

B. Protect and enhance the efficiency and integrity of Ghanaian financial markets, and

C. Contribute to the financial sector's policy objective of financial stability, financial inclusion and combating financial crimes and money lending.

D. Perform the duties impartially and professionally will be funded through government subvention and levy-based system on the regulated financial firms.

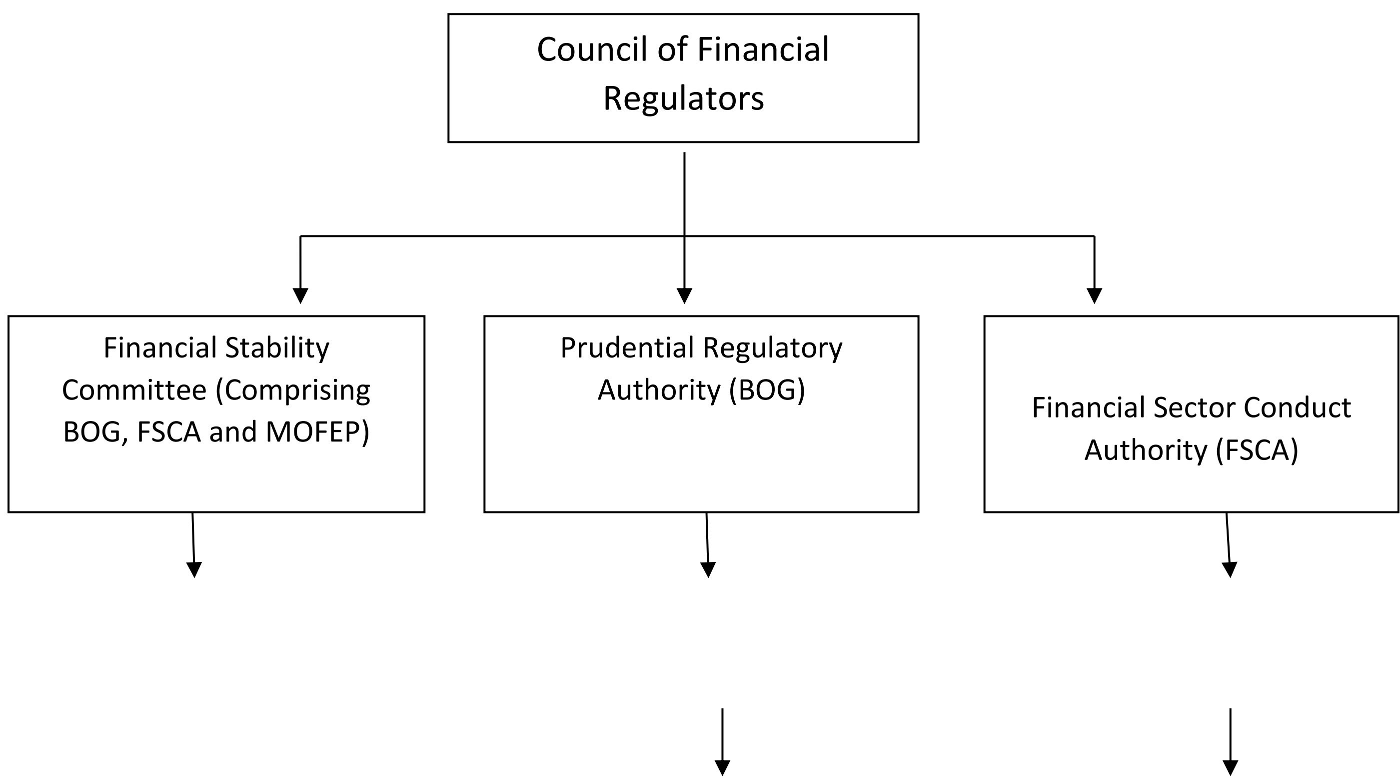
E. Provide financial customers and potential financial customers with financial education programs and otherwise promoting financial literacy and financial capability.

6.v. Council of Financial Regulators

Coordination and cooperation among the four regulators (Bank of Ghana, SEC, NPRA and NIA) are paramount and there are several structures established specifically to facilitate an appropriate level of communication and collaboration between them. There will have to be the "Council of Financial Regulators" This Council of Financial Regulators will be coordinating body for Ghana's financial regulatory

agencies: Bank of Ghana will chair the Council make up of SEC, NPRA and NIC as done in other jurisdictions like Australia. The Council will be meeting bi-monthly. The Council will operate as a formal body in which heads of regulatory agencies in Ghana meet to share information and views and discusses possible regulatory reforms, or issues where responsibilities overlap and if the need arises, coordinate responses to potential threats to financial stability. The Council will also have a role in advising the Ministry of Finance and Economic Planning on adequacy of the Ghana's financial system regulatory architecture in the light of any regional and global financial developments such as the 2007-2008 global financial crises. These arrangements will provide a flexible low- cost approach to coordination among the four financial regulatory agencies. The Council will be s statutory and will also has regulatory functions separate from those of its members.

Proposed Twin-peaks regulatory structure for Ghana



Financial System Stability (Monetary Policy Committee)	Regulation and Supervision	Conduct –of- Business Regulation

Culled from South Africa Regulatory Structure (2013)

6.vii Crises Management and Resolutions under the Twin Peaks Model.

To ensure financial stability it is important to have mechanisms in place to prevent distresses and to deal with crises when it occurs in the financial markets. The proposed prudential regulator the Bank of Ghana will have to be the resolution authority in Ghana due to its financial stability mandate as enshrined in the Banks and Specialized Deposit Taking Institution Act 2016 Act 930, its responsibility for macro and micro- prudential supervision and its role in providing emergency liquidity support for illiquid but solvent banks.

6.viii Governance accountability framework of Twin Peaks Model Regulation

The twin peaks model is based on regulatory and supervisory framework that aims at transparent, comprehensive, consistent and appropriate to the Ghanaian financial services sector. This model will be credible deterrent to non-compliance and will be aligned with international

standards. The governance framework of the prudential and market regulators will have to ensure that the two regulators have the necessary operational and financial independence in order to function properly.

The twin peaks model of financial regulation may not face a challenge of coordination and cooperation mechanisms between Ghana's key financial regulators, as experienced in the collapsed of UT bank, the lack of coordination between Bank of Ghana and SEC as one of the major challenges in the exiting regulatory structure. Although the Ministry of Finance and Economic Planning had made effort to address coordination and corporation challenges indented through various collapses and distresses, there continues to be problem for informal bilateral and multilateral coordination mechanisms over formal, statue-based mechanisms. For the twin peaks model of financial regulation, regulatory memoranda of understanding and will also establish the informal information sharing measure to make sure that each regulator is aware of the role other regulators in the Ghanaian financial system, coordination and cooperation among regulators to reduce financial crises in the system.

7. Funding Options available for Twin Peaks Model of Financial Regulation.

Funding has been an issue for the current multiple regulatory agencies in Ghana as they are covered by different schemes. Under the current silo based regulatory system, the costs of prudential regulation and market conduction regulation of banks are not explicitly recovered from banks by the Bank of Ghana. Instead, the Bank of Ghana receives budgetary allocation and special appropriations from the government through the Ministry of Finance and Economic Planning and other internal generated funds of the Bank of Ghana, which includes revenue generated from levies, penalties and sanctions imposed on defaulted banks and the Securities and Exchange Commission since the beginning of 2017 are funded through market operators' levies, transaction levies and depository levies under section 209 (4) of the Securities Industry Act 2016 Act 929. While the National Insurance Commission and National Pensions Regulatory Authority (NPRA) are funded by budgetary allocations from the Ministry of Finance and Economic Planning and other levies imposed on the regulated financial institutions. In Ghana, regulatory agencies had been at a competitive disadvantage when bidding in the market for the necessary skills and competencies because those same skills and experiences are also demanded by the regulated financial institutions which are usually in position to offer considerably more attractive remuneration packages for skilled and experienced staff. Effective regulation cannot be secured on the cheap as the necessary skills and

competencies are demanding. This means that the new regulatory structure must be adequately funded if they are to match the skills and competencies of those they are regulating (Llewellyn,2006). This in turn means that regulatory and supervisory personnel need to be adequately remunerated even if this may means moving outside salary range of the ministries, departments and agencies (MDAs). To attempt to cut costs by under-resourcing the new regulatory structures not paying market related salaries is likely to be a false economy. Money will be saved, but the expense of inefficient and ineffective regulation and supervision (Llewellyn, 2006).

The funding of the twin peaks approach must be carefully considered to ensure that appropriate budgets are worked out to allow the new entities to run efficiently with qualified staff and other resources. On the funding of the proposed twin peaks model of regulation, the Government and Ministry of Finance and Economic Planning may adopt any of three options discussed below: - (i) statutory levies and fees, (ii) budgetary allocation and special appropriation, and (iii) combination of budgetary allocations and statutory levies and fees.

(i) First, the twin peaks model of financial regulation could be funded by statutory levies and fees impose on the financial institutions and fees for services provided by the two regulators. Establishing statutory levies and

fee structures will merit a careful consideration to ensure that no supervised group is unduly affected. Levies and fees will be set out under the proposed Financial Sector Levies Bill will have to be enacted by the Parliament and the act will cover the costs and expenses of both prudential regulator and market conduct regulator. This proposal is to charge fees for service along with an annual levy is in line with other jurisdictions such as Netherlands, Belgium and South Africa that operate the twin peaks model of financial regulation. For example, in Belgium, both market conduct regulator and prudential regulator have their operating costs funded by supervised entities. There are three types of funding:- (i) sectoral contributions from entities subject to permanent supervision, (ii) variable specific contributions to finance the supervision of specific operations or requests. (e.g. approval of prospectus, licensing, resolution of disputes) and (iii) fixed contributions to finance specific projects e.g. the acquisition of offices and soft wares.

Both regulators will have majority of their funding through statutory levies and fees that will be designed to ensure that the full cost of regulation is recovered from the regulated financial institutions. For the cost recovery model to be adopted, the Ministry of Finance and Economic Planning would have to establish independent cost recovery body that will be responsible for providing views to the government on the implementation

and delivery of industry funding model. The cost recovery body include representatives from the Ministry of Finance and Economic Planning, Ghana Bankers Association, Prudential Regulatory Authority, Market Conduct regulator and each industry sector.

The second option for the funding of the twin peaks model of financial regulation will be budgetary allocation and special appropriation from government through the Ministry of Finance and Economic Planning as done in Australia where the twin peaks model of financial regulation funded by the central government. Ghana may have to adopt the Australian model which is entirely reliant on government funding. The government through Ministry of Finance and Economic Planning should ensure that the annual budgets and special appropriation are approved by Parliament to enable the two regulators to perform effectively and efficiently. These funding could be recouped by imposing special levies on the regulated firms annually. This type of funding will enable the government to the final say on the budget, thereby retaining ultimate control over both prudential regulator and market conduct regulator funding arrangement.

The third option for the industry funding will a combination of special approved budgetary allocation from the Ministry of Finance and Economic Planning and statutory levies and fees. The combination will ensure that

the two regulators are well resourced. The funding will be partially supported by statutory levies and fees approved by the Parliament as well as budgetary allocations and special appropriations for the two regulators.

Finally, to ensure equitable sharing of levies and fees between the prudential regulator and market conduct regulator there must be documented fees and levies sharing agreement. Consideration should be given to fees and levies sharing between the two regulators and both regulators must enter into a Service Level Agreement to address how they will charge each other for their services. Any fees and levies sharing agreements between the prudential regulator and market conduct regulator should be made explicit to regulated institutions as well as community as done in other jurisdictions.

Conclusion.

The move in Ghana towards a “twin peaks model” of financial regulation will be significant reform that will promote financial stability and strengthen Ghana’s ability to manage and mitigate the effects of financial crises. The most compelling argument for the twin peaks model is to enhance the effective management of systemic risks and consumer protection. For instance, if entities are conglomerates covering banking, insurance, securities and pension then it may be difficult for a particular regulator for a particular sub-sector to draw a view of the overall risks facing the entity.

A unified regulator under the twin peaks model, on the other hand would be able to understand and monitor risks across the sub-sectors and develop policies to address the risks facing the entire conglomerates. The experiences of UK and South Africa will provide some insights into the challenges that this model presents, particularly in the areas of coordination and the various ways in which these challenges might be overcome. One of the key lessons suggested by the South Africa experience will be legislative and regulatory framework which will be necessary- but of itself insufficient -element in terms of achieving the desired outcome, of equal importance will be the “culture of coordination” under which the main   will be regulatory performance rather than regulatory structure.

The two main features which stands out as being critical to the effective operation of the Twin Peaks model of financial regulation in Ghana. The first is clarity in terms of responsibilities and objectives of each regulator, which requires a clear demarcation between the roles of regulators and the minimization of regulatory overlaps and arbitrages. The second, which is closely related to the first, is a framework of coordination that encourages both regulators to share information proactively and cooperation in the performance of their supervisory and enforcement functions. Godwin, Li and Ramsay (2016) posit that regulatory framework

and experience in Australia suggests that coordination is critical for the Twin Peaks model to operate effectively because market participants may be regulated by both regulators. For this reason, the proposed move from an institutional approach to the Twin peaks model will require effective coordination based on consultation, information sharing and mutual cooperation in areas such as supervision and enforcement actions.

First, the pursuit of twin peaks model for Ghana is justified, because Ghana currently lacks the necessary legislation and regulator who is sole responsible for market business conduct regulation which takes care of consumer and investor issues that affect the confidence in the financial markets. Furthermore, securities markets and insurance sector are no longer in a silo but transcend right across the Ghanaian financial market as experienced in the recent collapse of UT Bank ltd where both the Bank of Ghana and SEC regulated and supervised over the distressed bank. It makes sense that the financial system be regulated by one unified regulator instead the piece meal approach currently being done.

Second, the twin peaks regulators are likely to have dedicated objectives and clear mandates to which they are exclusively committed. There is also minimal danger that one aspect of regulation -will come to dominate the regulatory landscape. Regulatory culture, which encompasses the attitudes, policies, and practices adopted by regulators in fulfilling their

objectives can be fostered depending on function of the regulator and the culture that needs to perform its role effectively. Third, the model may be better adopted towards keeping pace with the growing complexity of the Ghanaian financial markets and the continuing rise of financial conglomerates (IMF, 2011, 11/121). It is perhaps in this respect, namely the existence of two independent regulators that have different functions but nonetheless must achieve coordination in order to make the system work for both – that the Twin Peaks model of financial regulation might claim an advantage over the current institutional regulatory structure. According to Godwin et al (2016) when compared with institutional model, the twin peaks model is less susceptible to financial overlap and the resulting territorial conflicts. When compared with the integrated model, the twin peaks model is less susceptible to the internal conflicts of interests that arise as a result of the concentration of regulatory functions in one regulator.

Recommendations.

The paradigm shift to the Twin Peaks model in Ghana will be driven by the following recommendations. First, it is recommended that two agencies to be established for the financial regulation of companies and business conduct regulation. Noting that conduct and disclosure regulation in Ghana is currently being provided through a variety of

agencies, with arrangements are governed by the institutional form of service providers. The existing arrangements are inconsistent with the emerging structure of markets and resulted in inefficiencies, inconsistencies and regulatory gaps and are not conducive to effective competition in financial markets. The reform will ensure that market conduct regulator is created for consumer and investor protection.

Second, it is recommended that a single prudential regulator be established to carry out prudential regulation in the Ghanaian financial system. It is considered that combining prudential regulation in a single regulator would better accommodate the emergence of wide ranging financial conglomerates, universal banking concept, regionalization and internationalization and that would enable a more flexible approach over time to change in the focus of prudential regulation. Furthermore, a single entity would be better placed to reduce the intensity of regulation, and also lower cost, in the likely event that new technology or other developments that facilitate a reduction in systemic risk.

Third, there will be a need for information sharing and coordination between the four regulators and thus recommended that the establishment of the Council of Financial Regulators to coordinate a broad range of activities with the aim of facilitating the cooperation of its four members (Bank of Ghana, Securities and Exchange Commission,

National Pensions Regulatory Authority and National Insurance Commission) across the full range of regulatory functions and the attainment of regulatory objectives with minimum agency and compliance costs (Wallis report, 1997). The experiences from Australia and South Africa have shown that close and effective cooperation and coordination among the Ministry of Finance and Economic Planning, Bank of Ghana and the other supervisors are essential in the twin peaks regulatory structure. Efforts to enhance coordination at the highest levels of the regulatory agencies can be adversely affected if the principal actors clash personally or disagree over respective roles and objectives (Group, 30; 2008). Ultimately, a collaborative tone must be established at the top by the individuals in charge of the regulatory agencies. Memoranda of Understanding (MOU) may provide a necessary underpinning of those linkages in that they can set the ground rules and establish responsibilities

Fourth, it is recommended that the Twin Peaks model would be ideal regulatory model that will balance between preventing market failures and allowing financial markets to perform effectively and efficiently. Fifth, independence has been identified as four-fold approach to an independent regulator, which included regulatory, supervisory, institutional and budgetary independence. The chapter also indicated that an effective regulator needs to be both independent and accountable. To

achieve supervisory independence, the exclusive authority of the President to appoint the heads of the regulators should be removed and assigned to a transparent for Professional Selection Board. Such a Selection Board should only be constituted to spearhead the selection and appointment of the regulatory heads as well as the board members to sit on those Boards. In addition, this should be enshrined in the 1992 Constitution as amendment as done for the Chief Justice and judicial system so that the independence of the regulators could be upheld to enable regulatory agencies to appoint qualified and experienced CEOs and board members as done in some jurisdictions

Institutional independence should be promoted by the regulators. The Council of Financial Regulators should be set up as a separate agency by the Ministry of Finance and Economic Planning with an independent representative board as part of its governance structure. Further, the proposed twin peaks regulator should be an independent constitutional body. Legislation should be enacted to establish the Council of Financial Regulators, as an independent authority with mandate to promote effective, transparent and efficient regulation of the sector. Additionally, the staff of the twin peaks model should be adequately compensated in order to attract and keep competent staff and avoid bribery and corruption. The senior staff of the independent regulators should must be appointed

by the Council and enjoy security of tenure. In terms of budgetary independence, the Council of Financial Regulators must be able to formulate and justify its budget to parliament if funded by budgetary allocation and special appropriations. Similarly, the independent regulators should justify their budgets to the Ghanaian parliament. Where there are elements of funding by the market players, then this should not encourage some form of supervisory arbitrage. The two regulators have a role to ensure that policies are developed to enhance budgetary independence in the sector. The two independent regulators are key to a successful twin peaks' regulatory framework. There should be a balance between the concept of an independent regulator and that of accountability of the regulator. To achieve this will require some statutory amendments as well as major institutional setup and changes. However, a more important requirement will be a change of culture and a lot of political will. Sixth, standard operating procedures for the twin peaks model of financial regulation. Some regulators have statutory powers only to issue regulations and to ensure, through oversight, that they are complied with. The Council of Financial Regulators should advocate having similar operational powers among the independent regulators. Some of these include the power to issue regulations or guidelines and practice notes to the sector, giving exemptions to areas that currently has

duplicity such as multiple registration and powers to set adequate remuneration levels, among others.

Seventh, enforcement of the regulations and guidelines should be an essential element. The twin peaks model must empower the two independent regulators to enforce compliance with rules. Enforcement in this case would include investigating, gathering and sharing information among the regulators as well as imposing penalties. For this function to be effective there should be a collaborative effort among the independent regulators as well as the Council of Financial Regulators. Eight, effective corporate governance, best practices, and competent and ethical culture are primary to achieving sustainable and effective financial markets. This means that the Central Bank, the Council of Financial Regulators as well as the two independent regulators must adequately adhere to the corporate governance guidelines offered under the manual of Corporate Governance for financial institutions. Additionally, the codes for corporate governance enacted by the two regulators must be consolidated to ensure uniformity in the operating procedures.

Ninth, different stakeholders including the government and Ministry of Finance and Economic Planning need to be more proactive in monitoring and scrutinizing the regulators in the sector. Equally, the directors should be held more accountable in fulfilling their fiduciary duties by overseeing

management's strategic plans, decisions, risk assessment, and performance. The management of the various regulators are also expected to achieve sustainable shareholder value creation and enhancement and to enhance the reliability of financial reporting through executive certifications of internal controls and financial statements. Some of the internal control mechanisms that should be adopted by the Council of Financial Regulators and its independent regulators include adopting a more active role in the oversight of financial reporting, having effective board committees that is responsible for overseeing financial reporting and related audits. This will enhance early detection and prevention of systemic risks in the sector. The senior management of the regulators, including the chief executive officers and chief financial officers must equally be held accountable for serious breaches of the guidelines and regulations, which are likely to expose the sector.

Tenth, under the guidance of the Council of Financial Regulators, the two independent regulators should sign Memorandum of Understanding for cooperation in some areas which could enhance the efficiency of the sector. Some of these areas include creating „one stop" registration and licensing to remove overlaps, joint inspections of service providers, sharing of risk assessment and review tests, joint financial literacy campaigns, coordinated public education and collaboration in research

among others. Additionally, to ensure effective coordination and implementation of the policies and regulations, the chief executives of the independent regulators should be members of the boards of all the other financial sector regulators. Eleventh, there will be the need for legislative amendments upon the adoption of the twin peaks regulatory framework for Ghana, most of the legislation regulating the sector shall be amended to reflect the changes. First, an Act of Parliament should be enacted to create the twin peaks model as the financial services regulators. This amendment will legislate the independence, regulatory powers, appointment of its members and security of tenure. Similarly, legislation must be enacted to provide for the specific functions of the two independent regulators, including its powers to make legislation, operational functions, enforcement of regulation among other important provisions that will ensure the effectiveness of the regulators.

The different existing legislation including the Insurance Act 2006 Act, 724, Banks and Deposit Taking Institutions Act 2016 Act 930, Deposit Protection Act 2016 Act 931; Bank of Ghana Act 2002, 612, Securities Industry Act 2016 Act 929; and Pensions Act 2008, Act 766 among others, will be amended, to take cognizance of the new two regulators. The amendment will also restructure the powers of the current regulatory authorities, existing under those Acts. Further, the functions of those

independent authorities had to be reviewed to capture the spirit and letter of the integration, while considering its intended objectives. Ghana's financial services sector should be on the verge of adopting the twin peaks model. It is prudent that this process is conducted in a manner that will guarantee efficiency and effective coordination of the sector. In addition, the integration must revamp the system in order to make it more responsive to the market dynamics. Twelfth, the proposed Council of Financial Regulators must be established vide legislation to warrant the attainment of its intended objectives. Finally, the current challenges and issues in the institutional approach justifies a move towards the Twin peaks model of financial regulation, all of which resonate with the challenges in the Ghanaian financial system today. As postulated above, in order for the Ghanaian government to effectively manage the transition and implement the twin peaks model, budgetary and institutional independence, good corporate governance, legislative amendments and standard operating procedures must be adopted.