Board Membership Without Privilege: Lessons from The Legislative Process of the 24-Hour Economy Authority Bill, 2025 For State Corporate Governance

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ABSTRACT

The 24-Hour Economy Authority Bill, 2025 sparked intense debate in the Parliament of Ghana during its consideration stage over a provision which purported to exempt the Chief Executive Officer (CEO) from an automatic board membership cessation after failing to attend three consecutive board meetings without sufficient cause. The argument was premised on whether or not the CEO should be given such exemptions. This paper shall analyse both ends of the spectrum and argue, with the aid of relevant guidelines and international best practices, that the CEO should not be given any special exemption by reason of the office they occupy in order to enhance diligence and practicality within the governance of state-owned enterprises.

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INTRODUCTION

The government of Ghana, in furtherance of the implementation of their flagship 24-hour economy program, initiated the 24-Hour Economy Authority Bill, 2025 before parliament. The object of this bill is to create a State-owned body corporate which will supervise and implement the 24-Hour Economy and Accelerated Export Development Programme.[2] During the consideration stage of the bill[3], there was a riveting debate among the members of Parliament regarding clause 7(4) of the bill which provided

"A member of the Board, other than the Chief Executive Officer, who is absent from three consecutive meetings of the Board without sufficient cause ceases to be a member of the Board."

What made this debate rather eccentric was that it was not the traditional division of ideas between the majority and minority. The debate transcended political scores and had some members of the majority siding with the members of the minority and vice versa.

The debate centred on whether or not the CEO of the 24-hour economy authority should be exempted from the clause 7(4) of the bill. One faction argued that the CEO must not be exempted from this rule as this will promote an insouciant attitude among the persons who occupy the office. They further asserted that the provision serves as an incentive for the CEO to play their roles effectively.

Conversely, the other faction argued that this provision existed to prevent awkward and impractical situations where the CEO ceases to be a board member but nevertheless has to carry out the functions of the CEO. In their view, such an occurrence will create an unworkable effect.

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[2] The 24-Hour Economy Authority Bill, 2025, long title.

[3] The consideration stage of a bill happens after the second reading and before the third reading. Here, the Bill is read clause by clause and members of parliament can move to amend specific clauses, debate on the provisions, and vote on changes.

The matter remained unresolved at the consideration stage and was deferred for winnowing.[4]

This matter extends far beyond a parliamentary debate and brings to the fore a consequential question in state corporate governance and its legislation; whether CEOs or other designated members ought to be exempted from the uniform rules applicable to board meetings. This paper extensively discusses this issue having regard to the duties of the CEO and the nature of their duties, the duties of the board, as well as the relationship between the board and the CEO. This paper will conclude that the CEO must not be exempted from this provision as it is inconsistent with accountability.

THE CHIEF EXECUTIVE OFFICE

The Chief Executive Officer is the most senior executive officer of a body corporate, charged with ultimate responsibility of managing and conducting the affairs and business of the company under the authority and direction of the board of directors. The CEO translates policy directives by the board into operational action, exercises apparent authority that operates to bind the corporation in the ordinary course of business, and serves as the primary intermediary between the board and the management of the corporation. The precise scope of the CEO's authority varies as it is primarily dependent on the bylaws of the company and any board resolutions delimiting their mandate. Essentially, the CEO's powers are in all cases derived from and remain subordinate to the

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[4] Winnowing is the process of examining proposed amendments to clauses in a bill under consideration to ensure harmony and expeditious consideration. See Standing Orders of the Parliament of Ghana (2024), Order 6.

authority of the board.[5] Accordingly, a company primarily acts through the CEO or the managing director.[6]

FUNCTIONS OF THE CEO

As the principal executive officer of a corporation, the CEO performs several core functions within the governance structure of the corporation.

Administration and Management

The CEO is primarily responsible for the day-to-day management and administration of the corporation. This includes the allocation of the company's resources, oversight of senior staff, and the implementation of its business activities in line with the company's policies and decisions. Under section 383 of the Companies Act 2019 (Act 992), the managing director, and by functional analogy, the CEO, is vested with powers of the board to run the

[5] This composite definition draws on the statutory formulation in the Banks and Specialised Deposit-Taking Institutions Act 2016 (Act 930) s 1, which defines the CEO as a person 'responsible, subject to the authority of the board of directors of the body corporate, for the conduct and management of the business of the corporate body'; and the Companies Act 2019 (Act 992) s 383, which defines the managing director — a role treated as functionally analogous to that of the CEO — as 'a director to whom has been delegated the powers of the board of directors, to direct and administer the business of the company.' See also *First Atlantic Bank Ltd v Richkab Enterprise Ltd* & *Another* SUIT NO. CM/BFS/0999/2019 in which the court consistently treated the roles as interchangeable. See also Ferdinand Adadzi, *Modern Principles of Company Law in Ghana* (2021) 605 where the learned author states that the Managing Director is mostly referred to as a 'Chief Executive Officer' in many companies.

[6] Companies Act 2019 (Act 992) s. 148.

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business of the company.[7] It follows that the CEO's role is not a passive one but an active one as they are the active embodiment of the company's executive will.

Execution of Board Decisions

A core function of the CEO is the implementation of decisions made by the board of directors. The CEO acts as the operational arm of the board responsible for bringing policy into actuality. This is an illustration of the principal-agent relationship between the board and the CEO. As Sealy and Worthington observes, the managing director or CEO occupies a position in which the board's delegated authority is exercised subject always to the board's overriding power to give directions, and the CEO remains accountable to the board for the manner in which that authority is exercised.[8]

Representation and Apparent Authority

The CEO has apparent authority to act on behalf of the corporation in transactions which occur in the ordinary course of business, even in the absence of express board authorisation in that regard. This principle was affirmed in Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd,[9] where the Court held that a company is bound by acts performed by an officer held out as having authority to act on its behalf, provided the third party relies on that representation without notice of any limitation. The CEO, by virtue of their position, is the officer most naturally held out as possessing such authority, and third parties dealing with the company are entitled to rely on that representation.[10]

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[7] Companies Act 2019 (Act 992) s 383.

[8] L S Sealy and Sarah Worthington, Sealy & Worthington's Cases and Materials in Company Law (11th edn, Oxford University Press 2016) 127.

[9] *Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd* [1964] 2 QB 480 (CA).

[10] See also *Panorama Developments (Guildford) Ltd v Fidelis Furnishing Fabrics Ltd* [1971] 2 QB 711 (CA), where the Court of Appeal held that a company secretary — an officer of lesser seniority than the CEO — possessed apparent authority to bind the company in

Reporting and Accountability to the Board

This function is born out of the CEO's duty to execute the board's decisions. The CEO is under a continuous obligation to keep the board informed of the material affairs of the company. This is to aid the board in exercising meaningful oversight. This obligation is also deeply rooted in the fiduciary character of the CEO's role. Accordingly, the CEO must act in the best interests of the company and cannot withhold material information from the body to which they are accountable.

THE BOARD OF DIRECTORS

The board of directors is the governing organ of a corporation. According to section 184 of the Companies Act, 2019 (Act 992), the business and affairs of a company are managed under the direction and oversight of the board. In the context of state-owned enterprises (SOEs), this supervisory function assumes a special quality of public interest, since the board must account not only to shareholders but also to the citizenry who they serve.

The general responsibilities of the board are oversight of management, strategic direction, financial stewardship and risk management. These collective responsibilities are carried out at a formal level through board meetings. A board member's fiduciary responsibility to the institution and the citizens is carried out primarily through attendance at board meetings. Accordingly, the attendance of board meetings is not a ceremonial obligation. Therefore, persistent absence, therefore, is not merely an inconvenience, it is an abdication of duty.

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matters within the ordinary scope of that office, reinforcing the broader principle that corporate officers are held out as having authority commensurate with their role.

This is reinforced by the State Interests and Governance Authority Act, 2019 (Act 990)[11] which highlights the importance of board members to be active in governance. Section 9(5) of Act 990 provides that a member of the board shall be automatically removed from office if they are unable to attend three consecutive meetings of the board without cause. This is a direct legislative response to passive or absentee directorship that has historically affected the governance of Ghanaian SOEs.[12]

THE RELATIONSHIP BETWEEN THE CEO AND THE BOARD

The relationship between the CEO and the board is that of an agent and principal. The board establishes policy and strategy, while the CEO implements it. This division of functions is the premise of sound corporate governance, ensuring that no single individual simultaneously controls both the setting and implementation of objectives without accountability.

Many SOE frameworks adopt a dual membership in the board and executive committee, which is valid in the interest of finding an interface between operational management and board deliberations.

ARGUMENTS FOR AND AGAINST THE EXEMPTION

THE CASE FOR EXEMPTION

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[11] The State Interests and Governance Authority Act, 2019 (Act 990) is the regulatory framework which governs SOEs in Ghana.

[12] This was the case for the State Enterprises Commission established by the Supreme Military Council in 1976. One contributing factor that accounted to its failure was that "It never had its full complement of members over the entire period of its existence." see AB & David Africa, 'The Laws Are Not to Blame? A Commentary on the Non-Performance of State-Owned Enterprises in Ghana' (AB & David Africa, 25 January 2024) <https://abdavid.com/the-laws-are-not-to-blame-a-commentary-on-the-non-performance-of-state-owned-enterprises-in-ghana/> accessed 10 February 2026.

Proponents of the exemption advance two principal arguments. First, they argue the functional inseverability of the CEO's dual roles. Thus, if the CEO is automatically removed from the board for non-attendance, they still retain the office of CEO. The resulting situation is that where the CEO must implement board decisions without being a board member and therefore without formal standing to participate in the deliberations generating those decisions, it creates an unworkable situation. This is a legitimate concern as it touches directly on the coherence of the governance structure.

Second, proponents suggest that the CEO's operational responsibilities may in practice prevent attendance at consecutive board meetings. A CEO overseeing a large national programme such as the 24-hour economy may face genuine scheduling conflicts arising from the demands of government, international engagements, or operational crises. This argument, in my humble opinion, is untenable. A CEO who is unable to attend board meetings due to conflicting governmental demands has sufficient cause for being absent and such absenteeism does not fall within the purview of clause 7(4) of the Bill or section 9(5) of Act 990.

It may also be argued that for the purpose of consistency and certainty of law, it is prudent that the legislature maintains the exemption. Raz posits that a characteristic of a system with a functional rule of law has laws of a certain and consistent character.[13] Accordingly, since previous legislations have incorporated this exemption, the legislature should follow suit. This argument is rather regressive and unwelcoming to change. The defects in previous legislation should not be repeated in successive ones on a mere conservative basis.

<u>THE CASE AGAINST EXEMPTION</u>

The most significant argument against this exemption is premised on accountability of public officials. CEOs of SOEs are public officials and must be accountable to the public by

[13] Joseph Raz, 'The Rule of Law and Its Virtue' (1977) 93 LQR 195.

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being diligent to their obligations. The CEOs primary institutional obligation is to the enterprise itself. If any board member ought to attend meetings diligently, it is the CEO. Consequently, granting the CEO an exemption from attendance rules is to invert the accountability rationale of the provision entirely.

Additionally, board meetings of SOEs are typically scheduled in advance with sufficient notice. The notice is to enable the CEO to adequately prepare their schedule to attend the meeting. Alternatively, where a CEO cannot attend the meeting because of conflicting responsibility, that will suffice as sufficient cause. A CEO who cannot attend three consecutive meetings without sufficient cause raises serious questions about either their commitment to the governance function which should not papered over by an exemption.

COMPARATIVE ANALYSIS

Comparative practice across Commonwealth jurisdictions is inconsistent with blanket exemptions for executive officers from board attendance obligations.

For instance, in Kenya, it is provided in the State Corporations Act, (CAP 446)[14] that any board member of the State Corporation – including the CEO – who inter alia, is absent from three consecutive meetings without the permission of the Cabinet Secretary will cease to hold their appointment.

A comparable provision can be found in the Tanzanian Public Corporations Act (Chapter 257) in section 25(2)(c).

These frameworks must guide the Ghanaian parliament with regards to this provision.

CONCLUSION AND RECOMMENDATIONS

The proposed exemption for the CEO, despite its good intentions, is contrary to the accountability principles that undergird public service in Ghana, inconsistent with practices of common law jurisdictions with analogous legal systems, and susceptible to abuse.

[14] State Corporations Act (Cap 446) (Kenya), s 6(2)(b).

The argument for exemption to the effect that a CEO who loses board membership will face structural incoherence in the discharge of their executive duties is a valid one, and calls for a reconsideration of our legislation concerning this matter rather than a blanket exemption. Parliament should consider amending clause 7(4) to provide that where the CEO is removed from the board for non-attendance, they cease to be CEOs as well.

This effectively ensures that the CEO is not exempt from accountability. This principle ought to guide parliament in all other deliberations they make in this regard.