



Banking and Financial Laws of Ghana 2006-2008

Compiled by
Library and Documentation Office
I.D.P.S. Department

March, 2009

Contents

Introduction	1
Anti-Money Laundering Act, 2008, Act 749	2-28
Banking (Amendment) Act, 2007, Act 738	29-58
Borrowers and Lenders Act, 2008, Act 773	59-80
Central Securities Depository Act, 2007 Act 733	81-116
Credit Reporting Act, 2007, Act 726	117-154
Fair Wages and Salaries Commission Act, 2007 Act 737	155-167
Foreign Exchange Act, 2006, Act 723	168-186
Home Mortgage Finance Act, 2008, Act 770	187-209
Non-Bank Financial Institutions Act, 2008, Act 774	210-238
APPENDIX	
ARB Apex Bank Ltd. Regulations, 2006 L.I. 1825	239-278

Introduction

This third compilation of Banking and Financial Laws of Ghana brings together all laws pertaining to the banking and financial industry passed between 2006 and 2008.

Significant and rapid changes in the financial system over the past two years has necessitated the promulgation of new laws and regulations, hence the need to put together the third volume in the series. It is hoped that, together with the first two volumes, users will be provided with a comprehensive reference source for this group of laws. Further compilations will be published as and when necessary.

Library and Documentation Office
I.D.P.S Department
March 2009

Anti-Money Laundering Act, 2008
(Act 749)

ARRANGEMENT OF SECTIONS

*Section**Money laundering*

1. Money laundering
2. Aiding and abetting money laundering activities
3. Penalty for money laundering

Financial Intelligence Centre

4. Establishment of Financial Intelligence Centre
5. Objects of the Centre
6. Functions of the Centre
7. Governing body of the Centre
8. Functions of the Board on policy formulation
9. Tenure of office of members
10. Meetings of the Board
11. Disclosure of interest
12. Committees of the Board
13. Allowances

Administrative and financial matters

14. Appointment of Chief Executive Officer
15. Functions of the Chief Executive Officer
16. Appointment of Deputy Chief Executive Officer
17. Appointment of other staff
18. Funds of the Centre
19. Accounts and audit
20. Annual report and other reports

Accountable institutions, records and information

21. Accountable institutions
22. Register of accountable institutions
23. Accountable institutions to keep records
24. Duration for keeping records
25. Unauthorised access to computer system or application data
26. Unauthorised modification of computer system

27. Duty of operators of games of chance
28. Request for information
29. Information held by supervisory bodies and revenue agencies
30. Suspicious transaction report
31. Conducting transaction to avoid giving rise to a reporting duty
32. Protection against civil or criminal liability
33. Conveyance of currency to or from the Country
34. Electronic transfer of currency
35. Reporting procedures
36. Continuation of transactions
37. Intervention by the Centre
38. Monitoring orders
39. Offences in relation to records and information

Compliance

40. Formulation and implementation of internal rules
41. Training and monitoring for compliance
42. Referral of suspected offences to investigating authorities and other public bodies
43. Responsibility for the supervision of accountable institutions
44. Offences in relation to compliance

Miscellaneous provisions

45. Extraditable offence
46. Trial Court and proceedings
47. Freezing of transactions or accounts
48. Oath of secrecy
49. Co-operation by officers of public agencies
50. Regulations
51. Interpretation

SCHEDULE

THE SEVEN HUNDRED AND FORTY-NINETH

ACT

OF THE PARLIAMENT OF THE REPUBLIC

OF GHANA

ENTITLED

ANTI-MONEY LAUNDERING ACT, 2008

AN ACT to prohibit money laundering, establish a Financial Intelligence Centre and to provide for related matters.

DATE OF ASSENT: *22nd January, 2008.*

ENACTED by the President and Parliament:

Money laundering

Money laundering

1. (1) A person commits an offence of money laundering if the person knows or ought to have known that property is or forms part of the proceeds of unlawful activity and the person

- (a) converts, conceals, disguises or transfers the property,
- (b) conceals or disguises the unlawful origin of the property, or
- (c) acquires, uses or takes possession of the property.

(2) For the purpose of this Act, unlawful activity means conduct which constitutes a serious offence, financing of a terrorist act or contravention of a law which occurs after the commencement of this Act whether the conduct occurs in this country or elsewhere.

Aiding and abetting money laundering activities

2. A person commits an offence if the person knows or ought to have known that another person has obtained proceeds from an unlawful activity and enters into an agreement with that other person or engages in a transaction where

- (a) the retention or the control by or on behalf of that other person of the proceeds from unlawful activity is facilitated, or
- (b) the proceeds from that unlawful activity are used to make funds available to acquire property on behalf of that other person.

Penalty for money laundering

3. A person who contravenes section 1 or 2 commits an offence and is liable on summary conviction to a fine of not more than five thousand penalty units or to a term of imprisonment of not less than twelve months and not more than ten years or to both.

Financial Intelligence Centre

Establishment of Financial Intelligence Centre

4. (1) There is established by this Act a body to be known as the Financial Intelligence Centre.

(2) The Centre is a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.

(3) The Centre may for the performance of its functions acquire and hold movable and immovable property and may enter into a contract or any other transaction.

Objects of the Centre

5. The objects of the Centre are to

- (a) assist in the identification of proceeds of unlawful activity and the combat of money laundering activities;
- (b) make information available to investigating authorities, the intelligence agencies and the revenue agencies to facilitate the administration and enforcement of the laws of the Republic; and
- (c) exchange information with similar bodies in other countries as regards money laundering activities and similar offences.

Functions of the Centre

6. To achieve the objects, the Centre shall

- (a) process, analyse, disseminate and interpret information disclosed to or obtained by the Centre in terms of this Act;
- (b) retain the information in the manner and for the period required under this Act;
- (c) inform, advise and co-operate with investigating authorities, supervisory bodies, the revenue agencies, the intelligence agencies and foreign counterparts; and
- (d) monitor and give guidance to accountable institutions, supervisory bodies and other persons on the discharge of their duties and in compliance with this Act.

Governing body of the Centre

7. (1) The governing body of the Centre is a Board consisting of

(a) one representative each from:

- (i) the Ministry of Finance not below the rank of director,
- (ii) the Ministry responsible for National Security not below the rank of director,
- (iii) the Bank of Ghana not below the rank of director;

(b) one senior police officer not below the rank of Assistant Commissioner nominated by the Minister for the Interior;

(c) the Chief Executive Officer,

(d) one lawyer in private practice with at least ten years experience nominated by the Attorney-General and Minister for Justice, on the advice of the Ghana Bar Association, and

(e) one other person from the private sector with accounting, banking and finance experience nominated by the Minister

(2) The President shall appoint the chairperson and the other members of the Board in accordance with article 70 of the Constitution.

Functions of the Board on policy formulation

8. The Board shall formulate and ensure the implementation of policies necessary for the achievement of the objects of the Centre.

Tenure of office of members

9. (1) A member of the Board other than the Chief Executive Officer shall hold office for a period of four years and is eligible for re-appointment, but a member shall not be appointed for more than two terms.

(2) Where a member of the Board resigns, dies, is removed from office or is for a sufficient reason unable to act as a member, the Minister shall notify the President of the vacancy and the President shall, in accordance with article 70 of the Constitution, appoint another person to hold office for the unexpired portion of the member's term of office.

(3) A member of the Board other than the Chief Executive Officer may at anytime resign from office in writing addressed to the President through the Minister

(4) A member of the Board who is absent from three consecutive meetings of the Board without sufficient cause ceases to be a member of the Board.

(5) The President, by a letter addressed to a member

- (a) may revoke the appointment of that member where there are sufficient grounds for the revocation; and
- (b) shall revoke the appointment of a member at the request of the nominating body.

Meetings of the Board

10. (1) The Board shall meet at least once every three months for the despatch of business at the times and in the places determined by the chairperson.

(2) The chairperson shall at the request of not less than three of the members of the Board convene an extraordinary meeting of the Board at the place and time determined by the chairperson.

(3) The quorum at a meeting of the Board is three.

(4) The chairperson shall preside at meetings of the Board and in the absence of the chairperson, a member of the Board elected by the members from among their number shall preside.

(5) Matters before the Board shall be decided by a majority of the members present and voting and in the event of equality of votes, the person presiding shall have a casting vote.

(6) The Board may co-opt a person to attend a Board meeting but that person shall not vote on a matter for decision at the meeting.

(7) The proceedings of the Board shall not be invalidated by reason of a vacancy among the members or a defect in the appointment or qualification of a member.

(8) Subject to this section, the Board may determine the procedure for its meetings.

Disclosure of interest

11. (1) A member of the Board who has an interest in a matter for consideration by the Board shall disclose in writing the nature of that interest and is disqualified from participating in the deliberations of the Board in respect of that matter.

(2) Where a member contravenes subsection (1) the chairperson shall notify the Minister who shall inform the President to revoke the appointment of the member.

Committee of the Board

12. (1) The Board may constitute committees consisting of members of the Board or non-members or both, to perform a function of the Board.

(2) A committee of the Board may be chaired by a member of the Board.

(3) Section 11 applies to a member of a committee of the Board.

Allowances

13. Members of the Board and members of a committee of the Board shall be paid allowances approved by the Minister.

Administrative and financial matters

Appointment of Chief Executive Officer

14. (1) The President shall, in accordance with article 195 of the Constitution, appoint a Chief Executive Officer for the Centre.

(2) The Chief Executive Officer shall hold office on the terms and conditions specified in the letter of appointment.

Functions of the Chief Executive Officer

15. (1) The Chief Executive Officer is responsible for the day to day administration of the Centre and is answerable to the Board in the performance of functions under this Act.

(2) The Chief Executive Officer may delegate a function to the Deputy Chief Executive Officer but the Chief Executive Officer shall not be relieved of the ultimate responsibility for the performance of the delegated function.

Appointment of Deputy Chief Executive Officer

16. (1) The President shall, in accordance with article 195 of the Constitution, appoint a Deputy Chief Executive Officer for the Centre.

(2) In the absence of the Chief Executive Officer, the Deputy Chief Executive Officer shall perform the functions of the Chief Executive Officer.

Appointment of other staff

17. (1) The President shall in accordance with article 195 of the Constitution, appoint other staff of the Centre that are necessary for the proper and effective performance of the functions of the Centre.

(2) Other public officers may be transferred or seconded to the Centre or may otherwise give assistance to the Centre.

(3) The Centre may engage the services of consultants on the recommendation of the Board.

(4) The Chief Executive, Deputy Chief Executive and staff of the Centre shall be subject to security screening.

Funds of the Centre

18. The funds of the Centre shall include

- (a) moneys approved by Parliament,
- (b) donations, grants, and
- (c) any other moneys that are approved by the Minister responsible for Finance.

Accounts and audit

19. (1) The Board shall keep books of account and proper records in relation to the Centre in the form approved by the Auditor-General.

(2) The Board shall, within three months after the end of the financial year, submit the accounts of the Centre to the Auditor-General for audit.

(3) The Auditor-General shall, not later than three months, after the receipt of the accounts, audit the accounts and forward a copy of the audit report to the Board.

(4) The Internal Audit Agency Act, 2003 (Act 658) applies to this Act.

(5) The financial year of the Centre is the same as the financial year of the Government.

Annual report and other reports

20. (1) The Board shall, within one month after the receipt of the audit report, submit an annual report to the Minister covering the activities and operations of the Centre for the year to which the report relates.

(2) The annual report shall include the Auditor-General's report.

(3) The Minister shall, within one month after the receipt of the annual report, submit the report to Parliament with a statement that the Minister considers necessary.

(4) The Board shall also submit to the Minister any other report which the Minister may require in writing.

*Accountable institutions, records and information***Accountable institutions**

21. (1) For the purposes of this Act accountable institutions are as set out in the First Schedule.

(2) The Minister may by Legislative Instrument amend the First Schedule.

Register of accountable institutions

22. (1) Each supervisory body shall furnish the Centre with a list of accountable institutions which are registered with it.

(2) The Centre shall allocate to each registered accountable institution a number for identification purposes.

(3) The Centre shall maintain a register of accountable institutions.

Accountable institutions to keep records

23. (1) An accountable institution that establishes a business relationship with a person shall keep records of

- (a) the identity of the person or the agent of the person;
- (b) transaction made through the accountable institution, and
- (c) suspicious transactions reports made to the Centre.

(2) For the purposes of this Act records maybe kept on a computer system or an electronic device capable of being used to store information.

(3) This section applies to each single transaction with an accountable institution.

Duration for keeping records

24. (1) An accountable institution shall keep the records for

- (a) not less than six years after the date on which a relationship is terminated in case of a business relationship, or
- (b) not less than six years after the date a transaction is concluded.

(2) An accountable institution may appoint a person to keep records on behalf of the accountable institution.

(3) An accountable institution that appoints a person to keep records on its behalf shall inform the Centre of the appointment in writing.

(4) At the end of the six year period, the accountable institution shall send the records to the Public Records and Archives Administration Department.

Unauthorised access to computer system or application data

25. A person shall not

- (a) access a computer system,
- (b) access application data held in a computer system, or
- (c) cause a computer system

that belongs to, or is under the control of the Centre or an accountable institution to perform or fail to perform a function without the consent of the Centre or the accountable institution.

Unauthorised modification of computer system

26. A person shall not

- (a) modify,
- (b) erase, or
- (c) destroy

the contents of a computer system or application data of a computer system that belongs to the Centre or an accountable institution without the consent of the Centre or the accountable institution.

Duty of operators of games of chance

27. (1) The Gaming Commissioner shall not issue or renew a licence for the operation of a game of chance under the Gaming Act, 2006 (Act 721) unless the applicant for the licence or renewal provides proof of the lawful origin of the capital for the intended operation or in case of a renewal, the origin of its additional capital to the Games Commissioner.

(2) A betting or gaming operator shall

- (a) verify the identity of a person who buys or exchanges chips or tokens, by requesting the person to present an authentic document bearing the name and address of the person;
- (b) keep records of gaming transactions in chronological order in a register indicating
 - (i) the nature and amount of currency involved in each transaction, and
 - (ii) the full name and address of the person in a register in a form authorised by the Centre.

(3) The register shall be preserved for at least six years after the last recorded transaction in the register and after the six year period, the register shall be sent to the Public Records and Archives Administration Department.

Request for information

28. (1) The Centre or an authorised representative of the Centre may request an accountable institution to disclose whether

- (a) a person is or has been a client of the accountable institution,
- (b) a person is acting or has acted on behalf of a client of the accountable institution, or
- (c) a client of the accountable institution is acting or has acted on behalf of another person

and the accountable institution shall comply.

(2) The Centre may request further information where the Centre is of the opinion that the information given to the Centre is not adequate.

Information held by supervisory bodies and revenue agencies

29. (1) Where a supervisory body or a revenue agency becomes aware or believes that an accountable institution, as a result of a transaction concluded by or with the accountable institution,

- (a) has received or is about to receive the proceeds of unlawful activities or
- (b) has been used or may be used for money laundering or a suspicious transaction,

the supervisory body or revenue agency shall advise the Centre of the fact and furnish the Centre with the information and records in respect of the knowledge or suspicion which the Centre may reasonably require.

(2) Where the Centre believes that a supervisory body or revenue agency may have information indicating that an accountable institution

- (a) is about to receive the proceeds of unlawful activity as a result of a transaction, or
- (b) has been used or maybe used for money laundering or for the purpose of any suspicious transaction,

the Centre may request the supervisory body or revenue agency to confirm or rebut the belief and the supervisory body or revenue agency shall comply.

Suspicious transaction report

30. (1) A person who or an institution which knows or suspects that

- (a) a business entity, an accountable institution or a trust has received or is about to receive the proceeds of unlawful activity, or
- (b) a transaction to which the business entity is a part
 - (i) facilitated or is likely to facilitate the transfer of the proceeds of unlawful activities,
 - (ii) has no apparent business or lawful purpose,
 - (iii) is conducted to avoid or give rise to a reporting duty under this Act,
 - (iv) maybe relevant to an investigation into tax evasion or an attempt to evade the payment of tax, duty or a levy imposed by legislation, or
 - (v) has been used or is about to engage in money laundering,

shall within twenty four hours after the knowledge or the ground for suspicion of the transaction submit a suspicious transaction report to the Centre.

(2) Where a person suspects a transaction to be linked to or used for the financing of a terrorist act as defined bylaw, the person shall make a report to the Centre within twenty four hours of the suspicion.

(3) A person who makes a suspicious transaction report shall not

- (a) disclose the contents to another person, or
- (b) reveal the personal details of the officer of the Centre who receives the report to another person.

(4) A person who receives a suspicious transaction report shall not

- (a) disclose the contents of the report to a person not authorised to know the contents of the report, or
- (b) disclose the personal details of the person who made the report to another person.

(5) A person who makes a suspicious transaction report shall disclose the contents where

- (a) the person is required by law to disclose the contents,
- (b) it is to carry out the provisions of this Act,
- (c) it is for legal proceedings, or
- (d) it is by an order of a Court.

Conducting transaction to avoid giving rise to a reporting duty

31. A person shall not conduct two or more transactions separately with one or more than one accountable institution so as to avoid the duty to report a transaction or in breach of the duty to disclose information under this Act.

Protection against civil or criminal liability

32. A person who makes a suspicious transaction report under section 30 is not liable for the breach of a restriction on disclosure of information imposed by contract or by any law if the person reports the suspicion to the Centre in good faith.

Conveyance of currency to or from the country

33. (1) A person who intends to convey currency that exceeds the amount prescribed by the Bank of Ghana to or from this country shall declare the particulars of the currency and the amount to be conveyed to the Bank of Ghana or its authorised agent at the port of entry or exit.

(2) A person authorised to receive the declaration shall immediately on receipt of the declaration send a copy to the Centre.

(3) The declaration shall be made in accordance with the Foreign Exchange Act, 2007 (Act 723) and Regulations made under that Act.

Electronic transfer of currency

34. Where an accountable institution through electronic means and in accordance with the Foreign Exchange Act, 2007 (Act 723) and Regulations made under that Act,

- (a) transfers currency outside the country, or
- (b) receives currency from outside the country

which exceeds the amount prescribed by the Bank of Ghana, the accountable institution shall within twenty-four hours after the transfer or receipt of the currency, report the particulars of the transfer or receipt to the Centre.

Reporting procedures

35. (1) A report to the Centre on the conveyance of currency and the electronic transfer of currency by an accountable institution shall be made in a manner prescribed.

(2) The Centre or an authorised officer, may request an accountable institution that has made a report to furnish the Centre or body with additional information concerning the report.

Continuation of transactions

36. (1) An accountable institution required to make a report to the Centre may continue to carry out the transaction in respect of which the report is required to be made but shall inform the Centre.

(2) The Centre may within three days, direct an accountable institution or a person not to proceed with a transaction on which a report has been made.

Intervention by the Centre

37. Where the Centre after consulting an accountable institution, or a person required to make a report, has reasonable grounds to suspect that a transaction or proposed transaction may involve the proceeds of unlawful activity or may constitute money laundering, the Centre may direct the accountable institution or person to

(a) make the necessary inquiries concerning the transaction, or

(b) inform and advise an investigating authority,
where the Centre considers it appropriate.

Monitoring orders

38. (1) A Court may, on written application by the Centre, make a monitoring order requesting an accountable institution to make a report to the Centre.

(2) The order may request that transactions conducted by a specified person with an accountable institution and transactions conducted in respect of a specified account or facility at the accountable institution shall be reported if there are reasonable grounds to suspect that

- (a) that person has transferred or may transfer the proceeds of unlawful activity through the accountable institution or is using or may use the accountable institution for money laundering, and
- (b) the account or other facility has received or may receive the proceeds of unlawful activity or is being or may be used for money laundering purposes.

(3) The order lapses after three months except that before the expiry of the three months an application may be made to the Court to extend the order for a period of not more than three months at a time if

- (a) the grounds on which the order is based still exists, and
- (b) the Court is satisfied that the interest of justice may best be served by monitoring the person, account or facility referred to in subsection (1) and in the manner provided for in this section.

(4) An application under this section shall be made by one party without notice to the other.

Offences in relation to records and information

39. (1) A person who without reasonable excuse

- (a) fails to keep records, contrary to section 23;
- (b) accesses a computer system, application data held in a computer system or causes a computer system that belongs to or is under the control of the Centre or an accountable institution to fail to perform contrary to section 25;
- (c) modifies a computer system contrary to section 26;
- (d) fails to comply with section 27(2);
- (e) fails to or refuses to advise the Centre or an authorised representative of the Centre of a client contrary to section 28;
- (f) fails to report a suspicious transaction contrary to section 30;
- (g) fails to protect the identity of the officer of the Centre who receives the report contrary to section 30;

- (h) fails to protect the identity of a person who makes a suspicious transaction report contrary to section 30;
- (i) conducts transactions in a manner to avoid a reporting duty contrary to section 31;
- (j) fails to give notice of the conveyance of currency within, to or from the Republic contrary to section 33;
- (k) fails to inform the Centre of the electronic transfer of currency contrary to section 34;
- (l) fails to furnish the Centre with additional information contrary to section 35;
- (m) fails to comply with a direction of the Centre and proceeds with a transaction contrary to section 37; or

(n) fails to comply with a monitoring order contrary to section 38, commits an offence and is liable on summary conviction to a fine of not more than five hundred penalty units or to a term of imprisonment of not more than three years or to both.

(2) Where the offence is committed by a company or a body of persons the penalty shall be a fine of not more than one thousand penalty units, and

- (a) in the case of a body corporate, other than a partnership, each director or an officer of the body is considered to have committed the offence; and
- (b) in the case of a partnership, each partner or officer of that body is considered to have committed that offence.

(3) A person shall not be convicted of an offence under subsection (2), if the person proves that the offence was committed without the person's knowledge or connivance and that the person exercised due care and diligence to prevent the commission of the offence having regard to all the circumstances.

(4) The court shall in addition to the penalty refer the matter to the Bank of Ghana for administrative sanction where the offence is committed by a bank.

(5) A court shall refer the conviction of an accountable institution to the supervisory body concerned for administrative sanction.

*Compliance***Formulation and implementation of internal rules**

40. (1) An accountable institution shall in consultation with the Centre formulate and implement internal rules concerning

- (a) the establishment and verification of the identity of persons whom the institution is required to identify,
- (b) information of which records must be kept,
- (c) the manner in which and the place at which the records must be kept,
- (d) the steps to be taken to determine what a transaction is reportable, and
- (e) other matters that an institution may determine.

(2) An accountable institution shall make its internal rules available to its employees involved in dealing with transactions to which this Act applies.

(3) An accountable institution shall, on request, make a copy of its internal rules available to

- (a) the Centre, and
- (b) a supervisory body which performs regulatory or supervisory functions over that accountable institution.

(4) An accountable institution shall ensure that the foreign branches and subsidiaries of the accountable institution observe the rules consistent with a subsidiary company of the accountable institution registered in the Republic.

Training and monitoring for compliance

41. An accountable institution shall

- (a) train its employees on the provisions of this Act and the internal rules, and
- (b) appoint a compliance officer to ensure observance
 - (i) of the provisions of this Act and the internal rules by the employees of the accountable institution, and

(ii) of the obligations under this Act by the accountable institution.

Referral of suspected offences to investigating authorities and other public bodies

42. Where the Centre has reasonable grounds to suspect that an accountable institution or a person other than a supervisory body subject to the provisions of this Act, has contravened or failed to comply with a provision of this Act or a rule or guideline applicable to the accountable institution or person which facilitates compliance with this Act, the Centre shall refer the matter to

(a) the relevant investigating authority, or

(b) an appropriate supervisory body, a public body or other authority affected by the contravention or non-compliance,
together with recommendations considered appropriate by the Centre.

Responsibility for the supervision of accountable institutions

43. (1) Where the Centre refers a matter to a supervisory body, public body or authority, the supervisory body, public body or authority shall investigate the matter and may after consultation with the Centre take steps to remedy the matter

(2) Where the supervisory body, public body or an authority fails to take steps to remedy the matter, the Centre may in consultation with the supervisory body, public body or authority take steps to remedy the matter.

Offences in relation to compliance

44. An accountable institution, which fails to

(a) formulate and implement internal rules contrary to section 40, or

(b) provide training or appoint a compliance officer contrary to section 41, commits an offence and is liable on summary conviction to a fine of not more than five hundred penalty units.

Miscellaneous provisions

Extraditable offence

45. Money laundering and terrorist financing are extraditable offences under the Extradition Act, 1960 (Act 22).

Trial court and proceedings

46. (1) The High Court and Circuit Court have jurisdiction to try an offence under this Act.

(2) In a trial for an offence under this Act, the accused person may be presumed to have unlawfully obtained pecuniary resources or property in the absence of evidence to the contrary if the accused person,

- (a) is in possession of pecuniary resources or a property for which the accused cannot account and which is disproportionate to the accused person's known sources of income, or
- (b) had at the time of the alleged offence obtained access to personal pecuniary resources or property for which the accused cannot satisfactorily account.

Freezing of transactions or accounts

47. (1) The Centre shall not investigate serious offences but where the Chief Executive Officer is of the opinion that it is necessary to freeze a transaction or an account to prevent money laundering, the Chief Executive Officer may direct the freezing of a transaction or account of any accountable institution.

(2) The Chief Executive Officer shall apply to a court within seven days after freezing a transaction or account for confirmation of the action taken and the court may confirm the freezing on conditions or direct the de-freezing of the transaction or account.

(3) Where a transaction or account has been frozen, the person affected shall be notified by the Chief Executive Officer within forty-eight hours of the freezing of the transaction or account and the person affected may seek redress from court.

Oath of secrecy

48. (1) A person

- (a) appointed to an office,
- (b) appointed to act in an office, or
- (c) authorised to perform a function, under this Act shall swear the oath of secrecy set out in the Second Schedule before assuming office or before performing the function under this Act.

(2) A person specified under subsection (1) shall not disclose information obtained by the Centre under this Act from which a person can be identified except

- (a) to enable the Centre carry out its functions,
- (b) for the prevention or detection of an offence,
- (c) in connection with the discharge of an obligation under an international agreement,
- (d) to comply with a court order, or
- (e) as otherwise provided under any other law.

(3) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of not more than five hundred penalty units or to a term of imprisonment of not more than three years or to both.

Co-operation by officers of public agencies

49. (1) An officer of a public agency shall co-operate with officers of the Centre in the performance of the functions of the officers of the Centre under this Act.

(2) A public officer who refuses or fails without reasonable summary conviction to a fine of not more than fifty penalty units or to a term of imprisonment of not more than three months or to both.

Regulations

50. (1) The Minister, on the recommendations of the Board, shall by legislative instrument make Regulations

- (a) to add to or vary the list of accountable institutions;
- (b) on the records to be kept and retained by financial institutions and accountable institutions;
- (c) on the format of suspicious transactions reports;
- (d) for the rules and directives for accountable institutions to identify clients for the purposes of this Act;
- (e) on the form of reports and other documentation required under this Act; and

(f) generally for the effective implementation of this Act.

(2) Despite the Statutory Instruments Act, 1959 (No. 52) as amended, the penalty for contravention of Regulations shall be a fine of not more than two thousand five hundred penalty units or a term of imprisonment of not more than three years or to both.

Interpretation

51. In this Act unless the context otherwise requires:

“account” means a facility or an arrangement by which a financial institution does anyone or more of the following;

- (a) accepts deposits of currency,
- (b) allows withdrawals of currency or transfers into or out of the account,
- (c) pays cheques or payment orders drawn on a financial institution or cash dealer by, or collects cheques or payment orders on behalf of, a person,
- (d) supplies a facility or an arrangement for a safe deposit box;

“accountant” means a person registered under the Chartered Accountants Act, 1963, (Act 176);

“accountable institution” includes the institutions set out in the First Schedule;

“application data” means a set of instructions which causes a computer system to perform a function when executed on the computer;

“auctioneer” means a person registered under the Auction Sales Act, 1989 (P.N.D.C.L. 230);

“authorised officer” means a person authorised by the Centre to perform a function or discharge a duty on behalf of the Centre;

“bank” has the meaning given to it in the Banking Act, 2004 (Act 673);

“Board” means the governing body of the Financial Intelligence Centre;

“business entity” includes

- (a) a firm,
- (b) an individual licensed to carry out a business,

(c) a limited liability company, or

(d) a partnership,

for the purpose of providing a product or service either for profit or non-profit;

“business relationship” means an arrangement between a person and an accountable institution for the purpose of concluding a transaction;

“centre” means the Financial Intelligence Centre established under section 4;

“Chief Executive” means the Chief Executive Officer appointed under section 14;

“computer system” includes an electronic, magnetic, optical, electrochemical or other data processing device, the physical components and any removable storage medium that is connected, to the device or a group of inter-connected or related devices, one or more of which is capable of

(a) containing data, or

(b) performing a logical, arithmetic or any other function in relation to data;

“Court” means the High Court or Circuit Court;

“currency” means

(a) coins, money or notes of the Republic or of another country that is designated as legal tender and that circulates as and is customarily used and accepted as a medium of exchange in the country of issue,

(b) ‘travellers’ cheques or other financial instruments denominated in the currency of Ghana or in foreign currency and

(c) any right to receive coins or notes in respect of a credit or balance with a financial institution or a non-resident;

“data” means a representation of

(a) information,

(b) knowledge,

(c) facts, or

(d) concepts

capable of being processed in a computer system;

- “electronic device” means anything or apparatus that is used or capable of being used to intercept a function of a computer system;
- “electronic transaction” means a transaction made through an electronic device;
- “intelligence agency” means the Internal or External Intelligence Agency established under the Security and Intelligence Agencies Act, 1996 (Act 526);
- “entity” means a body corporate or unincorporated, an association or group of persons, a firm or a partnership;
- “financial institution” means an entity that undertakes financial intermediation;
- “financial instrument” means a physical or electronic document which embodies or conveys monetary value;
- “financial intermediation” means a process of transferring funds from one entity to another entity;
- “foreign counterpart” means the authority in another country that exercise similar powers and performs similar functions as the Centre;
- “game of chance” includes a game other than lotto in which participants risk, in anticipation of winning award on the result of the game which depends on luck and which cannot be determined before the end of the game, pay money for the right to participate in the game;
- “internal rules” means rules formulated by an accountable institution to enable the accountable institution comply with the reporting requirements of the Centre;
- “investigating authority” means a body that is designated by legislation to investigate unlawful activities;
- “Minister” means the Minister responsible for Finance;
- “non-bank financial institution” means a financial institution that undertakes financial intermediation outside the bank;
- “non-governmental organisation” means a civil organisation and includes a community based organisation, religious body and association;
- “notary” means a person appointed under the Notaries Public Act, 1960 (Act 26);
- “order” means a monitoring order;

“prescribed” means prescribed by Regulations made under this Act;

“proceeds” means property derived from or obtained, directly or indirectly through the commission of an offence;

“property” includes assets of any kind situated in the country or elsewhere whether movable or immovable, tangible or intangible, legal documents and instruments evidencing title of interest in the assets;

“record” means a material on which data is recorded or marked and which is capable of being read or understood by a person, computer system or other device;

“record of identity” means the records maintained by accountable institutions on their clients in accordance with rules and directives issued to the accountable institutions by relevant supervisory bodies;

“Regulations” means Regulations made under this Act;

“religious body” means an association, a body or organisation which professes adherence to a belief in a system of faith or worship or which is established in pursuance of a religious objective;

“Republic” means Republic of Ghana;

“revenue agency” means an agency authorised by law to collect revenue;

“securities portfolio management” means the process of managing the financial assets of a client by a brokerage firm for and on behalf of the client in accordance with selected investment strategy under agreed management principles and regulations;

“serious offence” means an offence for which the maximum penalty is death or imprisonment for a period of not less than twelve months;

“supervisory body” means a body responsible for the supervision of the activities of accountable institutions under this Act;

“suspicious” means a matter which is beyond mere speculations and based on some foundation;

“transaction” includes an act which establishes a right or obligation or gives rise to a contractual or legal relationship between the parties to the contract or legal relationship and any movement of funds by any means with a covered institution; and

“trust and company service providers” means paid professional companies or unpaid persons who hold assets in a trust fund separate from their own assets;

SCHEDULES

FIRST SCHEDULE

(section 21)

Accountable institutions include

- (a) an entity which is a bank or a non-bank financial institution which carries on any of the following activities:
- (i) accepting deposits of money from the public, repayable on demand or otherwise and withdrawable by cheque, draft, orders or by any other means,
 - (ii) financing, whether in whole or in part or by way of short, medium or long term loans or advances of trade, industry, commerce or agriculture,
 - (iii) the issue and administration of means of payment including credit cards, travellers' cheques bankers' drafts and other financial instruments,
 - (iv) the trade in foreign exchange, currency market instruments or transferable securities,
 - (v) securities portfolio management and advice concerned with the portfolio management,
 - (vi) dealing in shares, stocks, bonds or other securities,
 - (vii) leasing, letting or delivering goods to a hirer under a hire- purchase agreement,
 - (viii) the conduct of any business,
 - (ix) the collection of money or acceptance of employer contributions and payment from these funds of legitimate claims for retirement benefits; and
 - (x) any other business activities that the Bank of Ghana may prescribe or recognise as being part of banking business;

- (b) auctioneers;
- (c) lawyers;
- (d) notaries;
- (e) accountants;
- (f) religious bodies;
- (g) non-governmental organisations;
- (h) a person whose business or a principal part of whose business consists of providing financial services that involve the remittance or exchange of funds;
- (i) operators of game of chance;
- (j) a company carrying on insurance business within the meaning of the Insurance Act, 2006 (Act 724);
- (k) a real estate company or agent, only to the extent that the real estate company or agent receives funds in the course of the agent's business to settle real estate transactions;
- (l) dealers in precious metals and precious stones;
- (m) dealers in motor vehicles; and
- (n) trust and company service providers.

SECOND SCHEDULE
(section 48)

THE OATH OF SECRECY

Iholding the office of..... Do (in the name of the Almighty God swear) (Solemnly affirm) that I will not directly or indirectly communicate or reveal to any person any matter which shall be brought under my consideration or shall come to my knowledge in the discharge of my official duties or as may be specially permitted by law (so help me God).

To be sworn before the President, the Chief Justice or such other person as the President may designate.

Date of Gazette notification: 25th January, 2008.

**Banking (Amendment) Act , 2007
(Act 738)**

*ARRANGEMENT OF SECTIONS**Section*

1. Section 2 of Act 673 amended
2. Section 3 of Act 673 amended
3. Section 4 of Act 673 amended
4. Section 5 of Act 673 amended
5. Sections 5A, 5B and 5C of Act 673 inserted
6. Section 6 of Act 673 amended
7. Section 7 of Act 673 amended
8. Section 8 of Act 673 amended
9. Section 8A of Act 673 amended
10. Section 9 of Act 673 amended
11. Section 12 of Act 673 amended
12. Section 13 of Act 673 amended
13. Section 14 of Act 673 amended
14. Section 16 of Act 673 amended
15. Section 17 of Act 673 amended
16. Section 23 of Act 673 amended
17. Section 29 of Act 673 amended
18. Section 33 of Act 673 amended
19. Section 37 of Act 673 amended
20. Section 38 of Act 673 amended
21. Section 40 of Act 673 amended
22. Section 42 of Act 673 amended
23. Section 46 of Act 673 amended
24. Section 51A of Act 673 inserted
25. Section 60A of Act 673 inserted
26. Section 62 of Act 673 amended
27. Sections 69A and 69B of Act 673 inserted
28. Section 72 of Act 673 amended
29. Section 74 of Act 673 amended
30. Section 83 of Act 673 amended
31. Section 84 of Act 673 amended
32. Section 84A of Act 673 inserted
33. Section 87 of Act 673 amended
34. Sections 89A and 89B of Act 673 inserted
35. Section 90 of Act 673 amended
36. First, Second, Third and Fourth Schedules to Act 673 inserted

THE SEVEN HUNDRED AND THIRTY-EIGHTH

ACT

OF THE PARLIAMENT OF THE REPUBLIC
OF GHANA

ENTITLED

THE BANKING (AMENDMENT) ACT 2007

AN ACT to amend the Banking Act, 2004 (Act 673) to facilitate the establishment of an International Financial Services Centre that seeks to attract foreign direct investment, income from licence fees payable in foreign currencies, create employment enhance local skills and knowledge, strengthen the financial sector through expansion in the use of investment banking instruments and to provide for related matters.

DATE OF ASSENT: *18th June, 2007*

ENACTED by the President and Parliament.

Section 2 of Act 673 amended

1. Subsection (1) of section 2 of the Banking Act, 2004 (Act 673) referred to as the principal enactment is amended by the addition of a new paragraph (d),

“(d) ensuring the soundness and stability of the financial system in this country”,

Section 3 of Act 673 amended

2. The principal enactment is amended by the substitution for section 3 of
- “3. Subject to this Act, no person other than a body corporate shall carry on the business of banking in or from within Ghana.”

Section 4 of Act 673 amended

3. Section 4 of the principal enactment is amended by the substitution for section 4 of

“4. (1) A person shall not carry on the business of banking in or from within

Ghana except by or under the authority of a license issued in accordance with this Act.

- (2) A person shall not use a banking license for any purpose other than that for which it is issued.
- (3) A person who contravenes subsection (1) and (2) of this section commits an offence and is liable on summary conviction
- (a) in case of a body corporate or other body of persons to a fine not more than three thousand penalty units; and
- (b) in the case of an individual to a fine not more than three thousand penalty units or to a term of imprisonment not exceeding ten years.

Section 5 of Act 673 amended

4. Section 5 of the principal enactment is amended

(a) by the insertion after paragraph (e) of

“(f) in the case of an external company registered in Ghana, an authenticated copy of its certificate of registration and a written confirmation from the banking supervisory authority in the applicant’s country of incorporation that the supervisory authority has no objection to the applicant’s proposal to carry on banking business in Ghana;”

(b) by the insertion of new paragraphs (g) and (h)

“(g) the measures and structures it intends to adopt to ensure that its business is conducted in accordance with sound corporate governance principles;

(h) the processing fees and licence fees that the Bank of Ghana may by notice specify;” and

(c) by placing the original paragraph (f) at the end of the subsection as paragraph (i);

(d) by the insertion of a new subsection (2);

“(2) Each application shall state clearly the type of licence that is being applied for.”

(e) by the renumbering of subsection (2) as subsection (3);

(f) by the insertion of new subsections (4) and (5)

“(4) Where any document submitted to the Bank of Ghana is not in the English language, it shall be accompanied with a certified translation in English.

(5) The Bank may require that information supplied to it be verified, certified or otherwise authenticated in the manner that the Bank may consider fit.”

Sections 5A, 5B and 5C of Act 673 inserted

5. The principal enactment is amended by the insertion of new sections 5A, 5B and 5C.

“Types of licences

5A. A licence issued under this Act shall be issued subject to the terms and conditions that the Bank of Ghana may impose and shall be in one of the following categories:

(a) General Banking Licence;

(b) Class I Banking Licence; or

(c) Class II Banking Licence;

Limitation of Class II Banking Licence

5B. Subject to this Act or any other enactment, the holder of a Class II Banking Licence shall not

(a) take deposits or placements from any person resident in Ghana other than another bank holding a General Banking Licence with respect to its Class II banking business, or another bank holding a Class II Banking Licence;

(b) invest in an asset that represents a claim on any person resident in Ghana except a claim resulting from

(i) a Class II banking transaction with another bank holding a General Banking Licence or a Class II Banking Licence; or

- (ii) the purchase of bonds or other securities issued by the Government of Ghana or any other securities that may be approved by the Bank of Ghana; or
- (c) carry on business in Ghana other than the business for which its Class II Banking Licence has been issued.

“Pre-requisites for a licence

5C. A licence shall not be granted by the Bank, unless it is satisfied with

- (a) the technical knowledge, experience, financial conditions and history of the applicant;
- (b) the adequacy of the capital structure of the applicant;
- (c) the character of the business and its management;
- (d) the adequacy of the applicants accounting control systems and records;
- (e) in the case of an applicant incorporated outside Ghana, that the applicant is a branch or related company of a foreign bank of established international reputation; and
- (f) the ability and willingness of the applicant to comply with the other conditions that the Bank may impose.”

Section 6 of Act 673 amended

6. The principal enactment is amended by the substitution for section 6 of

“Provisional approval

6. (1) The Bank of Ghana may issue a provisional approval for a specified licence to the applicant on the terms and conditions that it considers appropriate, if it is satisfied that

- (a) the applicant will carry on banking business with integrity, prudence and the required professional competence;
- (b) the applicant has and will maintain paid up capital as set out in the First Schedule and hold a licence of the specified type as required; and

- (c) where the bank is an external bank, it shall have and maintain in Ghana the required capital in the form of funds transferred from abroad together with other funds that may be determined by the Bank.

(2) The Bank of Ghana may by notice published in the *Gazette*, alter the capital requirements as well as any other pre-licensing requirements."

Section 7 of Act 673 amended

7. Section 7 of the principal enactment is amended;

- (a) by the insertion of "for a General Banking Licence or a Class I Banking Licence" after "applicant";
- (b) by the insertion of a new subsection (2), and
- "(2) The applicant for a Class II Banking Licence shall not invite capital through a public issue of shares in Ghana."
- (c) by the renumbering of subsection (2) as subsection (3) and by the insertion of
- "or subsection (2)" after "subsection (1)".

Section 8 of Act 673 amended

8. Section 8 of the principal enactment is amended;

- (a) by the numbering of section 8 as 8 (1) and the insertion of "of a specified type".
- (b) by the insertion of new subsections (2), (3) and (4)
- "(2) A licence issued under this Act shall
- (a) be subject to the conditions that the Bank may impose;
- (b) in the case of a bank holding a General Banking Licence or a Class I Banking Licence, not authorise that bank to carry on business in any office or branch, other than its principal place of business, unless it has obtained the prior approval of the Bank;
- (c) in the case of a bank holding a Class II Banking Licence, not authorise that bank to have more than one place of business for the purpose of Class II banking;

(3) The holder of a licence issued under this Act shall pay the annual licence fees that the Bank of Ghana may specify by notice.

(4) No licence granted by the Bank of Ghana shall be transferable or assignable without the prior approval of the Bank."

Section 8A of Act 673 inserted

9. The principal enactment is amended by the insertion of section 8A after section 8 **"Power to vary conditions of licences**

8A. (1) The Bank of Ghana may, by notice in writing to a bank, inform the bank that it proposes to impose, amend, add to, vary or cancel any condition attached to the licence of the bank.

(2) The bank may, within seven days after the receipt of the notice, make representations in writing to the Bank.

(3) The Bank shall, "take a decision and notify the bank accordingly after giving due consideration to the representations made".

Section 9 of Act 673 amended

10. Section 9 of the principal enactment is amended in subsection 3 by the insertion of "within ten days after the decision of the Bank" after "writing".

Section 12 of Act 673 amended

11. Section 12 of the principal enactment is amended by the substitution for subsection (8) of

"(8) The Bank of Ghana may, subject to the terms and conditions that it considers fit, exempt a bank holding a Class II Banking Licence or a General Banking Licence, with respect to its Class II banking business or investment banking business in currencies other than the currency of Ghana, from compliance with this section in so far as the activities referred to in these subsections are carried on outside Ghana and do not involve the acquisition of an interest in movable or immovable property in Ghana."

Section 13 of Act 673 amended

12. Section 13 of the principal enactment is amended by the insertion of new paragraphs (d), (e), (f) and (g)

- “(d) the bank has gone into liquidation or is wound up or otherwise dissolved;
or
- (e) the bank has insufficient assets to cover its liabilities to its depositors or the public; or
- (f) the bank appears to the Bank of Ghana to be carrying on business in a manner which is contrary or detrimental to the interests of its depositors or the public; or
- (g) the bank has been convicted by a domestic Court or any other Court as may be prescribed, of a crime related to the use or laundering in any manner of illegal drug proceeds, or is the affiliate or subsidiary of a parent company of a bank which has been so convicted, if the conviction is a final conviction.”

Section 14 of Act 673 amended

13. Section 14 of the principal enactment is amended by the insertion of new subsections (4), (5) and (6)

- “(4) Despite subsections (1) to (3), the Bank of Ghana may in cases of emergency, or in the public interest revoke the licence of a bank with immediate effect.
- (5) The bank whose licence has been revoked may, within thirty days after the communication of the decision under subsection (4) make representations to the Bank.
- (6) The Bank of Ghana shall, within ten days after representations made, review the action taken by it and inform the bank in writing”.

Section 16 of Act 673 amended

14. Section 16 of the principal enactment is amended by the insertion of the words “or in breach of the conditions of its licence” after “licence”.

Section 17 of Act 673 amended

15. Section 17 of the principal enactment is amended by the substitution for section (1) of

“(1) Except as otherwise provided for in this Act, no person, other than a bank, shall hold itself out as a bank or use the word “bank” or any of its derivatives in any language in the description or title under which that person is carrying on business in Ghana, or make a representation to this effect in any billhead, letter, paper, notice, advertisement or in any other manner whatsoever.”

Section 23 of Act 673 amended

16. Section 23 of the principal enactment is amended by the substitution for that section of

“Capital adequacy

23. (1) A bank holding a General Banking Licence shall at all times while in operation, maintain a minimum capital adequacy ratio of ten per cent computed in the manner that the Bank of Ghana may determine.

(2) A bank holding a Class I Banking Licence shall at all times while in operation maintain a capital adequacy ratio of ten per cent.

(3) A bank holding a Class II Banking Licence shall at all times while in operation maintain a capital adequacy ratio of the percentage that the Bank may determine.

(4) The percentage mentioned in subsection (3) shall be determined by the Bank of Ghana from time to time, after discussions with the bank, and shall not necessarily be the same for all banks or all banks of that class.

(5) In determining the percentage mentioned in subsection (3), the Bank shall in each case have regard to

- (a) other financial resources available to the bank in question;
- (b) the nature, scale and risks of the bank’s operations; and
- (c) the amount and nature of net own funds required, in the Bank’s judgement, to protect the interests of depositors and potential depositors and the public.

(6) The Bank of Ghana may by directive prescribe a higher capital adequacy ratio with respect to a particular bank or all banks for the period that the Bank may prescribe.

(7) The capital adequacy ratio shall be measured as a percentage of the adjusted capital base of the bank to its adjusted asset base in accordance with Regulations made by the Bank of Ghana."

Section 29 of Act 673 amended

17. Section 29 of the principal enactment is amended in subsection 1 by the insertion of the words "holding a General Banking Licence or a bank holding a Class I Banking Licence" at the beginning of the subsection.

Section 33 of Act 673 amended

18. Section 33 of the principal enactment is amended by the substitution for subsection(5) of

"(5) The Bank of Ghana may require a bank to furnish information by a specified date in a form that it may consider appropriate to ensure compliance with the requirements of this section."

Section 37 of Act 673 amended

19. Section 37 of the principal enactment is amended in subsection (1) by the addition of "do any one or combination of the following" after "directive".

Section 38 of Act 673 amended

20. Section 38 of the principal enactment is amended

(a) by the substitution for "has been declared to be of unsound mind" of "has been adjudged to be of unsound mind" at the beginning of subsection (1) (a);

(b) by the deletion of paragraph (1) (e) and the addition of a new paragraph "(e) is a director, chief executive or employee of another bank."

(c) by the addition of a new subsection (4)

"(4) Section 38(1) (e) shall not apply where

(a) a person appointed as a director for the ARB Apex Bank Limited is a representative of a bank that is an affiliate to the ARB Apex Bank Limited; or

- (b) in the opinion of the Bank of Ghana, special circumstances require that the person be appointed as director of another bank.”

Section 40 of Act 673 amended

21. The principal enactment is amended by the substitution for section 40 of

“Intervention of the Bank of Ghana in appointments

40. (1) A bank shall give prior notice to the Bank of Ghana before it appoints a Chief Executive Officer or a Deputy Chief Executive Officer of the bank, each of whom shall be ordinarily resident in the country.

(2) Where the bank appoints a Managing Director, that person shall be the Chief Executive Officer of the bank.

(3) In the case of an external company, the Chief Executive Officer of the bank shall also be the local manager of that company.

(4) Where the Chief Executive Officer is unable to perform official functions due to illness, absence from the country or any other sufficient cause, the Deputy Chief Executive Officer shall act as the chief executive after notifying the Bank of Ghana.

(5) A bank shall notify the Bank of Ghana of the changes in the membership of its board of directors and key management personnel of a bank in the case of a bank incorporated in Ghana, and in each other case, the changes in its key management personnel only.

(6) A person shall not be appointed or reappointed as director or as a member of key management personnel unless the appointment or reappointment takes into account guidelines issued by the Bank of Ghana related to fit and proper persons.

(7) Where the Bank of Ghana considers that a director or a member of the key management personnel is not a fit and proper person, it shall direct the removal of the director or person after hearing the bank and the bank shall comply.

(8) A bank shall not outsource any of its functions to any other person without the approval of the Bank of Ghana.

(9) A bank which contravenes any provision of this section shall pay to the Bank of Ghana a fine of one thousand penalty units”.

Section 42 of Act 673 amended

22. Section 42 of the principal enactment is amended in subsection (1) by the insertion of "holding a General Banking Licence or a bank holding a Class 1 Banking Licence" after "bank" where the word first appears.

Section 46 of Act 673 amended

23. Section 46 of the principal enactment is amended in subsection (1) by the insertion of "or a branch" after "company".

Section 51A of Act 673 inserted

24. The principal enactment is amended by the insertion of a new section 51 A
"Guidelines

51 A. (1) The Bank of Ghana may by notice provide for the payment of fees and the levying of charges under this Act.

(2) The Bank of Ghana may by notice exclude from the application of any part of this Act banks holding a General Banking Licence or a Class II Banking Licence or any class of either of these banks subject to the terms and conditions that it considers fit.

(3) The Bank of Ghana may by notice make such guidelines or issue instructions that it considers fit for the purpose of this Act.

(4) Guidelines or instructions made under subsection (4) shall apply to all banks or to one or more classes of banks and shall take effect on the date of their issue to the banks or on a later date that may be specified in the guidelines.

(5) Any person to whom guidelines apply or instructions are issued shall comply with the guidelines and instructions.

(6) Any person who fails to comply with the guidelines or instructions made under this section commits an offence and is liable on summary conviction to a fine of one thousand penalty units."

Section 60A of Act 673 inserted

25. The principal enactment is amended by the insertion of new sections 60A, 60B and 60C.

“Appointment of adviser

60A. (1) The Bank of Ghana may, if it considers it necessary to improve the affairs of a bank after examining a bank’s explanation, appoint a competent person as adviser to the bank’s chief executive at the expense of the bank.

(2) The Bank of Ghana may give a hearing to the bank before issuing the order unless it considers that the consequent delay in action would not be in the interest of the bank.

(3) A bank which is served with an order shall comply with the order and extend full co-operation to the adviser.

(4) An adviser appointed under this section is entitled to attend the meetings of the board of directors of the bank or its committees, and to participate in their deliberations.

(5) The adviser’s views shall be recorded in the minutes of the meetings, but the adviser shall not vote on a matter for determination by the meeting.

(6) An adviser appointed under this section

(a) shall hold office for the period that the Bank of Ghana may specify, and

(b) shall furnish the Bank of Ghana with a status report on the bank as frequently as the Bank of Ghana may determine.

Remedial measures

60B. Where the Bank of Ghana is satisfied after an examination under section 55 or otherwise based on the information at its disposal, that a bank

(a) has failed to comply with a provision of this Act or of Regulations or rules or directives issued under this Act;

(b) has been conducting its affairs in a manner detrimental to the interests of its depositors and creditors; or

(c) no longer possesses sufficient net own funds or is unlikely to fulfil its obligations towards its depositors and creditors;

the Bank of Ghana may

- (i) prohibit the bank from receiving fresh deposits or renewing the existing deposits;
- (ii) prohibit the bank from further lending or taking further financial exposures, or capital expenditure;
- (iii) prohibit the bank from paying a dividend on its equity capital or issue rights shares or bonus shares to shareholders or to any person claiming under their authority;
- (iv) suspend or remove from office the chief executive of the bank or restrict the chief executive's powers;
- (v) recommend the removal from any or all of the directors on the board of the bank or restrict their powers;
- (vi) appoint a conservator to take over the management of the bank, pending a decision on the bank's future set-up;
- (vii) revoke the licence issued to the bank to carry on banking; or
- (viii) appoint a liquidator for the winding-up of the bank.

Appointment and the rights and responsibilities of conservator

60C (1) Where the Bank of Ghana appoints a conservator, the conservator

- (a) holds office for the period or the extended period that the order may specify, unless the appointment is terminated by the Bank of Ghana;
- (b) draws salary and other emoluments from the bank which shall provide the conservator with the perquisites and amenities specified in the letter of appointment of the conservator;
- (c) has the powers of the chief executive to do the things that may be necessary for the management of the affairs, business and property of the bank;
- (d) may attend the meetings of the board of the bank and its committees and move a resolution that the conservator considers appropriate and vote on any subject at those meetings; and

(e) may appoint competent officials to assist the conservator or delegate authority to other officials.

(2) Where there is a conflict between an order issued by the conservator and an order given by a director, the chief executive or any other official of the bank in the past, the order of the conservator shall prevail.

(3) The conservator may,

(a) set aside a decision of the bank's board taken against the conservator's recommendation, or

(b) move a resolution at a general meeting of the bank's shareholders, or

(c) hold up a decision taken at the general meeting of the shareholders if the conservator considers it to be prejudicial to the interest of depositors, with the prior approval in writing of the Bank of Ghana,

(4) The conservator shall not be subject to any action, claim or liability in respect of an act done in good faith in pursuance of a power or duty conferred or imposed upon the conservator in terms of the conservator's appointment.

Section 62 of Act 673 amended

26. The principal enactment is amended in subsection (2) of section 62 by the substitution for "petition the High Court" of "appoint a liquidator"

Sections 69A and 69B of Act 673 inserted

27. The principal enactment is amended by the deletion of "voluntary" in the headnote of section 69 and the insertion of new sections 69A and 69B

"Priority of deposit liabilities

69A. Where a bank becomes unable to meet its obligations or becomes insolvent or suspends payment, the assets of that bank in Ghana shall be available to meet the deposit liabilities of the bank in Ghana and those deposits shall have priority over the unsecured liabilities of the bank other than those expenses and debts specified in the Bodies Corporate (Official Liquidation) Act 1963 (Act 180) to have priority of claim over other liabilities of the company in the event of a winding up.

Priority in the event of winding up

69B. (1) Despite the provisions of any other enactment, in the event of a winding up of a bank that carries on Class I and Class II banking business, the deposit liabilities of the bank shall be settled in the following manner:

- (a) the assets of the bank held, as determined under this Act and by the Bank of Ghana, in relation to the Class I banking business of the bank shall be available to meet the deposit liabilities of the bank in the following order of priority,
- (i) deposit liabilities incurred by the bank in the course of its Class I banking business with non-bank customers,
 - (ii) deposit liabilities incurred by the bank, in the course of its Class I banking business, with other banks in respect of their Class I banking business,
 - (iii) deposit liabilities incurred by the bank in the course of its Class I banking business with other banks including those incurred with its own bank with respect to its Class II banking business,
 - (iv) subject to the Bodies Corporate (Official Liquidation) Act, 1963 (Act 180) other liabilities incurred by the bank in the course of its Class I banking business,
 - (v) deposit liabilities incurred by the bank in the course of its Class II banking business with non-bank customers,
 - (vi) deposit liabilities incurred by the bank in the course of its Class II banking business with other banks,
 - (vii) subject to the Bodies Corporate (Official Liquidation) Act, 1963 (Act 180) other liabilities of the bank incurred in the course of its Class II banking business.
- (b) The assets of the bank held, as determined under this Act and by the Bank of Ghana, in relation to the Class II banking business of the bank, shall be available to meet the deposit liabilities of the bank in the following order of priority;

- (i) deposit liabilities incurred by the bank in the course of its Class II banking business with non-bank customers,
- (ii) deposit liabilities incurred by the bank in the course of its Class II banking business with other banks,
- (iii) subject to the Bodies Corporate (Official Liquidation) Act, 1963 (Act 180) other liabilities incurred by the bank in the course of its Class II banking business,
- (iv) deposit liabilities incurred by the bank in the course of its Class I banking business with non-bank customers,
- (v) deposit liabilities incurred by the bank in the course of its Class I banking business with other banks,
- (vi) subject to the Bodies Corporate (Official Liquidation) Act, other liabilities of the bank incurred in the course of its Class I banking business.

(2) Despite the provisions of any other enactment, in the event of a winding up of a bank that is licensed to carry on Class I banking business only, the deposit liabilities of the bank shall be settled in the following order of priority:

- (a) deposit liabilities incurred by the bank with non-bank customers;
- (b) deposit liabilities incurred by the bank with other banks;
- (c) subject to the Bodies Corporate (Official Liquidation) Act, 1963 (Act 180) other liabilities incurred by the bank.

(3) Despite the provisions of any other enactment, in the event of a winding up of a bank that is licensed to carry on Class II banking business only, the deposit liabilities of the bank shall be settled in the following order of priority:

- (a) deposit liabilities incurred by the bank with non-bank customers;
- (b) deposit liabilities incurred by the bank with other banks;
- (c) subject to the Bodies Corporate (Official Liquidation) Act, 1963 (Act 180) other liabilities incurred by the bank.

(4) The deposit or other liabilities in each class specified in subsections (1), (2), or (3) shall rank in the order specified but as between deposit or other liabilities of the same class rank equally between themselves and shall be paid in full unless the assets of the bank are insufficient to meet them in which case they shall be settled in equal proportions between themselves.

(5) For the purpose of section 69A and this section, "deposit liabilities" means sums of money paid on terms

- (a) under which they will be repaid, with or without interest or at a premium, and either on demand or at a time or in circumstances agreed by or on behalf of the persons making the payment and the bank receiving them;
- (b) which are not referable to the provisions of property or services or to the giving of security;

"bank" means a bank as defined in section 90 of this Act and any person licensed as a bank or permitted to carry on banking business in the country in which it is incorporated.

(6) For the purpose of subsection (5) (b), money is paid on terms or to the giving of security if, and only if

- (a) it is paid by way of advance or part-payment for the sale, hire or other provision of property or services of any kind and is repayable only in the event that the property or services is or are not in fact sold, hired or otherwise provided,
- (b) it is paid by way of security for payment for the provision of property or services of any kind provided or to be provided by the bank by whom or on whose behalf the money is accepted; or
- (c) it is paid by way of security for the delivery or return of property, whether in a particular state of repair or otherwise."

Section 72 of Act 673 amended

28. Section 72 of the principal enactment is amended in subsection (2) by the addition of "or as the Bank of Ghana may otherwise approve" at the end of the subsection.

Section 74 of Act 673 amended

29. Section 74 of the principal enactment is amended in subsection 1 by the insertion of “approved by the Bank of Ghana in the manner and on the terms that may be prescribed” after “bank.”

Section 83 of Act 673 amended

30. The principal enactment is amended by the substitution for section 83 of “**Secrecy of information.**”

83. (1) Each Director, officer or employee of the Bank or any person appointed by the Bank pursuant to the banking laws shall

- (a) in the case of a Director or head of department, take an oath of confidentiality in the form set out in Part I of the Second Schedule; and
- (b) in any other case, make a declaration of confidentiality before the chairperson of the Board in the form set out in Part II of the Second Schedule, before the person begins to perform any functions under the banking laws.

(2) Except

- (a) for the purposes of
 - (i) the performance of functions or the exercise of powers under the banking laws; or
 - (ii) meeting the requirements of an agreement or understanding reached by the Bank with any other relevant supervisory body; or
- (b) when lawfully required to do so,
 - (i) by an order of a Judge in chambers or any court of law; or
 - (ii) under any enactment,

no person referred to in subsection (1) shall, during and after a relationship with the Bank, disclose directly or indirectly to any person any information related to the affairs of the Bank, or any other bank or of any of its customers, which the person has acquired in the discharge of duties or the performance of functions.

(3) Any person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding one thousand penalty units.

(4) Nothing in this section shall preclude

- (a) the exchange or disclosure of information, under conditions of confidentiality, between the Bank and a foreign regulatory agency performing functions similar to those of the Bank under this Act, pursuant to any existing or future Treaty, or agreement or Memorandum of Understanding entered into by the Bank or the Republic of Ghana;
- (b) the disclosure of information pursuant to an order made by the Judge in chambers under any relevant enactment related to mutual assistance in criminal and related matters to a foreign state; or
- (c) the disclosure of information to the Financial Intelligence Centre set-up under the Anti-Money Laundering Law in force.

Section 84 of Act 673 amended

31. The principal enactment is amended by substitution for section 84 of "**Secrecy of customer information**

84. (1) Subject to the other provisions of this Act, each person with access to the books, accounts, records, financial statements or other documents, whether electronically or otherwise, of a bank shall:

(a) in the case of a director or key management personnel, take an oath of confidentiality in the form set out in Part I of the Third Schedule; or

(b) in any other case, make a declaration of confidentiality before the chief executive officer or deputy chief executive officer of the bank in the form set out in Part II of the Third Schedule, before the person begins to perform any function under the banking laws.

(2) Except for the purpose of the performance of functions or the exercise of a power under the banking laws or as directed in writing by the Bank, no person referred to in subsection (1) shall, during or after a relationship with the bank, disclose directly or indirectly to any person any information related to the affairs of any of its customers including deposits, borrowings or transactions or other personal, financial or business affairs without the prior written consent of the customer or the personal

representative of the customer

- (3) The duty of confidentiality imposed under this section shall not apply where
- (a) a customer who had been issued a credit card or charge card by a bank, has had the card suspended or cancelled by the bank by reason of default in payment, and the bank discloses information related to the customer's name and identity, the amount of indebtedness and the date of suspension or cancellation of the credit card or charge card to other banks issuing credit cards or charge cards in Ghana;
 - (b) the customer is declared bankrupt in Ghana or, in the case of a company, is being wound up;
 - (c) the customer has passed away, testate or intestate, and the information is required by the appointed personal representative of the deceased or the testamentary executor solely in connection with the succession estate;
 - (d) civil proceedings arise involving the bank and the customer or the account of the customer;
 - (e) the information is required by a colleague in the employment of the same bank in Ghana or an auditor or legal representative of the bank who requires and is entitled to know the information in the course of professional duties;
 - (f) the information is required by another bank for the purpose of assessing the credit-worthiness of a customer, if the information is being sought for commercial reasons and is of a general nature;
 - (g) the bank has been served with a garnishee order attaching moneys in the account of the customer;
 - (h) any person referred to in subsection (1) is summoned to appear before a court or a Judge in Ghana and the court or the Judge orders the disclosure of the information;
 - (i) the bank is required to make a report or provides additional information on a suspicious transaction to the Financial Intelligence Centre set up under the Anti-Money Laundering law in force.
- (4) Subject to subsections (6) and (7), where the head office of a bank

(a) incorporated outside Ghana requires information from its branch in Ghana about any transaction of that branch; or

(b) incorporated in Ghana requires information from its branch outside Ghana about any transaction of that branch;

the information shall be disclosed.

(5) Subject to subsections (6) and (7), where the parent bank of a subsidiary, which subsidiary is operating in Ghana under consolidated supervision, requires information from the subsidiary about any of the transactions of the subsidiary, the information shall be disclosed.

(6) Where the information which is required under subsection (4) or (5) relates to a transaction with a customer other than a bank, no information other than credit facilities granted to or foreign exchange transactions with the customer shall be disclosed.

(7) No information related to deposits taken from or foreign exchange transactions with a central bank or any other entity or agency, by whatever name called, which performs the functions of a central bank, shall be disclosed.

(8) Where an officer of a foreign bank or an officer of a central bank or banking regulator in a foreign country or any other entity or agency, by whatever named called, has the responsibility to supervise banks or perform the functions of a central bank, proposes to conduct an inquiry, audit or inspection of a branch or a subsidiary of the bank in Ghana or carry out other action that would involve the duty of confidentiality imposed under this section, the officer shall obtain the prior written authorisation of the Bank and be subject to the duty of confidentiality imposed under this section and any conditions that the Bank may impose before information of a confidential nature is made available to the office.

(9) The Bank of Ghana or any other competent authority in Ghana or outside Ghana which requires information from a bank related to the transaction and accounts of any person, may apply to a Judge in chambers for an order of disclosure of the transactions and accounts or the part which may be necessary.

(10) The Judge in chambers shall not make an order of disclosure unless satisfied that

(a) the applicant is acting in the discharge of official duty;

(b) the information is material to civil or criminal proceedings, whether pending or contemplated or is required for the purpose of an enquiry into or related to the trafficking of narcotic and dangerous drugs, arms trafficking, offences

related to terrorism or money laundering; or

(c) the disclosure is otherwise necessary, in the circumstances.

(11) Subject to the other provisions of this Act, the Bank or any person making an inspection or conducting an examination for it under the banking laws shall not reveal, unless required by a court so to do, to any person information in relation to the affairs of a customer obtained in the course of an inspection made or of an examination conducted under the banking laws.

(12) Despite subsection (11), the Bank may disclose to the auditor of a bank any information received under or for the purposes of this Act where it considers that disclosing the information would enable or assist it in the discharge of its supervisory duties.

(13) This section shall be without limiting the obligations of the Republic of Ghana under an international treaty, convention or agreement and to the obligations of the central bank under any concordat or arrangement or under any existing or future memorandum of understanding for co-operation and exchange of information between the Bank and any other foreign regulatory agency performing functions similar to those of the Bank.

(14) Subject to section 84A and 85, in the event of any conflict or inconsistency between any provision of this section and the provisions of any other enactment, the provisions of this section shall prevail."

Section 84A of Act 673 inserted

32. The principal enactment is amended by the insertion of a new section 84A "**Agreements for exchange of information**"

84A. The Bank may, for the purpose of establishing and maintaining links and liaison with international agencies in the field of banking as may be necessary for the furtherance of its objects, enter into an agreement or arrangement for the exchange of information with a foreign supervisory institution with responsibility to supervise banks or other similar institutions, where the Bank is satisfied that the foreign supervisory institution has the obligation to protect the confidentiality of the information imparted."

Section 87 of Act 673 amended

33. The principal enactment is amended by the substitution for section 87 of "**Immunity**"

87. No action shall lie against the Government, the Bank of Ghana, any officer of the Bank or any person acting under the direction of the Bank for anything done or omitted to be done in good faith in the administration of this Act, or in the execution of any powers or discharge of duties authorised or required under any other enactment that are relevant to this Act."

Sections 89A and 89B of Act 673 inserted

34. The principal enactment is amended by the insertion of new sections 89A and 89B

"Payments by Class II banks

89A. A Class II Bank is entitled to open and maintain with a bank holding a Class I Banking Licence or a bank holding a General Banking Licence, and with the approval of the Bank of Ghana, an account in cedis out of which payments by way of salaries, remuneration, fees, fines, penalties and other proper local payment shall be made.

Exemptions

89B. (1) A holder of a Class II Banking Licence is exempt from payment of duty, levy charge, fee or tax imposed by the enactments specified in the Fourth Schedule to this Act in respect of

- (a) its Class II banking transactions,
- (b) its dealing with residents with the approval of the Bank of Ghana, and
- (c) any authorised dealing in property in Ghana.

(2) A holder of a General Banking Licence is exempt from payment of duty, levy, charge, fee or tax imposed by the enactments specified in the Fourth Schedule in respect of its banking transactions with a non-citizen who is a non-resident."

Section 90 of Act 673 amended

35. The principal enactment is amended in section 90 by

- (a) the substitution for the definition of "bank" of

"bank" means a company incorporated under the laws of Ghana, or a branch of a company incorporated abroad, which is licensed in accordance with this Act, to conduct:

- (a) general banking under a General Banking Licence; or
- (b) Class I banking, under a Class I Banking Licence; or
- (c) Class II banking, under a Class II Banking Licence, from within Ghana."

(b) the insertion of the definition of "banking business" means

- (a) accepting deposits of money from the public, repayable on demand or otherwise and withdrawable by cheque, draft, orders or by any other means;
- (b) financing, whether in whole or in part or by way of short, medium or long term loans or advance, of trade, industry, commerce or agriculture, and
- (d) any other business activities that the Bank of Ghana may prescribe or recognise as being part of banking business after "bank"

(c) by the insertion of the new definitions before the definition of "connected lending"

"conservator" means a person who performs the function of a conservator as specified in this Act;

"Class I banking" means banking business other than Class II banking business;

"Class II banking business" means banking business or investment banking business conducted in currencies other than the Ghanaian currency except to the extent permitted by the Bank of Ghana for trading on the foreign exchange market of Ghana and investment in money market instruments;

"Class I Banking Licence" means a licence authorising the holder to transact Class I banking business;

"Class II Banking Licence" means a licence authorising the holder to transact Class II banking business;

"Class II banking transactions" means transactions effected by a bank holding a Class II Banking Licence pursuant to its licence or transactions of a

similar nature effected by a bank holding a General Banking Licence pursuant to that licence;" and

"concordat" means agreement.

(d) by the insertion of new definitions after "financial exposure"

"general banking business" means Class I and Class II banking business;

"General Banking Licence" means a licence authorising the holder to transact Class I and Class II banking business in and from within Ghana;

"key management personnel" means

(a) the chief executive officer, deputy chief executive officer, chief operating officer, chief financial officer, secretary, treasurer, chief internal auditor or manager of a significant business unit of the bank; or

(b) any person with similar responsibilities as a person in paragraph (a);"

(e) by the insertion of new definitions after "net worth" of

"non-resident" means any person who does not normally reside or carry on business in Ghana";

"ordinarily resident" means a situation where a person has lived in this country for at least twelve months;"

(f) by the insertion of a new definition after "prescribed" of

"public interest" includes a right or advantage which enures or is intended to enure to the general benefit of the people of this country".

First, Second, Third and Fourth Schedules to Act 673 inserted

36. The principal enactment is amended by the insertion of new Schedules:

"FIRST SCHEDULE***(Section 6 (1) (b))***

Type of Licence	Type of Bank	Minimum Initial Paid up Capital (after deduction of accumulated losses).
General Banking Business Rural Banks Class I Banking Licence	All types	Seventy billion cedis in relation to its Class I Banking Business in a currency and other amounts, as the Bank of Ghana may determine.
Class II Banking Licence		An amount in a currency as the bank of Ghana may determine from time to time.
Rural Banks		500 million cedis in relation to rural Banks.

SECOND SCHEDULE

Part I

(Section 83 (1) (a))

Oath of confidentiality

IN THE HIGH COURT OF GHANA

I being appointed..... do hereby swear/solemnly affirm that I shall maintain during or after my relationship with the Bank of Ghana the confidentiality of any matter related to the banking laws which comes to my knowledge and shall not, on any account and at any time, disclose directly or indirectly to any person, any matter or information related to the affairs of the Bank or of any other bank or the affairs of any of their customers, otherwise than for the purpose of the performance of my functions or the exercise of my powers under the banking laws or when meeting the requirements of an agreement or understanding reached by the Bank with any other relevant supervisory body or when lawfully required to do so by a Judge in chambers or any court of law or under any enactment.

Signature of declarant

Taken before me,

The Registrar of the High Court on(date)

Part II

(Section 83 (1) (b))

Declaration of confidentiality

I..... being appointed..... do hereby declare that I shall maintain during or after my relationship with the Bank of Ghana the confidentiality of any matter related to the banking laws which comes to my knowledge and shall not, on any account and at anytime, disclose directly or indirectly to any person, any matter or information related to the affairs of the Bank or of any other bank

or the affairs of any of their customers, otherwise than for the purposes of the performance of my functions or the exercise of my powers under the banking laws or when meeting the requirements of an agreement or understanding reached by the Bank with any other relevant supervisory body or when lawfully required to do so by a Judge in chambers or any court of law or under any enactment.

Signature of declarant.....

Made before me.....

Name.....

The chairperson of the Board on(date)

THIRD SCHEDULE

Part I

(Section 84 (1) (a))

Oath of Confidentiality

IN THE HIGH COURT OF GHANA

I.....being appointeddo hereby swear/solemnly affirm that I shall maintain during or after my relationship with the confidentiality of any matter related to the banking laws which come to my knowledge and shall not, on any account and at anytime, disclose directly or indirectly to any person, any matter or information related to the affairs of..... otherwise than for the purpose of the performance of my function or the exercise of my powers under the banking laws or when lawfully required to do so by a Judge in chambers or any court of law or under any enactment.

Signature of declarant.....

Taken before me.....

The Registrar of the High Court on(date)

Part II

(Section 84 (1) (b))

Declaration of confidentiality

I being appointeddo hereby declare that I shall maintain during or after my relationship with the confidentiality of any matter related to the banking laws which come to my knowledge and shall not, on any account and at any time, disclose directly or indirectly to any person, any matter or information related to the affairs of otherwise than for the purpose of the performance of my functions or the exercise of my powers under the banking laws or when lawfully required to do so by a Judge in chambers or any court of law or under any enactment.

Signature of declarant.....

Made before me.....

Name.....

The Chief Executive Officer on(date)

FOURTH SCHEDULE

(Section 89B)

Value Added Tax Act, 1998 (Act 546);

Internal Revenue Act, 2000 (Act 592);

Financial Administration Act, 2003 (Act 654);

Stamp Duty Act, 2005 (Act 689); and

Other Acts specified by the Minister

Date of *Gazette* notification: 22nd June, 2007

Borrowers and Lenders Act, 2008
(Act 773)

ARRANGEMENT OF SECTIONS

Section

1. Application
2. Meaning of credit agreement
3. Meaning of credit facility
4. Meaning of credit transaction
5. Meaning of credit guarantee

Supervisory and enforcement role of Bank of Ghana

6. Functions of the Bank of Ghana
7. Rules by notices
8. Investigation
9. Examination
10. Order for search of premises
11. Power of Court to make certain orders
12. Administrative fines

Borrower rights

13. Right to apply for credit
14. Protection against discrimination in respect of credit
15. Delivery of documents
16. Protection of borrower credit rights
17. Confidentiality, personal information and borrower credit records

Disclosure of information

18. Pre-agreement disclosure
19. Marketing information

Repayment and recovery of debt

20. Borrower's or guarantor's obligations

Collateral registry and registration of charges

21. Collateral Registry
22. Object of the Registry
23. Functions of the Registry

- 24. Appointment of collateral Registrar
- 25. Registration of charges
- 26. Procedure on registration
- 27. Registration of satisfaction of debt
- 28. Expiry of time for registration
- 29. Appointment of receiver or manager
- 30. Registration of appointment or removal of receiver
- 31. Notices to be published in *Gazette*

Enforcement of borrower's obligations

- 32. Default in payment
- 33. Remedies of lender on default
- 34. Lender's right to possession
- 35. Mortgages

Miscellaneous

- 36. Annual report
- 37. Regulations
- 38. Interpretation

SCHEDULE

THE SEVEN HUNDRED SEVENTY-THIRD

ACT

ENTITLED

BORROWERS AND LENDERS ACT, 2008

An Act to provide the legal framework for credit, to improve standards of disclosure of information by borrowers and lenders, to prohibit certain credit practices, to promote a consistent enforcement framework related to credit, and to provide for related matters.

DATE OF ASSENT: *23rd December 2008.*

ENACTED by the President and Parliament:

Preliminary matters

Application

1. (1) This Act applies to

(a) a credit agreement between parties who deal at arm's length except

- (i) a credit agreement covering an amount of less than one hundred Ghana cedis (GH¢100) or an amount determined by the Bank of Ghana;
- (ii) any other credit agreement exempted by the Bank of Ghana by notice under this Act.

(b) a credit guarantee where the guarantee is only in respect of a credit facility or credit transaction covered by this Act;

(2) This Act applies to a credit agreement or proposed credit agreement whether the lender resides or has its principal office within or outside the country, or is

- (a) an institution of state,
- (b) an entity controlled by an institution of state, or
- (c) an entity created by an enactment.

- (3) Where this Act applies to a credit agreement
- (a) it continues to apply to that agreement even if a party to that agreement ceases to reside or have its principal office within the country; and
 - (b) it applies in relation to every transaction, act or omission under that agreement, whether or not that transaction, act or omission occurs within or outside the country.
- (4) For purposes of this Act parties are not dealing at arm's length in the case of
- (a) a shareholder loan or other credit agreement between a corporate body as borrower and a person who has a significant shareholding in that corporate body, as lender;
 - (b) a loan to a shareholder, or other credit agreement between a corporate body, as lender, and a person who has a controlling interest in that corporate body, as borrower;
 - (c) a credit agreement between persons who are in a familial relationship; or
 - (d) any other arrangement that is of a type that has been held in law to be between parties who are not dealing at arm's length.

Meaning of credit agreement

2. For the purpose of this Act a credit agreement is an agreement in the nature of a credit facility, a credit transaction, a credit guarantee or any combination of these which the lender

- (a) resides or has its principal office within or outside the country;
- (b) an institution of state;
- (c) an entity controlled by an institution of state; or
- (d) is an entity created by an enactment.

Meaning of credit facility

3. An agreement is a credit facility if in that agreement the lender undertakes

- (a) to lend stipulated amounts within a specified period or at specified intervals agreed on with the borrower
- (i) to the borrower,
 - (ii) on behalf of the borrower, or
 - (iii) at the direction of the borrower; and
- (b) to either
- (i) defer the borrower's obligation to repay the stipulated amount in paragraph (a) to the lender,
 - (ii) bill the borrower periodically for the amount stipulated in paragraph (a) whether or not a charge, fee or interest is payable to the lender in respect of the arrangements.

Meaning of credit transaction

4. An agreement is a credit transaction if it is
- (a) a pawn transaction;
 - (b) an installment agreement;
 - (c) a mortgage or secured loan; or
 - (d) a finance or operating lease
- and it is not a credit facility or credit guarantee

Meaning of credit guarantee

5. An agreement is a credit guarantee if in that agreement a third party undertakes or promises to satisfy on demand an obligation of a borrower in a credit facility or credit transaction to which this Act applies.

Supervisory and enforcement role of Bank of Ghana

Functions of the Bank of Ghana

6. (1) In furtherance of this Act, the Bank of Ghana shall

- (a) promote and support the development of a fair, transparent, competitive, and accessible credit market;
 - (b) receive complaints in writing about alleged contraventions of this Act;
 - (c) monitor the credit market to detect and prevent conduct prohibited by this Act;
 - (d) institute proceedings in case of contravention of this Act;
 - (e) conduct investigation to ensure compliance with this Act;
 - (f) issue and enforce compliance orders;
 - (g) promote public awareness of credit matters, through
 - (i) public education, the design and dissemination of information to the public; or
 - (ii) the provision of guidance to the credit market and industry;
 - (iii) adoption of other measures to develop public awareness of the provisions of this Act;
 - (h) advise the Minister on matters of national policy related to credit and on the determination of standards as regards protection of the rights of borrowers and lenders in terms of this Act; and
 - (i) report to the Minister annually on the volume and cost of different types of credit products, market practices relating to those products, and their implications for borrower choice and competition in the credit market.
- (2) In furtherance of subsection (1) the Bank may
- (a) have regard to international developments in the field of credit and financing; or
 - (b) consult a person, organisation or institution about a matter.

Rules by Notices

7. The Bank may by Notice make rules for the effective implementation of this Act.

Investigation

8. Where the Bank has reason to suspect that a person has committed an offence under this Act or has been found guilty of fraud or dishonesty in relation to any credit agreement, the Bank may conduct investigations as it considers necessary in pursuance of this Act.

Examination by Bank of Ghana

9. (1) The Bank may examine the books, accounts, documents and transactions of a lender.

(2) The Bank may appoint a person to perform the function in subsection (1) on terms and conditions determined by the Bank.

(3) A person appointed by the Bank may make copies or take possession of records of a lender.

(4) A lender, a borrower, or other person shall give the Bank access to and shall produce books, accounts, documents and information required to conduct the inspection.

(5) A person who fails, without reasonable excuse, to furnish the Bank with the information required commits an offence and is liable on summary conviction to a fine of not more than two thousand penalty units or to a term of imprisonment of not more than four years or to both.

(6) A person shall not disclose information obtained from the books produced under this section without the previous consent in writing of the person who has custody or control of the books, except to the Bank of Ghana and its officers and employees, unless the publication or disclosure is required for the purposes of criminal proceedings or other action under this Act.

Order for search of premises

10. Where the Bank has reasonable grounds to suspect that

- (a) an action prohibited by this Act has taken place, is taking place, or is likely to take place on or in the premises;
- (b) an article connected with an investigation into the prohibited conduct is in the possession of, or under the control of, a person who is on or in the premises; or

(c) books, the production of which have been requested by the Bank and have not been produced in compliance with the direction are in the possession or under the control of a person who is on or in the premises;
the Bank may apply to court for the issue of a warrant authorising the Bank or a person named in the warrant to enter and search the premises.

(2) A person authorised to enter and search premises may

(a) search the premises;

(b) search any person on the premises if there are reasonable grounds to believe that the person has personal possession of an article or document that has a bearing on the investigation;

(c) examine an article or document that is on or in the premises and has a bearing on the investigation;

(d) request information about an article or document from the owner of, or person in control of the premises or from a person who has control of the article or document, or from any other person who may have the information;

(e) take extracts from, or make copies of, any book or document that is on or in the premises and has a bearing on the investigation;

(f) use any computer system on the premises, or require assistance of person on the premises to use that computer system, to

(i) access any data contained in or available to that computer system;

(ii) reproduce any record from that data;

(iii) seize an output from that computer for examination and copying; and

(iv) attach, and if necessary, remove from the premises for examination and safekeeping, any item that has a bearing on the investigation.

(3) The powers conferred under subsection (1) are in addition to, and not in derogation of, any other powers conferred by the Criminal Offences Act, 1960 (Act 29) or a law related to search of premises.

(4) In this section “premises” includes structure, building, place, aircraft, vehicle and vessel.

Power of Court to make certain orders

11. (1) Where on the application of a person alleging infringement under this Act, it appears to a court that a person

(a) has committed an offence under this Act,

(b) has contravened the conditions or restrictions of a licence or a code of conduct issued by or with the permission of the Bank, or

(c) is about to do an act that, if done, would be an offence or contravention of this Act,

the Court may, without limitation to any other orders it may make, make an order to secure compliance with any other order under this section, and direct a person to do or refrain from doing a specified act.

(2) A person who, without reasonable excuse, contravenes or fails to comply with an order under subsection (1) commits an offence and is liable on summary conviction to a fine of not more than five thousand penalty units or to a term of imprisonment of not more than ten years or to both.

Administrative fines

12. The Bank may impose an administrative fine of not more than five thousand penalty units and in the case of a continued breach an additional fine of not more than fifty penalty units for each day the breach continues.

Borrower rights

Right to apply for credit

13. (1) A person who has a legal capacity to enter into a contract may apply to a lender for credit.

(2) A lender may refuse to enter into a credit agreement with a prospective borrower on reasonable commercial grounds consistent with the lender's customary risk management and underwriting practices.

(3) This Act does not establish a right of a person to require a lender to enter

into a credit agreement with that person.

Protection against discrimination in respect of credit

14. (1) A lender shall not discriminate against a person on the grounds of race, gender, ethnicity, political affiliation, or religion to

- (a) assess the ability of the person to meet the obligations of a proposed credit agreement;
- (b) decide whether to refuse an application to enter into a credit agreement, or to offer or enter into a credit agreement;
- (c) determine an aspect of the cost of a credit agreement to the borrower;
- (d) propose or agree on the terms and conditions of a credit agreement;
- (e) assess or require compliance by the person with the terms of a credit agreement;
- (f) exercise any right of the lender under a credit agreement, this Act or any legislation relating to credit; or
- (g) determine whether to continue, enforce, seek judgment as regard a credit agreement or terminate a credit agreement.

(2) A person aggrieved by a decision of a lender may make a complaint to the Bank for redress.

Delivery of documents

15. A lender shall deliver a document required to be delivered to a borrower

- (a) in person;
- (b) by ordinary mail;
- (c) by facsimile;
- (d) by electronic-mail;
- (e) by printable web-page; or

(f) any other means agreed between the lender and the borrower.

Protection of borrower credit rights

16. (1) A lender shall not in response to a borrower's exercise of a right under this Act

- (a) penalise the borrower;
- (b) alter, or propose to alter the terms or conditions of a credit agreement with the borrower to the detriment of the borrower; or
- (c) take an action to accelerate, enforce, suspend or terminate a credit agreement with the borrower.

(2) Where a credit agreement or the provision of a credit agreement is

- (a) declared unlawful, or
- (b) severed from the agreement,
the lender in that agreement shall not, in response to that decision
 - (i) alter the terms or conditions of other credit agreement with a party to the impugned agreement, except to the extent necessary to correct a similarly unlawful provision; or
 - (ii) take an action to accelerate, enforce, suspend or terminate another credit agreement with another party to the impugned agreement.

Confidentiality, personal information and borrower credit records

17. A lender or a person who acts on behalf of a lender shall not disclose information obtained from a borrower unless the information is required under the Credit Reporting Act, 2007 (Act 726) under any other law or by a court.

Disclosure of information

Pre-agreement disclosure

18. (1) A lender shall not conclude a credit agreement with a prospective borrower unless the lender provides the prospective borrower with a pre-agreement statement and quotation in the form specified in the Schedule.

(2) A pre-agreement statement shall specify

- (a) the principal amount;
- (b) the proposed disbursement schedule of the principal debt;
- (c) the interest rate;
- (d) other credit costs;
- (e) the total amount involved in the proposed agreement,
- (f) the proposed repayment schedule; and
- (g) the basis of any cost that may be assessed if the borrower breaches the contract.

(3) A lender who contravenes this section is liable to an administrative sanction imposed by the Bank.

(4) In furtherance of subsection (3), a borrower may sue a lender for damages for loss suffered as a result of the contravention.

Marketing information

19. (1) Any written solicitation to induce a person to apply for or obtain credit shall include

- (a) the name and business address of the lender;
- (b) the nature of the proposed credit agreement;
- (c) the lender's current annual interest rate and other costs of credit;
- (d) whether deposit or security is required;
- (e) whether residual payment will be required;
- (f) whether other restrictions apply; and
- (g) any other information determined by the Bank.

(2) A person who makes an oral solicitation to induce a person to apply for or obtain credit shall provide a written statement which contains the information set out in subsection (1).

Repayment and recovery of debt

Borrower's or guarantor's obligations

20. (1) A borrower or guarantor may settle the credit amount at any time, subject to notice requirements as the conditions provided for in a credit agreement.

(2) A credit agreement may provide for the terms and conditions of any prepayment and the order in which advance payments are to be applied;

(3) Unless otherwise agreed by the parties, the amount required to settle a debt agreement is the total of

- (a) the principal amount;
- (b) the accrued interest charges;
- (c) a prepayment charge, if any, agreed between the borrower and the lender; and
- (d) the other fees and charges payable by the borrower to the lender up to the date for settlement.

(4) Subject to notice requirements provided in a credit agreement, a lender shall accept any payment under a credit agreement when it is tendered, even if that is before the date on which the payment is due.

(5) A lender shall credit each payment made under a credit agreement to the borrower as of the date of receipt of the payment.

Collateral registry and registration of charges

Collateral Registry

21. There is established by this Act a registry known as the Collateral Registry.

Object of the Registry

22. The object of the Registry is to register charges and collaterals created by borrowers to secure credit facilities provided by lenders.

Functions of the Registry

23. The Registry shall register charges and collateral and perform other functions as determined by the Bank.

Appointment of collateral Registrar

24. The Bank shall appoint a Registrar of charges and collateral on terms and conditions specified in the letter of appointment.

Registration of charges

25. (1) A borrower or a person interested in a charge shall register a certified copy of a charge or collateral created by the borrower in favour of a lender with the Collateral Registry within twenty-eight days after the date of the creation of the collateral or charge.

(2) Where a charge is created by a company, the requirement to register charges with the Collateral Registry under this section shall be in addition to the requirement under section 107 of the Companies Act, 1963 (Act 179) to register charges with the Registrar of Companies.

(3) A charge which is not registered in accordance with subsection (1) is of no effect as security for a borrower's obligations for repayment of the money secured and the money secured shall immediately become payable despite any provision to the contrary in any contract.

Procedure on registration

26. (1) The Collateral Registrar shall specify in the register

- (a) the name of the borrower;
- (b) the name of the lender;
- (c) the nature of the charge;
- (d) the date of creation of the charge;
- (e) the amount secured by the charge,
- (f) short particulars of the property charged; and

(g) in the case of a floating charge, the nature of any restriction on the power of the borrower or chargor to grant further charges that rank in priority to or with the charge created.

(2) This section does not affect the provisions of other enactment related to the registration of charges.

(3) In furtherance of this section, the Registrar shall keep, with respect to each borrower; a register of the particulars of the charge delivered for registration.

(4) The Registrar shall issue a certificate of the registration of particulars of any charge registered to the borrower.

(5) The certificate shall be evidence in the absence of a copy of the document on the charge.

Registration of satisfaction of debt

27. (1) The Registrar shall, on application in the prescribed form and on proof of

(a) payment in whole or in part for the debt for which the charge was created, or

(b) the release of the whole or part of the property charged, enter a memorandum of release of debt in the Register and furnish the borrower with a copy of the memorandum.

(2) The memorandum shall specify whether the charge is released in whole or in part.

Expiry of time for registration

28. (1) The Registrar may accept for registration particulars of a charge submitted later than the time specified in section 25 on satisfaction that

(a) the failure to register particulars of the charge within the specified time shall not prejudice the position of creditors or shareholders of the borrower, or

(b) it is just and equitable to allow the registration on terms that the Registrar considers just and expedient to extend the time for registration.

(2) The extension of time for registration of charge

- (a) shall not, unless otherwise decided by a court adversely affect the right of a person who, prior to the date of actual registration of particulars of the charge, may have acquired proprietary rights in, or a fixed or floating charge on, the property subject to the charge, and
- (b) is of no effect against a liquidator, official trustee, and creditors of the borrower, if insolvency or winding-up proceedings that affect the borrower commences before the date of actual registration of the charge.

Appointment of receiver or manager

29. A lender in whose favour a charge is created may

- (a) appoint a receiver or manager, or
- (b) apply to court for the appointment of a receiver or manager to
 - (i) take possession of and protect the property,
 - (ii) receive the rents and profits and discharge the outgoings of the property, or
 - (iii) realise the security on behalf of the lender.

Registration of appointment or removal of receiver

30. (1) A person who

- (a) appoints a receiver or manager,
- (b) obtains an order for the appointment of a receiver or manager, or
- (c) enters into possession of the property under the powers contained in a charge, shall, within ten days after the date of the appointment, order or entry into possession give notice of the fact to the Registrar.

(2) The Registrar shall enter the notice of appointment of receiver or manager in the register of the particulars of charges relating to the borrower.

(3) Where a

(a) person appointed receiver of the property of the lender ceases to act as receiver or manager, or

(b) person who has entered into possession goes out of possession the lender shall, within ten days of the occurrence' of the events in paragraph (a) or (b), give notice to that effect in the prescribed form to the Registrar who shall enter the notice in the register of particulars of charges.

(4) A person who fails to give notice under this section commits an offence and is liable on summary conviction to

(a) in the case of an entity, a fine of not more than one thousand penalty units, or

(b) in the case of an individual, two hundred and fifty penalty units or to a term of imprisonment of not less than two years or to both.

Notices to be published in Gazette

31. The Registrar shall cause a copy of the notice given under section 30 to be published in the *Gazette*.

Enforcement of borrower's obligations

Default in payment

32. (1) Where a borrower fails to make payment on the due date for a payment, the lender shall give notice of default to the borrower in writing and request the borrower to pay the amount due within thirty days.

(2) The lender may send the notice by

(a) hand,

(b) courier service,

(c) registered mail, or

(d) other means determined by the lender in consultation with the borrower.

(3) Where the notice is delivered

- (a) by hand, it shall take effect on the date it is received by or on behalf of the borrower; and
- (b) by courier service or registered mail, it shall take effect on the day it is officially recorded as delivered by return receipt or its equivalent.

(4) If a borrower fails to pay or make satisfactory arrangements to pay the amount outstanding to the lender within thirty days after the date of receipt of the notice, the lender may enforce the rights provided for under this Act.

Remedies of lender on default

33. Where a borrower fails to pay an amount secured by a charge under this Act, the lender may

- (a) sue the borrower on any covenant to perform under the credit agreement, or
- (b) realise the security in the property charged on notice to the person in possession of the property.

Lender's right to possession

34. (1) In the exercise of right of possession of property that is subject to a charge to secure a borrower's obligations under a credit agreement, a lender is not obliged to initiate proceedings in court to enforce the right of possession.

(2) Where a lender is unable to enforce a right of possession in a peaceable manner, the lender may use the services of the police to evict the borrower or other person in possession pursuant to a warrant issued by a court.

(3) A person who

- (a) fails without reasonable excuse, to vacate premises being foreclosed by a lender under subsection (1) when duly requested to do so, or
- (b) obstructs a lender in the lawful exercise of power conferred on the lender by this section,

commits an offence and is liable on summary conviction to a fine of not more than five hundred penalty units or to a term of imprisonment of not more than six months or to

both; and in the case of a continuing offence, to a further fine not exceeding fifty penalty units in respect of any day on which the offence continues.

Mortgages

35. (1) The Mortgages Act, 1972 (NRCD 96) does not apply to the rights of a lender under this Act in the event of default on the part of a borrower.

(2) Where there is a conflict between the provisions of this Act and the provisions of the Mortgages Act or other laws or rules applicable to the enforcement of a lender's rights, the provisions of this Act shall prevail.

Miscellaneous

Annual report

36. (1) The Bank shall, within six months after the expiration of each financial year, submit to the Minister an annual report on the administration of this Act.

(2) The annual report shall include

- (a) a record of violations and remedial actions taken,
- (b) volumes of different types of credit products, and
- (c) proposals for ongoing improvement for the effective administration of this Act.

Regulations

37. The Minister may, in consultation with the Bank, by Legislative Instrument make Regulations for the effective implementation of this Act.

Interpretation

38. In this Act, unless the context otherwise requires

“Bank” means the Bank of Ghana continued in existence in section 1 of the Bank of Ghana Act, 2002 (Act 612);

“borrower” means a person who has concluded a credit agreement with a lender;

"charge" means charge, mortgage, security, interest, lien, pledge, assignment by way of security, covenant, restriction, reservation, lease, trust, order, decree, judgment, title defect (including retention of title claim), or any other encumbrance of any nature other than liens arising by operation of law;

"chargor" means a lender in whose favour a charge is created;

"lender" means a person who, as part of business, advances loans and other credit facilities including micro credit facilities;

"person" includes an individual, a company, a partnership, an association, and any other group of persons acting in concert, whether incorporated or not;

"premises" includes any building, structure, land or other place;

"prescribed" means prescribed by Regulations, Rules, Notices, or Directives made or issued under this Act;

"property" includes movable and immovable property and choses in action;

"receiver" means a person appointed as receiver in accordance with the provisions of this Act, including a receiver and manager or similar officer;

"Registrar" means the Registrar of Collateral appointed under section 24 of this Act;

"significant shareholding" means a direct or indirect holding in a non-bank financial institution

(a) which represents ten per cent or more of the capital or of the voting right, or

(b) which makes it possible to exercise a significant influence over the management of the institution in which a holding subsists.

SCHEDULE

**PRE-AGREEMENT TRUTH IN LENDING DISCLOSURE
STATEMENT: SECTION 18 (1)**

(This is neither a Contract nor a commitment to Lend)

Lender's Name:
Applicant

Prepared by:

Address:
Application No:

Date Prepared:

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AMOUNT FINANCED	TOTAL OF PAYMENTS
The cost of your credit at a yearly rate %	The amount the credit will cost you (specify currency and amount) US\$/GH¢	The amount of credit provided to you or on your behalf US\$/GH¢	The amount you will have paid after making all payments as scheduled US\$/GH¢
REQUIRED DEPOSIT PAYMENTS:			
Your payment schedule will be:			
Number of Payments	Amount of Payments	When Payments Due	
<input type="checkbox"/> DEMAND FEATURE: This obligation has a demand feature <input type="checkbox"/> VARIABLE RATE FEATURE: This loan contains a variable rate feature. A variable rate disclosure has been provided earlier.			
INSURANCE: The following insurance is required to obtain credit: <input type="checkbox"/> Credit life insurance <input type="checkbox"/> Credit disability <input type="checkbox"/> Property insurance <input type="checkbox"/> Flood insurance			

<p>You may obtain the insurance from anyone you want that is acceptable to creditor. If you purchase property, flood insurance from creditor, you will pay US\$/GH¢ for a one year term.</p>	
<p>SECURITY: You are giving a security interest in:</p> <p><input type="checkbox"/> The goods or perperty being purchased</p> <p><input type="checkbox"/> Real property you already own</p>	
<p>FILING FEES: US\$/GH¢</p> <p>LATE CHARGE: If a payment is more than [] days late, you will be charged %</p> <p>PREPAYMENT: If you pay off early, you</p> <p><input type="checkbox"/> <input type="checkbox"/></p>	
<p><input type="checkbox"/> will/will not have to pay a penalty of []</p> <p><input type="checkbox"/> may/may not be entitled to a refund of part of the finance charge.</p>	

Date of *Gazette* notification: 9th January, 2009

**Central Securities Depository Act 2007
(Act 733)**

ARRANGEMENT OF SECTIONS

*Section**Establishment and functions of central securities depository*

1. Establishment of a central securities depository
2. Application procedure
3. Grant of application
4. Conditions for grant of application
5. Alterations to central securities depository rules by a depository
6. Amendment of a central securities depository rules by the Commission
7. Functions of a central securities depository
8. Fees
9. Appointment of participants for central securities depository
10. Directions by central securities depository
11. Central securities depository to provide assistance to the Commission

Admitted and dematerialised securities

12. Issue of uncertificated or dematerialised securities
13. Admittance of securities
14. Verification of certificates and transfer to a central securities depository
15. Trading of eligible securities
16. Restriction on trade in eligible securities
17. Receipt of certificates of eligible securities for safe custody
18. Liability of a central securities depository for loss or damage of certificates
19. Withdrawal of immobilised securities
20. Trading of securities withdrawn from central securities depository
21. Withdrawal of prescribed securities prohibited
22. Dematerialisation of securities
23. Central securities depository to maintain official record of depositors
24. Issuer not to issue certificates in respect of dematerialised securities
25. Effect of reference to records in a central securities depository
26. Application to collective investment schemes
27. Rules in respect of dematerialised securities

Securities accounts and records

28. Dealers in book-entry securities to hold securities account
29. Issuance of statements of accounts
30. Duty of central securities depository to keep records and accounts
31. Audit of records and accounts

Securities transactions and entries

32. Evidence of transactions in respect of deposited securities
33. Provision of record of depositors to issuers
34. Depositor to be treated as member or debenture holder
35. Register of Depositors
36. Termination and set-off
37. Prohibition in dealings in book-entry securities
38. Public offer of securities
39. Corporate actions
40. Underwriters to open securities accounts
41. Charging of securities
42. Securities in or under suspense

Security, secrecy and investigation provisions

43. Security measures
44. Duty to maintain secrecy
45. Permitted disclosures
46. Regulation of access to computer system
47. Power of the Commission to require production of records
48. Power of Commission to enter and search premises
49. Disclosure to Commission
50. Investigation by Commission
51. Power of Court to make orders

Miscellaneous provisions

52. Preservation of records and accounts
53. Guarantee Fund
54. Falsification of records or accounts

55. Destruction, concealment, or alteration of records
56. Furnishing false or misleading information
57. Offences by bodies corporate
58. General penalty
59. Regulations
60. Interpretation
61. References
62. Consequential amendments

THE SEVEN HUNDRED AND THIRTY-THIRD

ACT

OF THE PARLIAMENT OF THE REPUBLIC OF GHANA

ENTITLED

THE CENTRAL SECURITIES DEPOSITORY ACT, 2007

AN ACT to establish central securities depositories to regulate dealings in securities and to provide for related matters.

DATE OF ASSENT: *16th May, 2007*

ENACTED by the President and Parliament:

Establishment and functions of central securities depository

Establishment of a central securities depository

1. A central securities depository may be established by a company registered under the Companies Code, 1963 (Act 179).

Application procedure

2. (1) A person who intends to establish or operate a central securities depository shall, apply in writing to the Commission.

(2) The application shall be in writing and accompanied by central securities depository rules made by the applicant in a manner and form prescribed by the Commission and shall provide for

- (i) the proper and efficient operation, management and maintenance of the central depository;
- (ii) the clearing and settlement service to facilitate buying, selling and other dealings in securities and the operations of the depository service;
- (iii) the confidentiality and protection of information and documents related to the affairs of persons holding securities accounts with the central securities depository and the securities accounts held by them; and

(iv) any other information that the Commission may prescribe.

Grant of application

3. The Commission shall grant an application in writing if it is satisfied that

- (a) the proposed central securities depository rules of the applicant are rules approved by the Commission,
- (b) the establishment and maintenance of the central securities depository, promote the positive development of securities market in the country, and
- (c) the interest of the public dealings with securities, will be served.

Conditions for grant of application

4. The Commission may, impose conditions in relation to

- (a) the paid-up or authorised capital of the depository,
- (b) the shareholding of the members of the depository
- (c) the appointment of the board of directors and management of the depository, and
- (d) any other matters that the Commission considers appropriate in approving an application.

Alterations to central securities depository rules by a depository

5. (1) A depository shall not amend its rules, except with the prior approval of the Commission.

(2) A depository which intends to amend its rules shall apply in writing to the Commission.

(3) The Commission shall within thirty days after receipt of the application communicate its decision in writing to the depository.

Amendment of a central securities depository rules by the Commission

6. (1) The Commission may amend the central securities depository rules after consultation with the depository

(2) The Commission shall in writing specify any amendments made and the date on which the amendment shall come into force.

Functions of a central securities depository

7. A depository shall

- (a) facilitate the admittance of securities into the central securities depository;
- (b) facilitate the deposit and withdrawal of certificates in respect of securities admitted in the central securities depository
- (c) facilitate the dematerialisation of securities accounts;
- (d) open, maintain and close securities accounts;
- (e) establish a proper and efficient system for the verification, inspection, identification and recording of book-entry securities with the central depository;
- (f) facilitate the efficient transfer of book-entry securities;
- (g) facilitate the efficient process of cash payment in exchange for securities;
- (h) facilitate the registration of dealings in book-entry securities;
- (i) operate securities accounts for the handling of book-entry securities and
- (j) designate one or more banks as a settlement partner for the settlement of funds in respect of transactions cleared through a depository;
- (k) facilitate the efficient collection of fees and other charges that maybe required;

- (l) guard against falsification of any records or accounts required to be kept or maintained under this Act; and
- (m) perform other functions that are necessary to ensure orderly dealings in admitted or dematerialised securities, or as the Commission may from time to time prescribe.

Fees

8. A depository shall charge such fees for its services and facilities as approved by the Commission.

Appointment of participants for a central securities depository

9. (1) A central securities depository may appoint participants comprising the following in writing:

- (a) a licensed dealing member of a stock exchange,
- (b) a registrar, custodian, stockbroker, or a person licensed by the Commission as a dealer in securities,
- (c) a unit trust scheme or mutual fund licensed by the Commission,
- (d) a person licensed by the Bank of Ghana as a bank under the Banking Act 2004, (Act 673) or as a Non-Bank financial institution under the Financial Institutions (Non-Banking) Law 1993 (RN.D.C.L. 328);
- (e) an institutional investor, or
- (f) a body corporate of a type prescribed by the Commission.

(2) A person shall not act as participant of a depository unless the person is duly appointed by the relevant depository

(3) A central securities depository participant shall

- (a) perform functions approved for the depository under the Central securities depository rules, and
- (b) produce or make available to the depository or to the Commission when required, any information or document relating to a securities account.

Directions by central securities depository

10. (1) A depository may, give directions to an issuer of securities or a participant in performing its functions under this Act, and the issuer or participant shall comply with the directions.

(2) An issuer or participant who fails to comply with directions given by a depository commits an offence and is liable on summary conviction to a fine of not more than five hundred penalty units or a term of imprisonment of not more than five years or to both.

Central securities depository to provide assistance to the Commission

11. (1) A depository shall provide assistance to the Commission for the performance of its functions.

(2) The Commission and its agents shall have access to any part of the premises of a depository at reasonable times to ensure compliance with this Act.

*Admitted and dematerialised securities***Issue of uncertificated or dematerialised securities**

12. (1) An issuer of securities to the public may

(a) issue a security in uncertificated or dematerialised form where it is authorised in its regulations and authorised by a resolution of its board of directors,

(b) convert a certificated security into an uncertificated security where it is authorised in its regulations and by a resolution of its board of directors.

(2) A person may opt to hold a certificated security or a security in book entry form with a depository.

(3) Where a person opts to hold a security with a depository, the issuer shall give to the depository, details of the allotted security.

(4) The depository shall on receipt of details of the allotted security enter it in its records in the name of the allottee as the beneficial owner of the security.

Admittance of securities

13. (1) Subject to subsection (2), a stock exchange may, after consultation with a

central securities depositories prescribe that any security

(a) listed or quoted, or

(b) proposed to be listed or quoted,
on the stock exchange, be admitted by depositing the security with the central securities depository.

(2) A stock exchange shall give notice to the public of all eligible securities prescribed by it to be admitted into a depository in respect of securities listed or quoted on the stock exchange.

(3) The deposit by a person of an eligible security with a depository participant shall be considered to be a deposit of the security with that central depository

(4) A central securities depository shall hold securities in book-entry form only.

Verification of certificates and transfer to a central securities depository

14. (1) A depository or its participant shall lodge the certificate and instrument with the issuer within the period prescribed in the central securities depository rules after deposit of a certificate representing an eligible security and an instrument of transfer in respect of that security.

(2) The issuer shall register the transfer of the security in respect of the certificates in the name of the depository or its nominee company on receipt of the certificate and instrument.

(3) The issuer shall refuse registration of the transfer where

(a) the certificate is not a genuine certificate or is a certificate that has been reported lost or destroyed, and

(b) in relation to any security,

(i) there has been a duplication in the issue of the certificate representing that security,

(ii) a certificate has been issued in excess of the issued capital of the issuer, or

(iii) the issuer has been served with an order of a Court prohibiting dealing in respect of the security underlying the certificate.

(4) The issuer shall, in any case other than a case referred to in subsection (3), cancel a certificate and substitute in its records the name of the depository or its nominee as a registered owner in respect of that security and inform the depository.

(5) A depository shall enter the name of the depositor in its records as the beneficial owner.

(6) Where an issuer refuses registration of a transfer, the issuer shall serve on the transferor and the central securities depository, a written notice giving reasons for the refusal.

(7) An instrument of transfer lodged with an issuer may be registered in the name of a depository or its nominee company.

(8) This section does not apply to bearer securities.

Trading of eligible securities

15. (1) This Act applies to trading in eligible securities during the period beginning on the day immediately after the notification date and ending on the admission date.

(2) A depository or depository participant, shall accept a certificate representing an eligible security to be admitted for the purpose of settlement of any trade on a stock exchange in accordance with the central securities depository rule.

(3) Section 14 shall apply to depository agents and issuers with whom the documents referred to in subsection (2) of this section have been lodged.

Restriction on trade in eligible securities

16. (1) A person shall not trade in any eligible security on a stock exchange, after the admission date, unless the security has been deposited with a depository in accordance with this Act.

(2) Despite subsection (1), an eligible security may be deposited at the depository after the admission date at any time subject to the additional fees, that may be imposed under the central securities depository rules.

Receipt of certificates of eligible securities for safe custody

17. (1) A depository may prescribe a date by notice after which a member of a stock exchange may not receive a certificate representing an eligible security for safe custody.

(2) A depository shall give notice to the public of the date prescribed.

Liability of a central securities depository for loss or damage of certificates

18. (1) A depository and its participants are liable to a depositor for any loss or damage in respect of a certificate deposited by a depositor with the central securities depository or depository participant.

(2) Despite subsection (1), a depository is not liable for loss or damage of a certificate the transfer of which is not capable of registration.

(3) Subsection (2) shall not relieve a depository participant from any obligation imposed on the depository participant by the rules of a stock exchange in its capacity as a member of the stock exchange to effect buying-in resulting from a refusal of an issuer to register a transfer.

Withdrawal of immobilised securities

19. (1) A depositor may, withdraw a security standing to the credit of the depositor's securities account on application to the depository.

(2) Where an application for the withdrawal of a deposited security is made and the appropriate notification and withdrawal documents are received by the issuer or its share registry in accordance with the rules of the central securities depository, the issuer or its share registry, shall complete and deliver to the central securities depository certificates in connection with the transfer of the securities within 14 days after the date of receipt of the withdrawal documents to be forwarded to the participant.

(3) Despite subsection (1) withdrawals are not allowed for government securities.

Trading of securities withdrawn from central securities depository

20. (1) A person shall not trade securities withdrawn from a depository on a stock exchange unless the security is re-deposited in a depository.

(2) A security which is re-deposited with a central securities depository shall not be utilised to settle a transaction which took place on a stock exchange prior to the re-deposit of that security.

(3) Section 15 relating to eligible securities shall apply in respect of a re-deposited security.

Withdrawal of prescribed securities prohibited

21. (1) A person shall not withdraw from a depository, security which is prescribed as a dematerialised security.

(2) A stock exchange may, with the prior approval of the Commission, restrict or prohibit the withdrawal of a security or class of securities which is listed or quoted by the stock exchange for a period and in a manner as it considers appropriate.

(3) Where a stock exchange restricts or prohibits the withdrawal of book entry securities the stock exchange shall

(a) inform the depository of the decision, and

(b) give notice to the public of

(i) the book-entry securities restricted or prohibited from withdrawal, and

(ii) the period of the restriction or prohibition.

Dematerialisation of securities

22. (1) A depository may in consultation with the Commission, prescribe a period after which securities or a class of securities held or to be held by the depository shall be dematerialised in accordance with the process laid down under the central securities depository rules.

(2) An issuer of a dematerialised security shall be notified by the depository of the decision taken in accordance with subsection (1).

(3) An issuer of a dematerialised security shall

(i) give notice to the public that the security shall, on the dematerialisation date, become a dematerialised security; and

(ii) take necessary steps to amend its Regulations, deed of establishment, trust deed, or enabling statute, as the case maybe, to comply with this Act and the central securities depository rules within a period stipulated in the notice upon being notified of the decision.

(4) A notice of dematerialisation shall specify a dematerialisation date of not less than one month from the date of publication of the notice.

Central securities depository to maintain official record of depositors

23. (1) Every issuer of a security prescribed as a dematerialised security, shall on or after the dematerialisation date

- (a) surrender the physical register of members or debenture holders to the depository, and
- (b) provide information to the central securities depository of any member or debenture holder who appears in the appropriate register as a holder of a certificate not already admitted by the depository.

(2) A depository shall maintain an official Register which shall include the name and particulars of

- (a) each depositor with a security credited to a securities account held by the depositor, and
- (b) each member or debenture holder whose name appear under the appropriate register of members or debenture holders of the company.

(3) Despite sections 32 and 96 of the Companies Code relating to register of members and debenture holders, a record of depositors maintained shall

- (a) contain information in computerised record form; and
- (b) contain any other information as may be required under the central security depository rules.

(4) This section shall not apply to any bearer security, or be construed as making the depository an agent of the issuer for the purpose of providing registration services.

Issuer not to issue certificates in respect of dematerialised securities

24. An issuer shall not issue a certificate in respect of a dematerialised security after the dematerialisation date.

Effect of reference to records in a central securities depository

25. (1) With effect *from* the date of dematerialisation and despite the provisions of the Companies Code or the Regulations of the issuer, a reference in respect of a dematerialised security to

- (a) a register of members or debenture holders including branch registers, maintained by a company under the Companies Code is a reference to the record of depositors maintained by the depository,
- (b) a transfer of shares or debentures under the Companies Code is a reference to a book-entry transfer performed by the depository, and
- (c) a certificate, or an instrument of transfer representing any security which is used as prima facie evidence of ownership of that security is a reference to a statement of account issued by the central securities depository.

(2) Sections 32 and 96 of the Companies Code shall not apply to a dematerialised security.

Application to collective investment schemes

26. (1) With effect from the dematerialisation date and despite any provision in trust deed of a collective investment scheme, a reference to

- (a) a register of a collective investment scheme, is a reference to the record of depositors maintained by the depository
- (b) a transfer of interest in a collective investment scheme from one investor to another, is a reference to a book-entry transfer by the central securities depository and
- (c) a certificate issued as evidence of an interest in a collective investment scheme, is a statement of account issued by the depository.

Rules in respect of dematerialised securities

27. The Commission may prescribe rules in respect of dematerialised securities

- (a) to effect the replacement of physical registers with book-entry records where the dematerialised security is a security other than a share or debenture under the Companies Code, or an interest in a collective investment scheme, and
- (b) to specify forms for recording interest in securities standing to the credit of any depositor before the dematerialisation date.

*Securities accounts and records***Dealers in book-entry securities to hold securities account**

28. (1) A person shall not deal in book-entry securities unless the person holds a securities account with a central securities depository

(2) A depository may establish different types of securities accounts for different classes of persons or securities.

(3) An entry in a securities account in respect of a transaction shall

(a) in the case of a securities account established and maintained directly by a central securities depository be considered to have been made by, or with the authority of, the central securities depository; and

(b) in the case of a securities account established through, and maintained by a depository agent on behalf of a depository, be considered as having been made by, or with the authority of, the depository agent.

(4) A record of an entry in a securities account in respect of a transaction in book-entry securities shall be prima facie evidence of the matters recorded.

Issuance of statements of accounts

29. (1) A depository shall issue statements of accounts to depositors, in respect of book-entry securities held by or registered in the name of the depository or its nominee company for the depositors at a time and in a manner prescribed.

(2) Despite subsection (1), a depositor may, require the depository to issue by written notice to the depositor, a statement of accounts in respect of book-entry securities held by or registered in the name of the depository or its nominee company on behalf of the depositor.

(3) A depository shall on receipt of a written notice and upon payment of charges which maybe imposed under the central securities depository rules, issue to the depositor the statement of account required.

(4) A statement of accounts issued under this section is evidence of truth of the matters specified in that statement of account.

Duty of central securities depository to keep records and accounts

30. A depository shall keep records and accounts to show particulars of

- (a) transfers of book-entry securities to and from a securities account,
- (b) income received from commissions, fees, charges and other sources, and expenses, commissions, and other payments made or paid by the central securities depository, and
- (c) assets and liabilities including contingent liabilities of the central securities depository.

Audit of records and accounts

31. (1) A depository shall cause an audit to be conducted in respect of its records and accounts at the end of each financial year.

(2) The audit shall include a verification of the accuracy of the details shown in the records and accounts.

(3) The depository shall submit a copy of a duly certified audit report to the Commission within ninety days after the end of the financial year.

(4) The Commission may, by notice in writing, direct that an audit be conducted of an aspect of or all of a central depository's operations at the expense of the central security depository.

Securities transactions and entries

Evidence of transactions in respect of deposited securities

32. A transaction in respect of a deposited security by a depositor

- (a) whether accompanied by an instrument or not shall be by entry in the securities account of the depositor, and
- (b) shall include a deposit of an eligible security and a trade or transfer of a book-entry from a securities account to another securities account maintained by the depository.

Provision of record of depositors to issuers

33. (1) An issuer of a book-entry security may by written notice require a depository to furnish it with a record of the depositors in whose securities accounts, securities are credited as at the date of the notice.

(2) A record of depositors

- (a) required by an issuer shall be issued by the depository within the period specified in the notice and in any case before the expiry of a period specified under the central securities depository rules;
- (b) issued in response to a request made by an issuer shall contain the name, identity card, passport number or company number and statement or the number of book-entry securities held in favour of each depositor;
- (c) obtained by an issuer shall be available for inspection by a member of an issuer without the payment of a fee but may be inspected by any other person on payment of a fee to the depository in respect of each inspection.

(3) A member of an issuer or any other person may require the issuer to furnish him with a copy of the record of depositors or a part of it on the payment of a fee, commensurate to the quantum of information requested.

(4) The copy of the record of depositors, or a part of it shall be supplied to the person who required the copy within a period of twenty-one days or within a longer period that the Commission considers reasonable after the date of receipt of the request by the issuer.

Depositor to be treated as member or debenture holder

34. (1) A depository shall be the registered owner of a security for the purpose of effecting transfer of ownership of that security on behalf of a depository

(2) A depository as a registered owner shall not have voting rights or any other rights in respect of securities held by it.

(3) A depositor of a book-entry security whose name appears in the record of depositors is entitled to rights, benefits, powers and privileges and to liabilities, duties and obligations in respect of the security as if the depositor were a member or debenture holder registered in an appropriate register maintained by the issuer of the security, in accordance with the Companies Code or any other law.

(4) Despite the Companies Code, a depositor is not entitled to attend a general meeting of a company, speak or vote at the meeting unless the depositor's name appears on the depository register forty-eight hours prior to the general meeting.

(5) A depository or its nominee company shall not have an interest in deposited securities registered in its name, or be a bare trustee.

(6) For the purpose of this section, "deposited security" does not include a security specified in the securities account as being in suspension under this Act or rules made by the Commission.

Register of Depositors

35. (1) Persons named as depositors in a Register of Depositors shall, for the period that the deposited securities are entered against their names in the Register be

(a) members of the company in respect of the amount of deposited securities entered against their respective names in the Register of Depositors; or

(b) holders of the amount of the issuer's deposited securities other than shares entered against their names in the Register of Depositors.

(2) This Act shall not affect

(a) the obligation of a company to keep a register of its members, and allow inspection of the register under the Companies Code;

(b) the obligation of a company to keep a register of holders of debentures issued by the company and allow inspection of the register, under the Companies Code;

(c) the obligation of an issuer other than a company to keep a register of the holders of securities issued by the issuer;

(d) the right of a depositor to withdraw documents showing title to securities, from the depository at any time in accordance with the central securities depository rules and to register them in the depositor's name; or

(e) the enjoyment of a right, power or privilege, or the imposition of a liability, duty or obligation under the Companies Code, or any other enactment, instrument, or Regulations of a company on a depositor, as a member of a company or as a holder of debentures or securities, except to the extent provided for in this Act or prescribed by regulations made under this Act.

Termination and set-off

36. (1) The Central Securities Depository may terminate its agreement

(a) to clear or settle securities transactions, or

(b) to act as a depository for securities with an insolvent participant or with a participant in respect of whom insolvency or bankruptcy proceedings are commenced.

(2) Where the central securities depository terminates its agreement, the depository may

- (a) set-off obligations between the insolvent participant and the depository in accordance with the provisions of the agreement, and
- (b) if there is a net termination sum owed to the depository by the insolvent participant, the depository shall be considered as a creditor of the insolvent participant in respect of that net termination sum.

(3) The depository may realise assets of the insolvent or bankrupt participant because of a pledge in favour of the central securities depository or because of the central securities depository rules or guarantees established by the depository in accordance with the central securities depository rules.

Prohibition in dealings in book-entry securities

37. A depository shall not purchase, acquire, or deal in book-entry securities as principal other than for a purpose and in a manner that may be permitted by the Commission.

Public offer of securities

38. (1) Where a stock exchange or a depository prescribes any securities proposed to be listed or quoted on a stock exchange to be immobilised or dematerialised, the issuer of the security shall notify the public that the security is prescribed in the prospectus or other offer document issued.

(2) Upon completion of the allotment or allocation of the security the issuer or offer or shall

- (a) confirm with the central securities depository the record of the successful applicants together with information required by the central securities depository in order to make appropriate entries in the securities accounts of the respective applicants, and
- (b) deliver to the central securities depository the certificates, if any, in denomi-

nations specified by the central depository registered in the name of the central securities depository or its nominee company.

- (3) For the purposes of this section
“offeror in relation to a security” means the person offering the security for sale.

“a reference to a security proposed to be listed on a stock exchange” means a reference to a security which has been approved by the Commission to be listed on the stock exchange.

Corporate actions

39. (1) Where an issuer, in relation to book-entry securities

(a) makes a bonus issue of shares by way of an increase in its total issued capital, or issue securities because of a rights issue or the conversion of debt securities, or

(b) issues securities because of an exercise of a right or option to acquire securities in the share capital of the issuer

the issuer shall notify the central securities depository and deliver to the central securities depository

- (i) a confirmed list of the names of the allottees for the purposes of amendment of the securities accounts held by the allottee, and
- (ii) the appropriate certificates, if any, in denominations that may be specified by the central securities depository registered in the name of the central securities depository or its nominee company.

(2) A prospective allottee shall, open a securities account with the central securities depository before acquiring any security.

Underwriters to open securities accounts

40. A person who intends to underwrite securities proposed to be listed on a stock exchange, or rights issue in respect of a book-entry security, shall open a securities account with the central securities depository.

Charging of securities

41. (1) Where a security deposited with a depository is charged by a depositor referred to as "the charger" in favour of a person referred to as "the chargee" the chargee or the nominee of the chargee shall create a security interest in the security which is the subject of the charge.

(2) A security interest in deposited securities to secure the payment of a debt or liability may be created in favour of a chargee upon the request of the chargee by an instrument of charge in the form prescribed under the central securities depository rules executed by the charger.

(3) Subject to this Act or to rules made by the Commission, a security interest shall not be created in deposited securities.

(4) An instrument of charge that creates a security interest in a deposited security in favour of another person shall be deposited with the central securities depository where the securities charged are held, for registration.

(5) The central securities depository agent shall on receipt of the instrument of charge deposited register the instrument in a register of charges maintained by the central security depository.

(6) If a charge over a deposited security is being discharged or released, the central securities depository or its agent, shall on receipt of a notice of the charge confirm the discharge or release and transfer the deposited security into the securities account of the charger.

(7) This section shall not

- (a) apply to floating charges,
- (b) affect the validity and operation of floating charges in respect of deposited securities created under any law, and
- (c) be construed to require the central securities depository to monitor, protect or give effect to an agreement or memorandum made between the charger and the chargee in respect of a charge; but the central securities depository or its agent, may require the charger or chargee to provide a supporting document of the charger on the creation of the security interest by way of the charge.

Securities in or under suspense

42. (1) A depository may specify a deposited securities account to be in suspense

- (a) where the transfer of the security in the name of the central securities

depository or its nominee company is not registrable by the issuer,

- (b) where an application for withdrawal of the security has been made by a depositor, or
- (c) in circumstances prescribed by the depository under the central securities depository rules.

(2) A depository may specify that a book-entry security in a security account is under suspense

- (a) where there is a need for the central securities depository to restrict the transfer, charge or mortgage of the security in the event of an objection or investigation made in accordance with the central securities depository rules, and
- (b) where the depository has been instructed to restrict the movement of book-entry transfers by the Commission or by a court of competent jurisdiction.

Security, secrecy and investigation provisions

Security measures

43. Each depository and its depository agent shall take reasonable measures to protect information and documents related to the affairs of depositors and in particular, related to their securities accounts, against unauthorised access by persons.

Duty to maintain secrecy

44. (1) Subject to this Act, a director, officer, employee or agent of a central securities depository or any other person who has access to information or document related to the affairs of a depositor and securities accounts of a depositor shall not disclose the information or the contents of a document to another person.

(2) A person who has information, which to that person's knowledge was disclosed in contravention of subsection (1) shall inform the depository of the disclosure.

(3) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of five hundred penalty units or imprisonment for a term of not less than three years, or to both.

Permitted disclosures

45. A person shall not disclose information or a document in respect of deposited securities to another person except

- (a) if the depositor, the depositor's authorised agent or personal representative, has given permission in writing for the disclosure,
- (b) in a case where the depositor is declared bankrupt, or, if the depositor is a company or body corporate, that depositor is being or has been wound up in Ghana or *in* any country outside Ghana;
- (c) for the purpose of instituting civil proceedings or in the course of any civil proceedings
 - (i) between a depository or its agent and a depositor relating to the securities account of the depositor, or
 - (ii) between a central securities depository or its agent and two or more parties making adverse claims to securities or monies in the securities account of the depositor, where the agent seeks relief by way of interpleader,
- (d) to a person authorised to investigate an offence in respect of a depositor suspected to have committed an offence in relation to a securities account in a depository;
- (e) to a central securities depository for the purpose of compiling the record of depositors under this Act;
- (f) to an issuer in respect of a record of depositors issued under this Act;
- (g) to any member of an issuer or any person in respect of a record of depositors issued under this Act;
- (h) for the purpose of enabling or assisting the Commission to exercise a power conferred on it under this Act or any other law;
- (i) for the purpose of enabling or assisting the commission and the Registrar to discharge their functions under this Act;
- (j) to enable or assist a stock exchange or clearing house of a stock exchange to discharge its duty, and

- (k) to enable or assist auditors of a central securities depository and its agent to discharge their duty.

Regulation of access to computer system

46. (1) A central securities depository may give access to its computer system to

- (a) its agents,
- (b) a stock exchange on which book-entry securities are listed,
- (c) a clearing house of a stock exchange,
- (d) issuers, and
- (e) any other person as may be prescribed by the Commission by Regulations made under this Act.

(2) The Commission may, prescribe rules, to provide for the extent to which a user or class of users can or cannot have access to the system for the purpose of regulating access to the computer system of a central securities depository.

(3) A person who

- (a) being a user, unlawfully gains access or attempts to gain access to a computer system of a central securities depository
- (b) unlawfully gains access, or attempts to gain access to a computer system of a central depository, or
- (c) unlawfully interferes with, impedes or attempts to interfere with or impede, the operation of a computer system of a central securities depository commits an offence and is liable on summary conviction to a fine of seven hundred penalty units or to a term of imprisonment not exceeding five years or to both.

Power of the Commission to require production of records

47. (1) The Commission may give directions in writing to

- (a) a central securities depository,
- (b) a nominee of a central securities depository

- (c) a central securities depository agent,
- (d) a user,
- (e) a person who is or has been an officer or employee of a central securities depository, or
- (f) an agent, advocate, solicitor, auditor, or other person acting in any capacity for or on behalf of a central depository or its nominee company, or a central securities depository agent, or a user to produce to the Commission records or accounts related to the business or affairs of a depository agent, or user or records or accounts required to be kept by a central securities depository under this Act.

(2) A reference in subsection (1) to a business carried on by a person includes a reference to a business carried on by a person as trustee.

(3) Where the Commission requires the production of a record or account and a person has a lien on the record or account, the Commission

- (a) may take possession of the records or accounts and make copies or extracts from it,
- (b) may require the other person or any other person who is a party to the compilation of the records or accounts to make a statement providing an explanation of the records or accounts,
- (c) may retain possession of the records or accounts for a period that the Commission may consider necessary; and
- (d) shall permit the other person, upon giving reasonable notice and description of the record or accounts, to have access to the records or accounts which are in the possession of the Commission.

(4) Where the Commission requires the production of a record or account and the records or accounts are not produced, the Commission may require a person

- (a) to state where the records or accounts may be found, and
- (b) to identify the last person who had custody of the records or accounts and where that person may be found.

(5) A power conferred by this section to require a person to do an act applies to an officer of a body corporate.

(6) A person who fails to comply with a requirement made under this section commits an offence and is liable on summary conviction to a fine of five hundred penalty units, and in the case of a continuing offence is liable to a penalty of ten penalty units for each day that the offence continues.

Power of Commission to enter and search premises

48. (1) The Commission shall enter and search premises

- (a) where there is reasonable grounds to believe that an offence under this Act has been or is likely to be committed, or
- (b) where a record or account which is required to be produced in compliance with a request by the Commission, is being kept; and
 - (i) if the premises is occupied by a depository or a user, inspect, examine and operate the computer system,
 - (ii) if the premises is occupied by any other person, break open and search any cupboard, drawer, safe, box or other receptacle, and where a computer system is installed, inspect, examine and operate the system, and
 - (iii) take possession of records, documents or other material found on the premises.

(2) A person who

- (a) obstructs or hinders the Commission in the exercise of its powers,
- (b) fails to give to the Commission assistance that it may reasonably require commits an offence and is liable on summary conviction to a fine of five hundred penalty units or to term of imprisonment not exceeding three years or to both.

Disclosure to Commission

49. (1) The Commission may require a depository or its agent to disclose to the Commission

- (a) the acquisition or disposal of deposited securities and the nature of the

instructions given to the central securities depository or its central agent in respect of the acquisition or disposal,

- (b) information regarding the disposal of the securities account numbers and entries made in the securities account, and
- (c) the book-entry securities acquired or disposed of by a depositor as trustee for or on behalf of another person, including the name of the person and the nature of instructions given to the depositor in respect of the acquisition and disposal.

(2) A person who, contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of five hundred penalty units or to a term of imprisonment not exceeding three years or to both.

Investigation by Commission

50. The Commission may conduct an investigation if it suspects that a person has committed or is about to commit an offence under this Act.

Power of court to make orders

51. (1) If on the application of an aggrieved party or a central securities depository it appears to the Court that a person

- (a) has committed an offence under this Act in relation to dealings in deposited securities;
- (b) has contravened the central security depository rules; or
- (c) is about to do an act in relation to dealings in deposited securities that constitutes an offence under this Act or would be a contravention of the central securities depository rules the court may make an order;
 - (i) to restrain a person from acting or holding himself out as a depository agent,
 - (ii) to restrain a person from withdrawing or dealing with book- entry securities specified in the order,
 - (iii) compel a person to do or refrain from doing an act, and
 - (iv) that it considers necessary.

(2) Before making an order, the Court may direct that notice of the application should be

(a) served on the relevant parties, and

(b) published in a manner that is considered appropriate.

(3) A person, who fails to comply with an order made by the Court commits an offence and is liable on summary conviction to a fine of five hundred penalty units or to a term of imprisonment of not less than three years or to both.

(4) The Court may in addition to the penalty provided for charge a person for contempt of court, rescind, vary or discharge an order made by it or suspend the operation of the order.

Miscellaneous provisions

Preservation of records and accounts

52. A central securities depository and its agents shall preserve records and accounts relating to the depository for a period of six years after closure of a securities account, whether or not they cease to carry on business before the end of the seventh year.

Guarantee Fund

53. (1) A central securities depository shall establish and maintain a Guarantee Fund for the purpose of providing an indemnity against default in respect of payments for or delivery of securities by a depository participant and of obligations of participants towards the central securities depository.

(2) The assets of the Guarantee Fund consists of moneys accruing to the Fund and contributions specified in the central securities depository rules.

(3) Where the central securities depository has made payment from the Guarantee Fund in relation to a default, even if the central securities depository is not a counter party to the transaction between selling and buying participants, it shall be subrogated to the rights and powers of the participant not in default for the purpose of the seizure and sale of unpaid securities and of operating the Guarantee Fund.

Falsification of records or accounts

54. (1) A person who

(a) records or stores, information that is false or misleading;

(b) falsifies, destroys or removes

- (i) information which is recorded or stored by that person,
 - (ii) information which is prepared for the purpose of being recorded or stored,
 - (iii) information which is prepared for use in compiling records, and
 - (iv) information which is prepared for use in recovering other information, in relation to a record or an account required to be kept by a depository or its agent under this Act by means of a mechanical device, an electronic device, or any other device, commits an offence and is liable on summary conviction to a fine of not more than five hundred penalty units or to imprisonment for a term of not more than three years or to both.
- (2) A person who is responsible for recording or storing information but fails to do so
- (i) with intent to falsify any entry made, or record intended to be compiled from the information that has been recorded or stored, and
 - (ii) knowing that the failure to record or store the information will render the information recorded or stored, false or misleading commits an offence and is liable on summary conviction to a fine of not more than five hundred penalty units, or to imprisonment for a term of not less than three years, or both.

Destruction, concealment, or alteration of records

55. A person who

- (a) destroys, conceals, or alters a record or account required to be kept under this Act; or
- (b) sends, attempts to send or conspires with another person to send out of Ghana any record or account,

with intent to defraud a person, or to prevent, delay or obstruct the carrying out of an examination, investigation or audit, or the exercise of a power under this Act, commits an offence and is liable on summary conviction to a fine of one thousand penalty units or to a term of imprisonment not exceeding four years or to both.

Furnishing false or misleading information

56. A person who furnishes information which is false or misleading

(a) for the purpose of, or in connection with, any application under this Act;
or

(b) in compliance with any requirement imposed on that person under this Act, commits an offence and is liable on summary conviction to a fine of five hundred penalty units or to a term of imprisonment of not more than three years.

Offences by bodies corporate

57. Where an offence under this Act is committed by a body corporate, a director, or other officer of the body corporate or a person acting in that capacity is liable to have committed that offence unless the person proves that

(a) the offence was committed without the person's consent or connivance;
and

(b) the person exercised diligence to prevent the commission of the offence having regard to the nature of the person's functions in that capacity and to other circumstances.

General penalty

58. A person who contravenes a provision of this Act for which a penalty is not provided commits an offence and is liable on summary conviction to a fine of five hundred penalty units or to a term of imprisonment of not more than three years or to both.

Regulations

59. (1) The Minister may, on the advice of the Commission, by legislative instrument make Regulations for matters necessary for the effective implementation of this Act.

(2) Despite the Statutory Instruments Act, 1959 (No. 52) Regulations made under this Act may impose a penalty of not more than two thousand five hundred penalty units.

Interpretation

60. (1) In this Act, unless the context otherwise requires,

"access" in relation to a computer system, means the placing of information on that system and the retrieval of information from that system;

- “admittance of securities date” in relation to any eligible security means the date specified in the notice given by a stock exchange as being the last day on which the eligible security may be traded on a stock market of the stock exchange unless such security has been deposited with the central depository;
- “admittance of security” means a security in which the underlying certificate has been deposited with and is held by a central depository;
- “agent” means a Central Securities Depository agent;
- “bank” mean a body corporate which is issued with a licence in accordance with the Banking Act 2004 (Act 673);
- “bare trustee” means a trustee who has no beneficial interest in the subject matter of the trust;
- “bearer security” means a security the title to which is transferable by delivery with or without endorsement of the certificates representing such securities;
- “buying in” means the buying effected by a security exchange, according to the rules of the stock exchange of securities which a seller has failed to deliver on a day fixed for settlement;
- “charge” includes a pledge or a mortgage;
- “certificate” means a document that is a document of title to a security;
- “central depository agent” in relation to any central depository, means a person appointed to be an agent of that central depository;
- “central securities depository” or “depository” means a company approved by the Commission to establish and operate a system for the central handling of securities—
- (i) whereby the securities are immobilised or dematerialised and dealings in respect of those securities are effected by means of entries in securities accounts without the physical necessity of certificates; or
 - (ii) which permits or facilitates the settlement or registration of securities transactions of dealings in securities without the physical necessity of certificates; and

(iii) which provides other facilities and services incidental with the proceeding provisions;

“Commission” means the Securities and Exchange Commission established by the Securities Industry Law 1993 (P.N.D.C.L. 333) as amended;

“Companies Code” means the Companies Code, 1963 (Act 179) as amended;

“computer system” in relation to a central depository, means a computer system established by a central securities depository which forms part of the system for the central handling of securities and which consists of

(i) the central equipment comprising hardware and software associated with that hardware, located at the premises of the central depository, and

(ii) the terminals located at the premises of the users.

“central securities depository rules” includes the rules of a central securities depository and any other directions given from time to time by a central securities depository to any person;

“dealer” means a dealer as defined in the Securities Industry Law 1993 (P.N.D.C.L. 333) as amended;

“dealing in securities” means dealing in securities as defined in the Securities Industry Law 1993 (P.N.D.C.L. 333) as amended;

“debt securities” means debentures, bonds, notes, or other similar instruments representing or evidencing indebtedness whether secured or otherwise;

“debenture” and “debenture holder” means debenture and debenture holder as defined under the First Schedule to the Companies Code;

“dematerialisation” means the elimination of physical certificates or documents of title that represent ownership of securities so that securities exist only as accounting records;

“dematerialisation date” in relation to a dematerialised security, means the date prescribed by a central securities depository as being the last day on which a certificate representing such security shall not be recognised as first hand evidence of ownership under the Companies Code;

“dematerialised security” means a security which has been prescribed by the central securities depository whereby the underlying physical certificate is no longer recognised as prima facie evidence of ownership under the Companies Code;

“deposited security” includes a security standing to the credit of a security account which is transferable by way of book-entry in the record of depositors and a security in a securities account that is in suspense;

“depositor” in relation to any book-entry, means a holder of a securities account;

“depository” means a central securities depository;

“eligible security” means a security which has been prescribed by the Bank of Ghana or a stock exchange to be admitted in with a central securities depository;

“information” includes data recorded in a form which can be processed by equipment operating automatically in response to instructions given for a particular purpose;

“institutional investor” means a person whose ordinary course of business is to hold, manage or invest funds in connection with retirement benefits, insurance contracts, mortgage and savings schemes and any funds or scheme in the nature of a collective investment scheme; “issuer” in relation to a security, includes the company, corporation, government or body corporate or unincorporated or other person, which issued that security, and any person performing the functions of a registrar for the issuer in respect of the security;

“listed” means admitted to the official list of a stock exchange in Ghana and listing shall be construed accordingly;

“listed security” means a book-entry security listed on a stock exchange in Ghana;

“market day” means any day during which a stock exchange is open for business;

“member” in relation to

- (i) a stock exchange, means a person who is recognised as a member of a stock exchange; and
- (ii) a company, means a person who is recognised as a member of a company under the Companies Code;

“Minister” means the Minister responsible for Finance;

“non-bearer security” means a security other than a bearer security;

“notification date” means the date on which is given by a stock exchange;

“official list” in relation to a stock exchange in Ghana, means a list or lists specifying all securities which have been admitted for listing on that stock exchange;

“prescribe” means prescribed by regulations under this Act;

“record” in addition to a record in writing, includes

- (i) a photograph;
- (ii) a disc, tape, sound-track, or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced from the disc, tape, sound track or other device; and
- (iii) a film, tape or other device on which visual images are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced therefrom, and any reference to a copy of a record includes a film, tape or other device;
- (iv) in the case of a record falling within paragraph (ii) but not paragraph (iii) of this definition, a transcript of the sounds or other data embodied therein;
- (v) in the case of a record falling within paragraph (iii) but not paragraph (iv) of this definition, a still reproduction of the images embodied therein, whether enlarged or not; and
- (vi) in the case of a record falling within both paragraphs (ii) and (iii) of this definition, the transcript of the sounds or other data embodied therein together with the still reproduction of the images embodied therein;

“Register of depositors” means a record maintained by a central securities depository to an issuer which contains specified particulars;

“Registrar” means a person appointed by an issuer to perform the functions of a registrar of its securities;

“securities” includes—

- (i) debentures, shares, bonds or notes issued or proposed to be issued by a body corporate and any right, warrant or option in respect of them,
- (ii) bonds, treasury bills or other loan instrument of the Government of Ghana or of any other country,
- (iii) rights of interest, whether described as units or otherwise under a collective investment scheme,
- (iv) other rights, interests or instruments that the Minister may, by notice in the *Gazette*, prescribe.

“securities account” means an account established by a central securities depository for a depositor for the recording of deposited securities and cash balances, in respect of dealings in the securities by the depositor;

“selling out” means the selling of securities effected by a stock exchange according to the rules of the stock exchange, in which a buyer has failed to accept and to pay for when delivered on a day fixed for the settlement;

“settlement partner” means a commercial bank designated by a depository participant to settle its transactions with the central securities depository;

“stock market” means a market exchange or other place at which, or a facility by means of which securities are regularly offered for sale, purchase or exchanged; and

“user” means a central securities depository agent, an issuer, a stock exchange or another person that may be prescribed by the Commission who may be given access to a computer system of a central depository.

References

61. A reference in this Act to

- (a) writing includes any mode of presenting or reproducing letters, figures or marks in a visible form, and
- (b) a security being deposited or required to be deposited with a central securities depository shall be construed as a reference to a deposit of

- (i) the certificate,
- (ii) the instrument of transfer, if any, or
- (iii) any other document representing the security, to the central securities depository

Consequential Amendments

62. (1) The Securities Industry Law, 1993 (P.N.D.C.L. 333) as amended by the Securities Industry (Amendment) Act 2000 (Act 590) is hereby further amended

(a) by the insertion of a new section 9(c) as follows:

“to register, licence, authorise or regulate, in accordance with this Act or any regulations made under it, stock exchanges, investment advisers, unit trust schemes, mutual funds, securities dealers, central securities depositories, and their agents, and to control and supervise their activities with a view to maintaining proper standards of conduct and acceptable practices in the securities business;”

(b) by the deletion of the following from the definition of “dealer” under section 142 of the Securities Industry Law, 1993 (P.N.D.C.L. 333) as amended by section 12(c) of the Securities Industry (Amendment) Act, 2000 (Act 590).

a person who performs the functions of central securities depository and / or provides securities clearing and settlement facilities”.

(2) Section 52 of the Companies Code is hereby repealed.

(3) Section 82 of the Companies Code is hereby repealed.

(4) The First Schedule to the Companies Code, is hereby amended by the substitution of the following for the definition of the “Register”

“Register” includes a Register maintained in electronic form and saved on any device including a disc, tape, or other device in which sounds or other data are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced from the disc, tape or other device.”

Date of *Gazette* notification: 24th May, 2007.

Credit Reporting Act, 2007
(Act 726)

ARRANGEMENT OF SECTIONS

*Section**Supervisory and regulatory role*

1. Supervisory and regulatory role of the Bank of Ghana

Licensing and regulation of credit bureau operations

2. Credit bureau licence
3. Application for licence
4. Application and licensing fees
5. Process for application
6. Licensing requirements
7. Conditions for grant of licence
8. Organisational and technical requirements for credit bureaus
9. Time limit for decision on application for credit bureau licence
10. Grant of credit bureau licence
11. Revocation and suspension of credit bureau licence
12. Permissible credit bureau activities
13. Review of licensing requirements
14. Pre-license inspections and security checks
15. Register of licences
16. Non-transferability of licence
17. Renewal of licence

Operation of credit bureau

18. Capital requirements for carrying on a credit bureau business
19. Display of credit bureau licence
20. Places of business
21. Additional duties of a credit bureau
22. Duties of a data provider
23. Duties of a credit report recipient

Data protection provisions

24. Submission of information to credit bureau
25. Financial institution to provide information without consent
26. Financial institution to provide information with consent of borrower
27. Offence of disclosure of confidential information
28. Other sources of information for credit bureau
29. Access to information
30. Retention period of credit information database

31. Management of database security
32. Dissemination and usage of credit information by credit bureau
33. Payment for the provision of credit information and credit report services
34. Credit bureau to observe privacy and secrecy principle
35. Duties of a data provider in relation to consent obtained
36. Right to confidential treatment
37. Right to access and challenge of credit records and information
38. Right of modification and cancellation of information
39. Unfounded claim
40. Refusal of inspection
41. Legal action

Complaints, redress and penalties

42. Inquiry Service Unit
43. Dispute resolution
44. General offences, breaches and penalties
45. Operation of credit bureau without licence

Investigation, inspection and Court orders

46. Investigation of certain matters by Bank of Ghana
47. Inspection by Bank of Ghana
48. Production of books
49. Procedure on receipt of books
50. Information from books to be published with prior consent
51. Order by Magistrate to enter and search premises
52. Power of Court to make certain orders

Miscellaneous matters

53. Liquidation of credit bureau
54. Database in event of liquidation, suspension or revocation of a licence
55. Compliance report
56. Technical audit
57. Accounts and audit
58. Bank of Ghana to submit annual report
59. Sale or amalgamation of business
60. Regulations
61. Interpretation
62. Applicability of other legislation

THE SEVEN HUNDRED AND TWENTY-SIXTH

ACT

OF THE PARLIAMENT OF THE REPUBLIC
OF GHANA
ENTITLED

CREDIT REPORTING ACT, 2007

AN ACT to provide a framework for credit bureaus, to establish the conditions for credit reporting and to provide for related matters.

DATE OF ASSENT: *5th April, 2007*

ENACTED by the President and Parliament:

Supervisory and regulatory role

Supervisory and regulatory role of the Bank of Ghana

1. (1) The Bank of Ghana shall have overall supervisory and regulatory authority to:
- (a) register, license and regulate credit bureaus, data providers and credit information recipients and their agents;
 - (b) control and supervise activities of the credit bureaus, data providers, credit information recipients and their agents;
 - (c) maintain proper standards of conduct and acceptable credit reporting practices under the scheme;
 - (d) make regulations and rules for institutions under this Act;
 - (e) take measures to protect the interests of credit information subjects;
 - (f) protect the integrity of the credit reporting system against abuses;
 - (g) impose penalties for contravention of this Act;
 - (h) undertake other activities necessary or expedient to give full effect to the provisions of this Act; and

(i) perform other functions specified under this Act.

(2) The Bank shall advise the Minister for Finance on matters relating to credit reporting.

(3) The Bank shall establish within its organisation, a Credit Reporting Department or office.

(4) The Bank may authorise the Head of the Credit Reporting Department of the Bank or any other official or person to exercise a power and do an act that it considers appropriate in order to discharge its duties under this Act.

(5) The Bank of Ghana may establish a Public Credit Bureau.

Licensing and regulation of credit bureau operations

Credit bureau licence

2. (1) A person shall not establish, operate or conduct business as a credit bureau unless that person has obtained a licence for that purpose from the Bank.

(2) A person shall not propose to engage in credit bureau activities unless that person has obtained a licence for that purpose from the Bank.

(3) A person who establishes, operates or conducts the business of a credit bureau without a licence commits an offence and is liable on summary conviction,

(a) in the case of a body corporate or other body of persons to a fine of not less than five thousand penalty units, and

(b) in the case of an individual to a fine of not less than five thousand penalty units or to a term of imprisonment of not less than ten years or to both.

Application for licence

3. (1) An application for licence to operate or engage in the activities of a credit bureau shall be

(a) made in writing to the Bank, and

(b) in the prescribed form.

(2) The application shall be accompanied with the appropriate administrative and processing fee.

Application and licensing fees

4. The Bank may prescribe
- (a) an application fee to be paid for applications, and
 - (b) an initial licence fee to be paid on registration.

Process for application

5. (1) The Bank shall
- (a) acknowledge receipt of an application for a credit bureau licence,
 - (b) within three months after the receipt of the application, inform the applicant in writing of the decision of the Bank, and
 - (c) within three months after receipt of the application, and on satisfying itself that the applicant has
 - (i) paid the stipulated fees, and
 - (ii) satisfied all other conditions grant a licence to the applicant.
- (2) Where
- (a) an applicant fails to pay the stipulated fees,
 - (b) there is an error in the application, or
 - (c) an applicant fails to satisfy any pre-condition for the grant of the licence, the Bank shall, within three months after receiving the application, notify the applicant in writing to rectify the situation within thirty days after the receipt of the notification.
- (3) Where the applicant fails to rectify the situation, the Bank shall not process the application.

(4) Where an application for a licence is refused, the Bank shall state the reasons for the refusal in the notice of refusal to the applicant.

Licensing requirements

6. (1) The Bank shall not grant a licence to a person to carry on the business of a credit bureau unless the person

- (a) is incorporated as a company under the Companies Code 1963 (Act 179) solely to carry out credit bureau activities,
- (b) has human, financial and operational resources to enable it function efficiently and perform its functions effectively in accordance with this Act,
- (c) presents a business plan that is satisfactory to the Bank,
- (d) presents plans to adopt mechanisms to gather input, integrate, update, validate and provide security for data to the Bank,
- (e) presents a credible plan to develop and adopt procedures to ensure that
 - (i) questions, concerns and complaints of credit information subjects, or
 - (ii) data providers are treated equitably and consistently in a timely and efficient manner

(2) The Bank shall not grant a licence to carry on the business of a credit bureau if a person who has ten percent or more of the voting rights of the applicant is

- (a) a financial institution as defined in this Act,
- (b) a debt collection agency, or
- (c) a person who conducts disqualified business.

(3) The Bank of Ghana may by regulation declare a business activity disqualified if the business activity is inconsistent with the function of operating an independent credit bureau.

Conditions for grant of licence

7. (1) A licence granted by the Bank is subject to conditions specified in the licence.

(2) Without limiting the effect of sub-section (1), an applicant for a credit bureau licence shall provide the following documents and information:

- (a) a copy of the applicant's certificate of incorporation, regulations and certificate to commence business;
- (b) documents that support the value of the applicant's capital base;
- (c) a feasibility study by the applicant company that shows the business plan, organisational structure and internal monitoring procedures of the company and information on:
 - (i) mission statement and goals,
 - (ii) market analysis,
 - (iii) ownership structure,
 - (iv) governance structure,
 - (v) management structure,
 - (vi) a description of projected investments,
 - (vii) financial statements on a pro-forma basis for a minimum of three years,
 - (viii) analysis on profitability, and
 - (ix) a business continuity plan;
- (d) details of the applicant's shareholders, directors and other officers;
- (e) a description of the applicant's premises and suitability for credit bureau activities;
- (f) the particulars of the proposed key management personnel concerned with the management of the credit bureau business including qualifications;
- (g) information necessary for assessing the trust worthiness of the applicant; and

- (h) the overview of operations including a description of systems, design of the data collection and dissemination and management processes including
 - (i) the development schedule of the software required for operation,
 - (ii) characteristics of products and services to be provided to users,
 - (iii) policy on service provision,
 - (iv) proposed security and control measures to prevent improper access to information,
 - (v) proposed security and control measures to prevent improper access to management of information,
 - (vi) operational manuals designed to ensure accuracy of information contained in the database and its update, and
 - (vii) the proposed fee and cost structure of products.

Organisational and technical requirements for credit bureaux

8. (1) A licensed credit bureau shall ensure that
- (a) its premises are safe;
 - (b) its premises can operate its data systems, credit information database and other documents;
 - (c) it employs the use of certified hardware and software when setting up and using the information systems that house the credit information database;
 - (d) certified means of protection are used for the systems;
 - (e) information supplied to the credit bureau by financial institutions is maintained and stored on a private domain name in accordance with the provisions of this Act;
 - (f) it prepares and maintains operational manuals that ensure accuracy of information contained in its database including manuals for,

- (i) queries,
 - (ii) loading of data,
 - (iii) source quality control,
 - (iv) maintenance,
 - (v) security and
 - (vi) procedure for handling complaints,
- (g) its database is updated regularly;
- (h) provisions are included in agreements between credit bureau and reporting financial institutions and between credit bureau and credit report recipients which set out the obligation on parties to jointly implement organisational and technical measures for the protection of software applied in the design of a credit information database and the means of their protection;
- (i) it implements strict quality control procedures;
- (j) it adopts measures and systems that records requests or queries for the credit report of a person;
- (k) it adopts measures and systems to detect the misuse of data held in its database;
- (l) it recruits and maintains personnel sufficiently trained in customer relations and credit reporting and can handle queries of recipients of information and records made available under section 37;
- (m) it utilises information collected solely for the intended purpose;
- (n) it provides information that reflects the existing situation of the credit information subject;
- (o) it provides access to the Bank to information managed by the credit bureau through access to its systems or in the manner stipulated by the Bank, for the conduct of investigations;

- (p) it ensures compliance with this Act and regulations made under the Act; and
 - (q) it observes a duty of confidentiality as regards information divulged to them by financial institutions.
- (2) The duties of a credit bureau as regards
- (a) data management, and
 - (b) data processing may be outsourced to another person but the credit bureau
 - (i) shall notify the Bank in writing of the outsourcing arrangement, and
 - (ii) remain liable for the discharge of its duties and the observance of the rights of a credit report recipient under this Act and other law.

Time limit for decision on application for credit bureau licence

9. The Bank shall communicate its decision on an application for a credit bureau licence within three months from the date of receipt of the application.

Grant of credit bureau licence

10. (1) Where an applicant
- (a) pays the stipulated fees, and
 - (b) satisfies the pre-conditions for the grant of a licence,
- the Bank shall grant the licence within three months after receiving the application.
- (2) A licence granted by the Bank is subject to the conditions specified in the licence.
- (3) The Bank may by written notice to a credit bureau vary a condition restriction in relation to a licence.

Revocation and suspension of credit bureau licence

11. (1) The Bank shall revoke a licence if the Bank is satisfied that the credit bureau

- (a) has repeatedly failed to comply with the terms and conditions of the licence,
- (b) has contravened the provisions of this Act,
- (c) has contravened the Rules made under this Act,
- (d) has ceased to satisfy the requirements for licensing and the renewal of a licence, and
- (e) has ceased to satisfy the requirements on minimum capital for the establishment of a credit bureau.

(2) The Bank may revoke or suspend a credit bureau licence for a specified period if the licensee

- (a) has breached duties imposed under this Act,
- (b) has breached a code of conduct for credit bureaus issued by or with the permission of the Bank,
- (c) has breached the provisions of a law which deals with
 - (i) data protection,
 - (ii) computer misuse, or
 - (iii) electronic transactions, and
- (d) has failed to commence business within six months immediately after the date of issue of the licence.

(3) Where the Bank suspends or revokes the licence of a credit bureau, the Bank shall give notice in writing of the decision to the credit bureau and shall specify in the notice, the defect, omission or breach which has occasioned the suspension and request the credit bureau to remedy the defect, omission or breach within fifteen working days after the date of the notice.

(4) Where the Bank suspends or revokes the licence of a credit bureau, the Bank shall give notice of the decision to the credit bureau affected by the decision within three working days after the decision to suspend or revoke the licence.

(5) If the defect, omission or breach is remedied within the time specified, the Bank shall by notice in writing to that person restore the licence, otherwise the licence shall be considered to have been revoked on the expiration of the time specified.

(6) The suspension or revocation of a licence is effective from the day that the credit bureau is informed of the decision of the Bank.

(7) Where the Bank suspends or revokes a credit bureau licence

(a) the Bank shall notify the general public within seven days after the suspension or revocation of the licence in the *Gazette* and a newspaper of wide national circulation; and

(b) the credit bureau affected by the decision of the Bank to suspend or revoke the licence shall within seven days after receipt of notice of the decision, issue a written notice to each subscriber of its services informing them

(i) of the action of the Bank, and

(ii) request the subscribers to discontinue further reporting to the credit bureau.

(8) A person who is dissatisfied with the decision of the Bank to revoke or suspend a credit bureau licence may apply to the High Court for a review decision.

Permissible credit bureau activities

12. (1) A credit bureau may engage in the following activities:

(a) gather and maintain data for the formation of credit histories;

(b) process credit related data; and

(c) deliver credit reports based partly or fully on information not in the public domain.

(2) A credit bureau shall give prior notice to the Bank of Ghana before performing the following functions:

(a) assessment of the credit worthiness of credit history subjects using a methodology developed or acquired by the credit bureau;

- (b) provide consultancy services in informational support;
- (c) sell literature and other informational material related to credit bureau activities; and
- (d) carry out market research and statistical research.

(3) A credit bureau shall not engage in the activities other than those activities specified in this section.

(4) A person who operates a credit bureau which engages in business activities not specified under this section commits an offence and is liable on summary conviction to a fine of not more than five thousand penalty units or to a term of imprisonment of not more than ten years or to both.

Review of licensing requirements

13. The Bank may vary the licensing requirements by notice after consultation with existing credit bureau.

Pre-license inspections and security checks

14. (1) The Bank shall carry out on-site inspection of the applicant's premises to determine the adequacy of the applicant's security system including

- (a) suitability of the premises for credit bureau operations,
- (b) separation of credit bureau operations from other business conducted by the applicant, and
- (c) adequacy of the applicant's management information system, administrative and operational processes, internal control systems and information security systems.

(2) The Bank shall carry out security checks with the Police Service and other relevant security agencies to ascertain that a person who is proposed as an executive director or other employee of the applicant does not have previous criminal record relating to

- (a) computer fraud,
- (b) misuse of information, and

(c) other offences relating to security of information held by another person.

Register of licences

15. The Bank shall keep and maintain a register of licences which shall contain details of licences granted.

Non-transferability of licence

16. (1) A person shall not transfer a licence granted by the Bank of Ghana to another person.

(2) A person who transfers a licence granted by the Bank of Ghana commits an offence and is liable on summary conviction to a fine of not less than four thousand penalty unit or a term of imprisonment of not less than five years or both.

Renewal of licence

17. A licence to operate a credit bureau is renewable annually.

Operation of credit bureau

Capital requirements for carrying on a credit bureau business

18. (1) A credit bureau is required to have a minimum paid-up capital of five billion cedis.

(2) The minimum paid up capital shall be invested in assets to be determined by the Bank from time to time.

(3) The Bank may review the minimum paid-up capital at periodic intervals where necessary.

Display of credit bureau licence

19. (1) A credit bureau operator shall display the credit bureau licence in a conspicuous place on its premises for the information of the public.

(2) A credit bureau which fails to display to the Bank the credit bureau licence shall pay a pecuniary penalty of one thousand penalty units to the Bank.

Places of business

20. (1) A credit bureau shall notify the Bank of the location of its principal place of business at the time of application for a credit bureau licence.

(2) A credit bureau may open branch and agency offices for the conduct of its authorised business with the prior approval of the Bank.

(3) A credit bureau shall obtain the approval of the Bank prior to the

- (a) relocation of its principal place of business,
- (b) relocation of branch offices,
- (c) agencies, and
- (d) closing its principal place of business, branch, office, or agency.

Duties of a credit bureau

21. (1) A licensed credit bureau shall:

- (a) quote its licence number in an advertisement or information document in which it offers its services;
- (b) accept the filing of credit information from a data provider on payment of the bureau's filing fee, if any;
- (c) provide credit reports on request in accordance with the provisions of this Act;
- (d) prevent information held by the credit bureau from being disclosed, with the exception of those situations stipulated under this Act;
- (e) maintain adequate systems of internal control
- (f) keep and submit records of the activities of the credit bureau in accordance with this Act and the laws of Ghana;
- (g) request that a data provider corrects and supplements the submitted information that requires reprocessing or specification if there are grounds for this;

- (h) submit to technical audits that the Bank may require from time to time;
- (i) submit records and reports to the Bank as the Bank may require;
- (j) abide by
 - (i) regulations and rules made under this Act,
 - (ii) directions given by the Bank, and
 - (iii) other duties imposed by a code of conduct issued by or with the permission of the Bank;
- (k) accept without charge the filing of credit information by a credit information subject to correct or challenge information held by that credit bureau concerning that credit information subject;
- (l) take steps to verify the accuracy of credit information reported to it;
- (m) retain credit information reported to the bureau for the prescribed period;
- (n) maintain the database records of consumer credit information to satisfy the standards prescribed by the Bank;
- (o) comply with standards and code of conduct issued by or with the permission of the Bank for licensed credit bureaus; and
- (p) not prejudice the assessment of a person's credit worthiness merely on the basis that the credit bureau does not have credit information concerning that person.

Duties of a data provider

22. A data provider shall discharge the following duties:

- (a) submit to a credit bureau confirmation that it has received the consent of the subject of the credit information for
 - (i) submitting information, and
 - (ii) receiving credit report on the credit information subject;

- (b) notify the credit bureau of changes to information the data provider becomes aware of as regards information submitted on a person.

Duties of a credit report recipient

23. A credit report recipient shall discharge the following duties:

- (a) keep the credit report confidential and shall not disclose the information contained to third parties;
- (b) use the information contained in the credit report only for the purposes stated in this Act;
- (c) disclose the contents of a credit report to a subject of credit information or provide the subject of credit information with a copy of the credit report on request in accordance with this Act;
- (d) pay the credit bureau on the issuance of the credit report; and
- (e) fulfil other obligations in accordance with any other law.

Submission of information to credit bureaux

24. (1) A data provider which is a financial institution shall submit information to a licensed credit bureau that relates to a person who enters into a credit agreement with the financial institution.

(2) The information to be provided under subsection (1) includes:

- (a) the amount of the loan or other facility granted to the person from the financial institution;
- (b) the sum of the outstanding loans including contingent liabilities extended to the person by the financial institution;
- (c) the date on which the loan was made and the dates for payment of the principal and the interest as agreed;
- (d) information on the composition and the types of collateral which secured the debt obligation;
- (e) in the case of a financial institution which sells goods or offers services on a credit basis or with delayed payment terms;

- (i) the amount of the goods and services provided on a credit basis together with contingent and possible obligations,
 - (ii) the dates the services were provided,
 - (iii) the agreed schedule of payment for the services, and
 - (iv) information on the composition and the types of collateral that secured the payment obligations;
- (f) where the borrower is a natural person including an entrepreneur, the following information
- (i) full name,
 - (ii) gender,
 - (iii) date of birth,
 - (iv) place of residence,
 - (v) information contained in the borrower's identification documents including passport, voter's identity card and national identity
 - (vi) the taxpayer registration number of the borrower, and
 - (vii) the social security number of the borrower, and
- (g) where the borrower is an artificial person, the following information is to be submitted;
- (i) the name of the entity,
 - (ii) its organisational and legal form,
 - (iii) its location,
 - (iv) the number and date of registration as a legal entity
 - (v) the taxpayer identification number,
 - (vi) the full names of its Chief Executive Officer, directors and shareholders, and
 - (vii) the taxpayer identification numbers of the Chief Executive Officer, directors and shareholders.

- (3) (a) A financial institution shall provide this information to licensed bureaus within seventy-two hours after entering into a credit agreement or facility,
- (b) A financial institution shall on a monthly basis provide information to licensed credit bureaus on the status of performance of the customer's obligations under the credit agreement or facility
- (4) (a) A financial institution shall not require a borrower to provide information on the race, ethnic origin, political, religious or union affiliation or membership of a borrower,
- (b) A financial institution which provides information on race, ethnic origin, political, religious or union affiliation of a borrower commits a breach and is liable to a pecuniary penalty of not more than two thousand five hundred penalty units.

Financial institution to provide information without prior consent

25. A data provider which is a financial institution shall report to the licensed credit bureau the following information without first obtaining consent from the customer:

- (a) details of the loans which are ninety days past the due dates for repayment where,
- (i) the amount owed is not in dispute,
- (ii) the customer has not made satisfactory proposals for repayment of the debt following formal demand, and
- (iii) the customer has been given at least twenty-eight days notice of the intention to disclose that information to the Credit Reference Bureau;
- (b) information on a person involved in financial malpractices; and
- (c) information on a person involved in the issuance of dishonoured cheques owing to lack of funds or fraud.

Financial institution to provide information with consent of borrower

26. (1) A data provider which is a financial institution shall not report any of the information specified under section 24 to a licensed credit bureau unless the prior consent in writing of the borrower has been obtained by the financial institution for

- (a) the submission of the information to the credit bureau, and
 - (b) the storage, processing and dissemination of the information by the credit bureau in accordance with this Act.
- (2) The financial institution shall request the consent of the customer in
 - (a) account opening application forms,
 - (b) loan application forms, and
 - (c) loan agreements.
- (3) The Bank may by notice direct financial institutions and credit bureaus to obtain the consent of a borrower and store the consent in electronic form.
- (4) A financial institution shall conduct a search with respect to the applicant's credit record on the database of one or more credit bureau licensed under this Act before it makes a decision to grant or refuse an application for credit or other facility
- (5) An obligation to deny a credit application because of a customer's refusal to provide consent shall not be placed on a financial institution.
- (6) Except as provided in section 25, a financial institution shall not divulge information to a credit bureau without the customer's consent in writing which shall be in the form specified in the Schedule.
- (7) A financial institution shall not induce a customer or prospective customer to provide consent under this section.
- (8) Where a financial institution obtains the consent of a customer the consent shall continue until revoked by the customer.
- (9) A financial institution which reports information to a credit bureau does not violate the provisions of the Banking Act, 2004 (Act 673) and any other laws relating to
 - (a) secrecy of banking,
 - (b) other financial, and
 - (c) non-financial services.

(10) A financial institution may enter into agreements for Data Submission and Credit Report Delivery with licensed credit bureaus to determine

- (a) the modalities for the submission of information by the financial institution,
- (b) the delivery of credit reports by a credit bureau to a financial institution
- (c) the type of information to be provided, and
- (d) the manner and form in which the information is submitted.

(11) In this section

- (a) "loan" includes borrowing, leasing, factoring and forfeiting, and
- (b) "person" includes a natural person and an artificial person but excludes the Government of Ghana.

Offence of disclosure of confidential information

27. A person who intentionally

- (a) discloses confidential information in contravention of sections 24, 25 and 26, or
- (b) fails to report information to a credit bureau in contravention of sections 24, 25 and 26 commits an offence and is liable on summary conviction to a fine of one thousand penalty units and a term of imprisonment of not less than five years or to both.

Other sources of information for credit bureaux

28. (1) A credit bureau may receive, compile and report information as regards a person that is ordinarily available to the public.

- (2) The information is what can be obtained from the following public sources:
 - (a) government agencies that register business and maintain a register of businesses in operation;
 - (b) government agencies that register property rights and transactions which include;

- (i) registries which maintain information on interests in immovable property,
 - (ii) creation of charges and other encumbrances on assets, and
 - (iii) the registration of discharges of the encumbrances;
 - (c) reports on investigations and convictions on economic crimes held by the Police Service;
 - (d) registries of courts which maintain;
 - (i) data on judgement debts,
 - (ii) records of insolvency proceedings,
 - (iii) orders for the winding-up of business, and
 - (iv) criminal convictions;
 - (e) rulings of tribunals or administrative bodies as regards the credit status of a person.
- (3) The public source may enter into contracts with licensed credit bureaus to determine
- (a) the modalities for the provision of information by the source, and
 - (b) the manner and form in which the information is submitted.
- (4) A public source which provides information to a credit bureau shall include the following information:
- (a) for individuals;
 - (i) the name,
 - (ii) the gender,
 - (iii) date of birth,
 - (iv) place of residence,

- (v) relevant information obtained from the identification documents,
 - (vi) the taxpayer registration number, and
 - (vii) information as regards the registration of encumbrances that affect property and other rights; or
- (b) for legal entities;
- (i) the name,
 - (ii) the organisational and legal form,
 - (iii) the location,
 - (iv) the number and date of registration of legal entity,
 - (v) the taxpayer registration number,
 - (vi) details of the bank account,
 - (vii) information on registration of property rights, and
 - (viii) information on encumbrances of property

Access to information

29. The right of a credit bureau to access information from public sources shall be in addition to the right of access to information granted under any law.

Retention period of credit information database

30. (1) A credit bureau shall maintain a record of the history of the credit information.

(2) A credit bureau shall maintain information in its database for

(a) a maximum period of six years from the occurrence of the basis for keeping the information on record, or

(b) a period of ten years in the case of a criminal conviction.

(3) A credit bureau shall establish and implement procedures to update information registered on its database on an ongoing basis.

- (4) A credit bureau shall update its database
 - (a) as often as necessary in accordance with the nature of the information stored, and
 - (b) whenever information is provided by the data provider.

Management of database security

31. (1) A credit bureau shall adopt adequate security and control measures to avoid mismanagement of information in accordance with this Act and other data protection law.

(2) Where a person other than the sender or the intended recipient of transmitted message or data

- (a) steals,
- (b) intercepts,
- (c) interferes with,
- (d) alters or modifies,
- (e) diverts,
- (e) unlawfully discloses,
- (g) decodes,
- (h) facilitates, or

attempts to decode a transmitted message or data, that person breaches the principles of privacy and secrecy of communication established under section 34.

(3) A credit bureau, a credit information recipient and a data provider shall employ international best practices in the industry to promote

- (a) privacy,
- (b) secrecy,
- (c) security of communications, and

- (d) personal and account data earned or transmitted by the credit bureau, data provider or credit information recipient or through their communications system.

Dissemination and usage of credit information by credit bureau

32. (1) A person shall not obtain credit information from a credit bureau unless that person

- (a) is a credit report recipient as defined under this Act;
- (b) has been registered with the credit bureau to obtain information;
- (c) has produced confirmation that that person has obtained the consent in writing of the credit information subject to receive the credit report from the credit bureau; and
- (d) has satisfied the credit bureau that it requires the credit information to
 - (i) evaluate credit risks in the grant, monitoring or extension of loans or other credits,
 - (ii) evaluate risks where the terms of a credit agreement are changed,
 - (iii) evaluate risks related to other transactions with deferred payments,
 - (iv) confirm the accuracy of information contained in a credit report,
 - (v) underwrite insurance, or
 - (vi) analyse insurance claims.

(2) A credit bureau shall keep a record of requests for the issue of credit reports and a record of the credit reports provided.

(3) A credit bureau shall refuse to provide a credit report if the request for its provision contravenes a provision of this Act or any other law.

(4) The Bank may request for credit information from a credit bureau to investigate matters arising under this Act.

Payment for the provision of credit information and credit report services

33. (1) A credit bureau may charge fees for its services or other services authorised under this Act, after consultation with a credit information recipient.

(2) A credit bureau shall publish the fees prescribed in subsection (1) in a media of nationwide coverage.

Credit bureau to observe privacy and secrecy principles

34. (1) A credit bureau, data provider or credit information recipient shall observe the following principles:

- (a) the equality of credit information subjects;
- (b) the confidentiality of information;
- (c) non-interference in the private life of citizens;
- (d) respect for the rights, liberties and lawful interests of persons and legal entities;
- (e) accuracy and transparency of information; and
- (f) privacy and secrecy of communication.

(2) The Bank may issue statements of principle with respect to the conduct of persons licensed under this Act.

(3) A person who fails to comply with the statement of principle breaches the provisions of this Act.

Duties of a data provider in relation to consent obtained

35. A data provider shall

- (a) keep records *of* consent obtained from the credit history of a subject, and
- (b) keep the consent in electronic or physical form for not less than ten years from the date the consent was provided.

Right to confidential treatment

36. A person who receives, compiles, retains or reports confidential information that pertains to a consumer or prospective consumer shall protect the confidentiality of the information and shall

- (a) use the information only for a purpose permitted in terms of this Act, and
- (b) disclose information in good faith and in accordance with the provisions of this Act.

Right to access and challenge of credit records and information

37. (1) A person has a right to

- (a) receive a copy of information proposed to be provided by a data provider to a credit bureau on the person on request,
- (b) physically call at the offices of a credit bureau during normal business hours and inspect a file or information concerning that person held by the credit bureau without charge
 - (i) once within a period of twelve months,
 - (ii) if so ordered by a Court or tribunal, and
 - (iii) once within a reasonable period after the person has challenged information given to verify whether that information has been corrected,
- (c) inspect a file containing information concerning the person held by the credit bureau at another time, on payment of a nominal fee.

(2) A person has a right to

- (a) challenge the accuracy of information held by a credit bureau on a person, and
- (b) require the credit bureau to investigate the accuracy of the challenged information, without a charge to the consumer.

Right of modification and cancellation of information

38. (1) Where a person who is the subject of information challenges the accuracy of information held by a credit bureau as illegal, inaccurate, erroneous, or outdated the person may

- (a) request a review of the information held by the credit bureau, and
- (b) support the request with evidence relevant to the establishment of the accuracy of the information in question.

(2) Where the error is attributable to information sources, a credit bureau shall notify the person to direct the claim to the data provider from where the information originated.

(3) Where a person challenges the accuracy of information the credit bureau or the data provider shall take reasonable steps to seek evidence to support the challenged information and within the prescribed time after the filing of the challenge

- (a) provide a copy of any credible evidence to the person who filed the challenge, or
- (b) remove the information and records of the information from the files if the credit bureau is unable to find credible evidence in support of the information, and the credit bureau shall, at its expense notify any person who may have used the flawed information of the error and the rectification of the error.

(4) (a) Where a person who challenges information held by a data provider or credit bureau, receives a copy of the credible evidence, the person may apply to the Bank in the prescribed manner and form within twenty working days after receiving a copy of the evidence.

- (b) The Bank shall investigate the disputed information as a complaint under section 43 of this Act.

(5) (a) A data provider or credit bureau may apply to the Bank to make an order limiting the obligation of the applicant to a consumer.

- (b) The Bank may grant the order if satisfied that

- (i) the request or requirement of the consumer is frivolous, unfounded or wholly unreasonable, or
- (ii) the history and pattern of making requests or requirements is frivolous or vexatious.

Unfounded claim

39. Where a person makes an unfounded claim, a credit bureau may charge the person for the cost of verifying the credibility of the claim.

Refusal of inspection

40. A credit bureau shall not refuse to permit a person to exercise the right to inspect a credit bureau file as specified in section 37(1) (c).

Legal action

41. A person who suffers harm arising from the supply of inaccurate or incomplete information about the person is entitled to commence an action in Court

- (a) against the data provider or credit bureau,
- (b) showing that the data provider negligently provided the information which has caused harm to the person, and
- (c) to seek an injunction from the Court to
 - (i) restrain the publication of the inaccurate information, or
 - (ii) expunge the inaccurate or adverse information from the database of a credit bureau.

Complaints, redress and penalties

Inquiry Service Unit

42. (1) A credit bureau shall have an Inquiry Service Unit.

(2) An Inquiry Service Unit shall attend to persons

- (a) affected by information contained in the database of the credit bureau, and
- (b) who challenge the information on the grounds that it is illegal, inaccurate, erroneous or outdated.

Dispute resolution

43. (1) A complaint shall be submitted in writing to the Bank before redress is sought in a Court for the settlement of grievance under this Act.

(2) The Bank shall investigate the matter and determine it in accordance with this section.

(3) Where the Bank receives a complaint or notice of a dispute, the Bank shall

- (a) cause the matter to be investigated, and
- (b) settle the dispute or complaint to the satisfaction of the parties concerned, unless the Bank considers the matter to be frivolous or vexatious.

(4) A person dissatisfied with a decision of the Bank may appeal to the High Court.

General offences, breaches and penalties

44. (1) The Bank may impose sanctions on persons who contravene the provisions, regulations and rules made under this Act.

(2) The Bank may impose one or more of the following sanctions:

- (a) pecuniary penalties as are prescribed by Regulations under this Act;
- (b) suspension of a credit bureau licence; or
- (c) revocation of a credit bureau licence.

(3) A credit bureau which

- (a) delays in providing information and documents to the Bank,

(b) alters, modifies or deletes records from its database in contravention of this Act, or

(c) fails to adopt security and control measures that are necessary to prevent the wrongful use and management of information

commits a breach and is liable to pay a pecuniary penalty of five thousand penalty units to the Bank and in the case of a continuing breach to an additional fine of not more than one hundred penalty units for each day on which the breach continues.

Operation of credit bureau without licence

45. (1) A person who operates as a credit bureau when the licence to operate as a credit bureau has been revoked or suspended, commits an offence and is liable on summary conviction to a fine of not less than five thousand penalty units or a term of imprisonment of not less than ten years or both.

(2) A person who

(a) discloses confidential information as provided under section 27, or

(b) fails to disclose confidential information as provided under section 27 of this Act,

commits an offence and is liable on summary conviction to a fine of not less than four thousand penalty units or a term of imprisonment of not less than eight years or both.

(3) A person who discloses confidential information concerning the affairs of a person or firm obtained in the course of the performance of functions under this Act, commits an offence and is liable on summary conviction to a fine of not less than four thousand penalty units or a term of imprisonment of not less than eight years or both.

(4) A person who hinders, opposes, obstructs or unduly influences a person in the exercise of a power, performance of a delegated function, conferred or imposed duty under this Act, commits an offence and is liable on summary conviction to a fine of not less than two thousand penalty units or a term of imprisonment of not less than four years or both.

(5) Where a person other than the sender or the intended recipient of a transmitted message or data, steals, intercepts, interferes with, alters or modifies, diverts, unlawfully discloses, decodes or attempts to decode a transmitted message or data, or facilitates any act, that person commits an offence and is liable on summary conviction to a fine of not less than four thousand penalty units or a term of imprisonment of not less than eight years or both.

(6) A person who fails to comply with any other provision of this Act commits an offence and is liable on summary conviction to a fine of not less than two thousand penalty units or a term of imprisonment of not less than four years or both.

(7) Where an offence is committed under this Act by a body corporate, each director, executive officer, secretary or employee of the body corporate who was by act or omission, directly or indirectly concerned in or is a party to the commission of the offence shall also be guilty of the offence

Investigation, inspection and Court orders

Investigation of certain matters by the Bank of Ghana

46. Where the Bank reasonably

(a) suspects that a person has committed an offence under this Act, or

(b) has been found guilty of fraud or dishonesty in relation to credit information the Bank may conduct investigations into the matter.

Inspection by Bank of Ghana

47. (1) The Bank may inspect the books, accounts, documents, transactions and other records of a data provider¹ credit bureau, or a credit information recipient.

(2) The Bank may appoint a qualified person to exercise this power.

(3) (a) To carry out an inspection under this section,

- (i) a data provider,
- (ii) credit bureau, or
- (iii) a credit information recipient

shall afford the Bank access to its books, accounts, documents and the information required to conduct the inspection.

(b) A data provider, credit bureau, or a credit information recipient shall produce books, accounts, documents and the information required to conduct the inspection.

(4) A person appointed by the Bank shall have the power to make copies of, or take possession of the books, accounts and other documents of a data provider, credit bureau, or a credit information recipient.

(5) A person who fails without reasonable excuse, to produce a book, account, document, information, or facilities commits an offence and is liable on summary conviction to a fine of not more than two thousand penalty units or a term of imprisonment of not more than four years or both.

Production of books

48. (1) The Bank may by notice in writing give directions to a credit bureau, data provider or a credit information recipient to produce books or records to a person authorised by the Bank as specified.

(2) The Bank may authorise a person in writing to exercise the power to request the production of books conferred on it.

(3) Where the books required to be produced to the Bank or the person authorised by the Bank are subject to alien, the production of the books shall not prejudice the lien.

(4) An action shall not lie against a person who complies with a direction or requirement to produce books under this section.

(5) Where the power is conferred to make a requirement of a person, it extends where the body is a body corporate, to an officer of the body corporate whether that body corporate is in the course of being wound up or has been dissolved.

Procedure on receipt of books

49. (1) Where the books required are produced, the person who receives the books may

- (a) take possession, make copies or take extracts from them,
- (b) require the other person or any person who was party to the compilation of the books to provide an explanatory statement of any of the books, or
- (c) retain possession of the books for the duration the Bank considers necessary to enable inspection, or copies or extracts from the books to be made, or taken on behalf of the Bank.

(2) The person who receives the books shall permit the person who produced them, access to the books on being given reasonable notice and specification of the books.

(3) Where the books are not produced, the Bank or the authorised person may request the person who should have produced the books

- (a) to state where the books may be found,
- (b) to identify the person who last had custody of the books and where the person may be found, or
- (c) to state the reasons why the books cannot be produced.

Information from books to be published with prior consent

50. (1) The person who has custody or control of books shall give consent in writing prior to the publication or disclosure of information obtained from the books.

(2) Information obtained from books that have been produced shall not be published or disclosed without the previous consent in writing of the person who has custody or control of the books except to

- (a) the Bank, its officers and employees, and
- (b) as required by law.

(3) A person who publishes any information in contravention of this section commits an offence and is liable on summary conviction to a fine of not more than two thousand penalty units or a term of imprisonment of not more than four years or both.

Order by Magistrate to enter and search premises

51. (1) Where a District Magistrate on being informed in writing on oath and after enquiry, on reasonable grounds suspects that

- (a) prohibited conduct has taken place, is taking place, or is likely to take place on or in premises within the jurisdiction of the District Court,
- (b) a person who has control of the subject of an investigation into a prohibited conduct is on the premises, and
- (c) a person who has control or possession of books which have been directed to be produced but have not been produced in compliance with the direction, is on the premises,

the Magistrate may issue a warrant authorising the Bank or a person named in the warrant to enter and search the premises.

- (2) The authorised person may

- (a) enter premises or a place suspected to be used for credit bureau operations without a licence at a reasonable time to investigate activities there and make a report,
- (b) search the premises,
- (c) search any person on the premises if there are reasonable grounds to believe that the person has possession of an article or document which is relevant to the investigation,
- (d) examine any article or document on the premises which is relevant to the investigation,
- (e) request information about any article or document from
 - (i) the owner,
 - (ii) person in control of the premises,
 - (iii) any person who has control of the article or document, or
 - (iv) any other person who may have the information sought, and take extracts from, make copies of books or documents on the premises relevant to the investigation, and
- (f) use a computer system on the premises, or require the assistance of any person on the premises to use that computer system to
 - (i) search data contained in the computer,
 - (ii) reproduce a record from the data,
 - (iii) seize output from the computer for examination and copying, and
 - (iv) attach and, if necessary, remove from the premises for examination and safekeeping, a thing that is relevant to the investigation.

(3) The powers conferred by the Criminal Code 1960 (Act 29) or any law in force relating to search of premises shall apply.

(4) The person authorised to conduct the search shall produce the authorisation at the request of the person in control of the premises.

(5) In this section “premises” includes any structure, building, place,, aircraft, vehicle or vessel.

Power of Court to make certain orders

52. (1) Where a person alleges infringement of the person’s rights under this Act, the person may make an application to the High Court.

(2) Where on an application by a person who alleges infringement, the Court discovers that

- (a) a person has committed an offence under this Act,
- (b) has contravened a condition for the issue of a licence,
- (c) has breached a code of conduct issued by the Bank of Ghana or issued with the Bank’s permission, or
- (d) is about to do an act which would constitute an offence the Court may, in addition to other orders, make one or more of the following. orders:
 - (i) an order to restrain the person from carrying on a credit bureau business, acting as a data provider or a credit information recipient, or purporting to carry out credit bureau business; or
 - (ii) an order to restrain a person from providing, acquiring, disposing of or dealing with any credit information specified in the order;
 - (iii) an order to direct a person to do or refrain from doing a specified act; and
 - (iv) any ancillary order.

(3) A person commits an offence if the person fails to comply with an order under subsection (2) and is liable on summary conviction to a fine of not more than five thousand penalty units or a term of imprisonment of not more than ten years or both.

Miscellaneous matters

Liquidation of credit bureau

53. Subject to the approval of the Bank a credit bureau may be wound up under the Companies Code, 1963 (Act 179) and the Bodies Corporate Official Liquidation Act, 1963 (Act 180).

Database in event of liquidation, suspension or revocation of a licence

54. (1) Where

- (a) a resolution is made by a credit bureau for voluntary liquidation under the Companies Code 1963 (Act 179),
- (b) a winding-up order is made as regards a credit bureau under the Bodies Corporate (Official Liquidation) Act, 1963 (Act 180), or
- (c) the Bank suspends or revokes the licence of a credit bureau the credit bureau shall deliver any information contained in its database to the data provider from whom the credit bureau obtained the information subject to a data submission agreement entered into as regards the information.

(2) A credit bureau shall only transfer database containing information to the Bank or the nominated recipient of the Bank.

(3) Where

- (a) a credit bureau,
- (b) its shareholders,
- (c) directors, or
- (d) officers

disclose information in breach of subsection (2), the credit bureau is liable to pay a pecuniary penalty of two thousand penalty units and in the case of a continuing breach to an additional fine of not more than five hundred penalty units for each day on which the breach continues.

Compliance report

55. (1) A credit bureau shall submit to the Bank an annual compliance report in addition to its audited financial statements.

(2) An annual compliance report shall be certified by an independent auditor

(3) An annual compliance report shall address the following matters:

- (a) accuracy of data received and reported by the credit bureau;

- (b) incidence of complaints and complaint resolution; and
- (c) adequacy of procedures employed by the credit bureau to ensure
 - (i) that data received and reported by it are accurate,
 - (ii) that confidentiality of data is maintained, and
 - (iii) that complaints are resolved promptly and satisfactorily.

(4) An annual compliance report shall deal with any other related matters prescribed by regulations.

Technical audit

56. The Bank may order the technical audit of the facilities, equipment resources and accounts of a credit bureau to be conducted at reasonable intervals.

Accounts and audit

57. (1) A credit bureau shall keep books of account and proper records in relation to them in the form approved by the Bank.

(2) A credit bureau shall submit a copy of its audited financial statements to the Bank within three months after the end of the financial year.

Bank of Ghana to submit annual report

58. The Bank shall submit to the Minister, an annual report covering the activities and operations of licensed credit bureaus within six months after the end of the financial year.

Sale or amalgamation of business

59. A credit bureau shall submit to the Bank for prior approval, any proposal for arrangement or agreement by which the credit bureau is to change control of business, sale or amalgamation of its business.

Regulations

60. The Minister may on the advice of the Bank by legislative instrument make Regulations to

- (a) prescribe the fees to be paid by a credit bureau for an application for a licence to the Bank of Ghana;
- (b) provide for standards for the filing, retention and reporting of credit information by a credit bureau;
- (c) provide for the licensing of credit bureau;
- (d) provide operational guidelines for credit bureau;
- (e) prescribe guidelines for submission of information to credit bureau;
- (f) prescribe the manner of dissemination of credit information by credit bureau;
- (g) prescribe the reporting requirements of credit bureau;
- (h) provide for persons to be designated as data providers under this Act;
- (i) provide for administrative and other penalties for breach of this Act;
- (j) prescribe appropriate control and security measures to be taken by credit bureaus to secure their operations; and
- (k) provide generally for the effective implementation of this Act.

Interpretation

61. In this Act unless the context otherwise requires,

“Bank” means the Bank of Ghana;

“Court” means a Court of competent jurisdiction;

“computer system” includes an electronic, magnetic, optical, electron-chemical or other data processing device, the physical components and any removable storage medium that is connected to the device or a group of inter-connected or related devices, one or more of which is capable of

(a) containing data, or

(b) performing a logical, arithmetic or any other function in relation to data;

“contingent liabilities” includes liabilities that are contingent upon the occurrence of an event that affect guarantees and other credit enhancing instruments issued by a person in favour of another person;

“credit bureau” means an institution licensed under this Act to carryout credit bureau activities;

“credit bureau activities” means the activities specified in section 12;

“credit information” means data on credit information subjects in electronic and paper form that is submitted by a data provider to a credit bureau and maintained, processed and reported on by a credit bureau, under this Act;

“credit information subject” means a person in relation to whom a data provider submits credit information to a credit bureau and in relation to whom a credit report is issued by a credit bureau;

“credit report” means a report issued by a credit bureau which contains a full or partial disclosure of information contained in its database;

“credit report recipient” means a financial institution which is eligible to receive a credit report under this Act;

“credit reporting system” means the collection of credit data by a credit bureau, the storage, management and processing of the data and the dissemination of credit information by a credit bureau under this Act;

“data provider” means a financial institution and a public source as defined under this Act and any other person designated as such from time to time by the Minister;

“financial institution” means a financial institution licensed and regulated bylaw and includes institutions licensed and regulated under

(a) the Banking Act, 2004 (Act 673),

(b) the Financial Institutions (Non-Banking) Law, 1993 (P.N.D.C.L. 328),

(c) the Insurance Law, 1989 (P.N.D.C.L. 227), and

(d) the Securities Industry Law 1993 (P.N.D.C.L. 333); “Minister” means the Minister responsible for Finance and Economic Planning;

“pecuniary penalty” means a fine imposed by the Bank;

“person” means a natural and artificial person;

“prescribed” means prescribed under this Act;

“private domain name” means an alphanumeric designation that is registered or assigned in respect of an electronic address or other resource on the Internet;

“public source” means the public agencies and registries specified under section 28 of this Act;

“security agencies” means agencies connected with national security;

Application of other legislation

62. This Act shall be in addition to any other legislation related to confidentiality, privacy, right to information, data protection, electronic crime, economic crime, computer crime and other relevant matters and shall not derogate from the provision of these laws.

Schedule

I, a customer of (Limited)

hereby authorise..... (Limited) to

- (a) submit information on my credit transaction with..... (Limited) to a credit bureau licensed under this Act, or
- (b) obtain credit reports on me from a credit bureau licensed under this Act for the purpose of credit management.

Date of *Gazette* notification: 13th April, 2007.

**Fair Wages and Salaries Commission
Act, 2007 (Act 737)**

ARRANGEMENT OF SECTIONS

*Section**Fair Wages and Salaries Commission*

1. Establishment of Fair Wages and Salaries Commission
2. Object of the Commission
3. Functions of the Commission
4. Scope of the Act
5. Governing body of the Commission
6. Tenure of office of members
7. Meetings of the Board
8. Disclosure of interest
9. Establishment of committees
10. Allowances
11. Ministerial directives
12. Collaboration with other bodies

Administrative matters

13. Secretariat to the Commission
14. Chief Executive
15. Functions of the Chief Executive
16. Deputy Chief Executive
17. Technical team
18. Appointment of other staff

Grievance Review Committee

19. Establishment of the Grievance Review Committee
20. Composition of the Committee
21. Functions of the Committee
22. Tenure of office of members of the Committee
23. Allowance of members of the Committee
24. Appeal

Financial and Miscellaneous provisions

25. Funds of the Commission
26. Accounts and audit

Act 737 **Fair Wages and Salaries Commission Act, 2007**

- 27. Annual report and other reports
- 28. Power to obtain information
- 29. Existing arrangements
- 30. Regulations
- 31. Interpretation
- 32. Repeal

THE SEVEN HUNDRED AND THIRTY-SEVENTH

ACT

OF THE PARLIAMENT OF THE REPUBLIC
OF GHANA
ENTITLED

THE FAIR WAGES AND SALARIES COMMISSION ACT, 2007

AN ACT to establish the Fair Wages and Salaries Commission and to provide for related purposes.

DATE OF ASSENT: *4th June, 2007.*

ENACTED by the President and Parliament:

Fair Wages and Salaries Commission

Establishment of Fair Wages and Salaries Commission

1. (1) There is established by this Act a body to be known as the Fair Wages and Salaries Commission.

(2) The Commission is a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.

(3) The Commission may for the performance of its functions acquire an. hold movable and immovable property and may enter into a contract or any other transaction.

(4) Where there is hindrance to the acquisition of property, the property may be acquired for the Commission under the State Property and Contracts Act, 1960 (C.A.6) or the State Lands Act, 1962 (Act, 125) and the costs shall be borne by the Commission.

Object of the Commission

2. The object of the Commission is

(a) to ensure fair, transparent and systematic implementation of the Government public service pay policy,

(b) to develop and advise Government on and ensure that decisions are implemented on matters related to

- (i) salaries, wages, grading, classification,
 - (ii) job analysis and job evaluation,
 - (iii) performance management and indicators, and
 - (iv) allowances and benefits in the public service with the ultimate objective of consolidation of the allowances and benefits; and
- (c) to undertake negotiations where compensation is financed from public funds.

Functions of the Commission

3. To achieve its objects, the Commission shall
- (a) implement public service pay policy, except the determination of emoluments under article 71 of the Constitution,
 - (b) develop and monitor allowances and benefits of public servants and the consolidation of salaries of public servants,
 - (c) undertake job analysis and job evaluations,
 - (d) develop and ensure a consistent review of standard job evaluation methodology
 - (e) develop and ensure implementation of grading and classification structures
 - (f) review requests for the re-grading of positions,
 - (g) co-ordinate, manage and monitor collective bargaining processes in which Government is the direct or indirect employer,
 - (h) develop salary structures for the public service,
 - (i) ensure that the balance of internal consistency, external competitiveness and employee performance are fully reflected in the public service pay system,
 - (j) advise on performance management processes and indicators,

- (k) develop a mechanism within the public service salary system to attract and retain critical skill,
- (l) undertake research on salaries, benefits and allowances,
- (m) review and propose changes to salary related components in enactments, and
- (n) perform other functions related to the objects of the Commission.

Scope of the Act

4. This Act applies to the public service, except as provided in article 71 of the Constitution.

Governing body of the Commission

5. (1) The governing body of the Commission is a Board consisting of

- (a) the chairperson,
- (b) the vice-chairperson,
- (c) the chief Executive of the Commission who shall be the member secretary; and

(d) four other persons at least one of whom is a woman who have expertise in human resource management, wage and salary administration or law.

(2) The members of the Board shall be appointed by the President in accordance with article 70 of the Constitution.

(3) The Board shall perform the functions of the Commission.

Tenure of office of members

6. (1) A member of the Board shall hold office for a period not exceeding three years and is eligible for re-appointment.

(2) Where a member of the Board, resigns, dies, is removed from office or is for a sufficient reason unable to act as a member, the Minister shall notify the President of

the vacancy and the President in consultation with the Council of State shall appoint another person to hold office for the unexpired portion of the member's term of office.

(3) A member of the Board may at any time resign from office in writing addressed to the President through the Minister.

(4) The President may by letter addressed to a member revoke the appointment of that member.

Meetings of the Board

7. (1) The Board shall meet at least once each month for the despatch of business at the times and in the places determined by the chairperson.

(2) The chairperson shall at the request in writing of not less than one-third of the membership of the Board convene an extraordinary meeting of the Board at the place and time determined by the chairperson.

(3) The quorum at a meeting of the Board is four members of the Board.

(4) The chairperson shall preside at meetings of the Board and in the absence of the chairperson the vice-chairperson shall preside and in the absence of the vice chairperson, a member of the Board elected by the members present shall preside.

(5) Matters before the Board shall be decided by a majority of the members present and voting and in the event of an equality of votes, the person presiding shall have a casting vote.

(6) The Board may co-opt a person to attend a Board meeting but that person shall not vote on a matter for decision at the meeting.

(7) The proceedings of the Board shall not be invalidated by reason of a vacancy among the members or a defect in the appointment or qualification of a member.

(8) Subject to this section, the Board may determine the procedure for its meetings.

Disclosure of interest

8. (1) A member of the Board who has an interest in a matter for consideration by the Board shall disclose that interest in writing and is disqualified from participating in the deliberations of the Board in respect of that matter.

(2) A member who contravenes subsection (1) ceases to be a member.

Establishment of committees

9. The Board may establish committees consisting of members of the Board or non-members or both to perform a function.

Allowances

10. A member of the Board and a member of a committee of the Board shall be paid the allowances approved by the Minister in consultation with the Minister responsible for Finance.

Ministerial directives

11. Subject to section 3, the Minister may give directives to the Board on matters of policy and the Board shall comply.

Collaboration with other bodies

12. The Board shall collaborate with other relevant bodies in the performance of its functions under this Act.

Administrative matters

Secretariat to the Commission

13. There shall be a Secretariat of the Commission to be headed by a Chief Executive.

Chief Executive

14. (1) The President shall, in accordance with article 195 of the Constitution, appoint the Chief Executive.

(2) The Chief Executive shall hold office on the terms and conditions specified in the letter of appointment.

Functions of the Chief Executive

15. (1) The Chief Executive is responsible for the day to day administration of the

Act 737 Fair Wages and Salaries Commission Act, 2007

secretariat of the Commission and is answerable to the Board in the performance of functions under this Act.

(2) The Chief Executive may delegate a function to the Deputy Chief Executive or any senior member.

Deputy Chief Executive

16. (1) The President shall, in accordance with article 195 of the Constitution, appoint a Deputy Chief Executive.

(2) In the absence of the Chief Executive, the Deputy Chief Executive shall perform the functions of the Chief Executive.

Technical team

17. The Board shall constitute a technical team to perform the functions of the Commission.

Appointment of other staff

18. (1) The President shall in accordance with article 195 of the Constitution, appoint other staff of the Commission that are necessary for the proper and effective performance of the functions of the Commission.

(2) Other public officers may be transferred or seconded to the Commission or may otherwise give assistance to the Commission.

(3) The Commission may engage the services of advisers on the recommendation of the Board.

Grievance Review Committee

Establishment of the Grievance Review Committee

19. In furtherance of section 9, there is hereby established a Grievance Review Committee.

Composition of the Committee

20. The Committee shall be chaired by a member of the Board and consist of at least two other persons who are non-members of the Board with experience in

- (a) the development of salary systems, and
- (b) grading, classification and job evaluation.

Functions of the Committee

21. The Committee shall

- (a) examine documentation and recommendations presented to the Committee from the Chief Executive to grade or re-grade positions in the public service,
- (b) determine matters related to grading or re-grading, based on the analysis of the information provided by the secretariat, and
- (c) determine the guidelines and procedure to be followed by the staff of the Commission in the analysis of a complaint about grading or re-grading before a grievance is submitted to the Committee.

Tenure of office of members of the Committee

22. (1) A member of the Committee shall be appointed by the Board and shall hold office for a period of not more than three years and is eligible for re-appointment.

(2) A member of the Committee shall hold and vacate office in accordance with the terms of appointment and may resign from office by notice in writing to the Board.

(3) If a member of the Committee is by reason of illness, absence or other reasonable cause unable to discharge the duties of office generally or in relation to particular proceedings, the Board may appoint another person to discharge the duties of the member in relation to those proceedings for a period of not more than six months at a time.

(4) The person appointed by the Board shall have the same powers during the period of the appointment as the member in whose place the person is appointed.

Allowance of members of the Committee

23. A member of the Committee shall have the remuneration that the Minister determines in consultation with the Minister responsible for Finance.

Appeal

24. A person dissatisfied with a decision

- (a) of the Committee may apply to the Board for a review of the decision, or
- (b) of the Board may apply to the National Labour Commission for a review of the decision.

Financial and miscellaneous provisions

Funds of the Commission

25. The funds of the Commission include

- (a) moneys approved by Parliament,
- (b) donations, grants and gifts, and
- (c) any other moneys approved by the Minister responsible for Finance.

Accounts and audit

26. (1) The Board shall keep books of account and proper records in relation to them in the form approved by the Auditor-General.

(2) The Board shall submit the accounts of the Commission to the Auditor-General for audit within three months after the end of the financial year.

(3) The Auditor-General shall, not later than three months after the receipt of the account, audit the accounts and forward a copy of the audit report to the Minister

(4) The financial year of the Commission shall be the same as the financial year of the Government.

Annual report and other reports

27. (1) The Board shall within one month after the receipt of the audit report, submit an annual report to the Minister covering the activities and the operations of the Commission for the year to which the report relates.

(2) The annual report shall include the report of the Auditor-General.

(3) The Minister shall, within one month after the receipt of the annual report, submit the report to Parliament with a statement that the Minister considers necessary.

(4) The Board shall also submit to the Minister any other reports which the Minister may require in writing.

Power to obtain information

28. (1) The technical team may require any person to provide information related to this Act by notice in writing.

(2) The information shall be provided within twenty-one days after service of the notice.

(3) A person who fails to provide the information requested commits an offence and is liable on summary conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years or to both and in the case of a continuing offence to a further fine of ten penalty units for each day during which the offence continues after written notice has been served on the offender by the Commission.

(4) Where the offence is committed by a company or body of persons, the penalty shall be a fine of not more than one thousand penalty units, and

(a) in the case of a body corporate, other than a partnership, each director or officer of the body is considered to have committed the offence, and

(b) in the case of a partnership, each partner or officer of that body is considered to have committed that offence.

(5) A person is not considered to have committed the offence under subsection (3), if the person proves that the offence was committed without the person's knowledge or connivance and that the person exercised due care and diligence to prevent the commission of the offence having regard to all the circumstances.

Existing arrangements

29. (1) A public agency concerned with

Act 737 Fair Wages and Salaries Commission Act, 2007

(a) the classification of salaries, and

(b) negotiation of terms and conditions of service for public servants before the commencement of this Act, shall cease to be responsible for the classification or negotiation twelve months after the commencement of this Act.

(2) To be concerned with classification or negotiation means placement on pay scales, adjustments to salaries and any other aspect connected to these.

Regulations

30. (1) The Minister may, on the advice of the Board, by legislative instrument, make Regulations

(a) on the form of notice or other documentation required under this Act;

(b) on grievance procedure; and

(c) generally for the effective implementation of this Act.

Interpretation

31. In this Act, unless the context otherwise requires

"Commission" means the Commission established under section 1;

"Committee" means Grievance Review Committee;

"classification" means grouping jobs with the same content and value in the same class;

"critical skill" means performance in a job where personnel is in short supply

"enactment" means legislation made in accordance with the Constitution;

"Government" means any authority by which the executive authority of the country is exercised;

"Labour Commission" means the Commission established under the Labour Act, 2003 (Act 651);

“Minister” means Minister responsible for Employment;

“public agency” means a body set-up by the Government in the public interest with or without an Act of Parliament;

“public interest” includes a right or advantage which ensures to or is intended to entire the general benefit of the people of this country;

“public service” includes service in any civil office of Government, the emoluments attached to which are paid directly from public funds and service with a public corporation;

“public funds” means the Consolidated Fund, the Contingency Fund and other funds that may be established by or under an Act of Parliament;

“salary” includes allowances, and retiring benefits;

“wage” means money payable by an employer to an employee at intervals of less than a month in respect of service rendered;

Repeal

32. The Public Services Commission Act, 1994 (Act 482) is amended in section 4 by the repeal of paragraphs (h), (k) and (7).

Date of *Gazette* notification: 8th June, 2007.

Foreign Exchange Act, 2006
(Act 723)

ARRANGEMENT OF SECTIONS

Section

Authority of Bank of Ghana and licensing

1. Authority of Bank of Ghana
2. Responsibility of Bank of Ghana
3. Requirement of licence
4. Application for a licence
5. Grant of licence
6. Refusal of licence
7. Conditions of licence
8. Register of licences
9. Non-transferability of licence
10. Renewal of licence
11. Suspension and revocation of licence
12. Conditions for revocation of licence
13. Notice of suspension, revocation or variation of licence
14. Review and appeal

Provisions related to the conduct of foreign exchange business

15. Foreign exchange business and international payments
16. Requirement of permission for the payment or transfer of foreign currency
17. Power of Bank of Ghana to regulate foreign exchange business and transfers between residents and non-residents.
18. Power of the Bank to impose restrictions on the importation or exportation of foreign exchange.
19. Conditions for carrying out the business of foreign exchange transfers.
20. Imposition of temporary restrictions

Enforcement and compliance

21. Provision of information by banks
22. Provision of information by persons
23. Court orders and admissibility of evidence
24. Search and seizure
25. Notice
26. Recovery or forfeiture
27. Retention of seized property

Miscellaneous provisions

28. General prohibitions
29. Offences
30. General penalty
31. Rules
32. Regulations
33. Interpretation
34. Modification of existing enactments
35. Repeals, savings and transitional provisions

THE SEVEN HUNDRED AND TWENTY-THIRD
ACT

OF THE PARLIAMENT OF THE REPUBLIC OF GHANA
ENTITLED

FOREIGN EXCHANGE ACT, 2006

AN ACT to provide for the exchange of foreign currency, for international payment transactions and foreign exchange transfers; to regulate foreign exchange business and to provide for related matters.

DATE OF ASSENT: *29th December, 2006.*

ENACTED by the President and Parliament

Authority of Bank of Ghana and licensing

Authority of Bank of Ghana

1. (1) The Bank of Ghana is the licensing, regulatory and supervisory authority to give effect to this Act.

(2) The Bank may require a person who is resident or who conducts business in the country to

- (a) furnish the Bank with details of part or the whole of that person, foreign exchange transactions; or
- (b) provide returns in a form prescribed by the Bank accompanied with details of that person's foreign exchange transactions.

Responsibility of Bank of Ghana

2. (1) The Bank is responsible for the implementation of this Act.

(2) The Bank may, delegate to a person or class of persons the exercise of any of the powers conferred on the Bank under this Act, except the powers in section 20.

(3) The Bank may by notice make rules, issue guidelines and manuals and request information to ensure the effective implementation of this Act.

Requirement of licence

3. (1) A person shall not engage in the business of dealing in foreign exchange without a licence issued under this Act.

(2) The Bank shall prescribe the banks or other corporate bodies or persons that it considers competent to engage in the business of dealing in foreign exchange.

(3) The Bank shall issue or renew a licence to engage in the business of dealing in foreign exchange subject to conditions that the Bank shall determine from time to time.

(4) The business of dealing in foreign exchange includes the

- (a) purchase and sale of foreign currency,
- (b) receipt or payment of foreign currency,
- (c) importation and exportation of foreign currency, and
- (d) lending and borrowing of foreign currency.

Application for a licence

4. (1) An application for a licence to engage in the business of dealing in foreign exchange shall be made to the Bank

(2) An application shall be made in the form prescribed by the Bank and accompanied with information that the Bank may specify.

Grant of licence

5. (1) The Bank shall grant a licence to the applicant within sixty days after the receipt of the application, if it is satisfied that the applicant has

- (a) satisfied the conditions required for a licence, and
- (b) paid the prescribed licence fee.

(2) The licence may be used by the applicant to engage in the business of

- (a) buying and selling bank notes, coins and traveller's cheques in foreign currency,

- (b) electronic units of payment, and
- (c) any other activity that the Bank may determine.

(3) The Bank shall cause to be published in the *Gazette* and any other news media of national circulation that the Bank determines, the names of licencees and the foreign exchange business for which licences have been granted.

(4) A licence is valid for one year from the date of issue unless it is renewed.

Refusal of licence

6. (1) Where the Bank refuses to grant a licence to an applicant, the Bank shall inform the applicant in writing of its decision and the reasons for the decision within three months after the receipt of the application.

(2) A person whose application is refused may petition the Minister in writing.

(3) The Minister shall refer the matter to a panel of three experts one of whom shall be nominated by the Bank and the other two nominated by the Minister.

(4) The panel shall prepare a report and submit it to the Minister for determination.

Conditions of licence

7. (1) A licence to engage in the business of dealing in foreign exchange is subject to the conditions specified in the licence.

(2) Without limiting the power to suspend or revoke a licence, the Board may vary a condition or restriction or at any time impose further conditions or restrictions in respect of a licence that has been granted or renewed under this Act.

Register of licences

8. The Bank shall keep and maintain a register of licences that contains details of the licences granted, to monitor and regulate licensed dealers.

Non-transferability of licence

9. (1) A person shall not transfer a licence granted by the Bank to another person.

(2) A person who transfers a licence granted by the Bank commits an offence and is liable on summary conviction to a fine of not less than five hundred penalty units or to a term of imprisonment of not less than two years or to both.

Renewal of a licence

10. (1) An application for the renewal of a licence shall be made to the Bank not later than sixty days prior to the expiry of the licence and shall be made in the manner determined by the Bank.

(2) The Bank may extend the period of application for renewal of a licence for a licensed dealer for a period of not more than three months to enable the licensed dealer comply with directives of the Bank in pursuance of this Act.

(3) The extension of the period of application for the renewal of a licence by a licensed dealer shall be subject to the conditions that the Bank considers appropriate.

Suspension and revocation of licence

11. (1) The Bank may suspend or revoke a licence issued under this Act where the licensee has contravened the provisions of this Act or Regulations made under it.

(2) The Bank may, suspend a licence for a specific period or determine conditions or restrictions for the licence instead of revoking the licence.

Conditions for revocation of licence

12. The Bank may revoke a licence on behalf of the Bank where the licensee

- (a) fails to utilize the licence within ninety days after the date of issue of the licence;
- (b) fails to disclose in the application for the grant, extension or renewal of a licence, material information known to the licensee or reasonably expected to have been known to the licensee;
- (c) has provided material information for an application for a licence which is false in a material particular;
- (d) has not complied with a directive issued under this Act;
- (e) has since the issue of the licence, ceased to qualify for the licence;
- (f) is found by the Bank to have engaged in malpractice or irregularity in the management of the business of dealing in foreign exchange; and

(g) is placed under liquidation, receivership or is adjudged bankrupt.

Notice of suspension or revocation or variation of licence

13. (1) Where the Bank intends to suspend, revoke or vary a licence, the conditions or restrictions of the licence, the Bank shall give the licensee

- (a) fourteen days notice prior to the suspension, revocation or imposition of conditions or restrictions,
- (b) reasons for the intention of the Bank to suspend, revoke or vary a licence, and
- (c) an opportunity to make an oral or written representation to oppose the intended action of the Bank.

(2) A licensee who receives a notice may make the representation within fourteen working days from the date of receipt of the notice.

(3) The Bank shall within thirty days after the representation take a decision on the representation and inform the licensee.

Review and appeal

14. (1) *A person aggrieved by*

- (a) a variation of a licence
 - (b) a rejection or refusal of the Bank to renew that person's licence, or
 - (c) a suspension or revocation of a licence,
- may submit a petition to the Bank for a review of its decision.

(2) The Bank shall after receipt of the petition review its decision and respond to the petition within thirty days.

(3) A person who is dissatisfied with the decision of the Bank or with the failure of the Bank to make a decision within thirty days, may appeal to the Court.

*Provisions related to the conduct of foreign exchange business***Foreign exchange business and international payments**

15. (1) Each payment in foreign currency, to or from Ghana between a resident and a non resident, or between non residents, shall be made through a bank.

(2) Without limiting subsection (1), payments for merchandise exports from Ghana shall be made through the bank of the non-resident to the exporter's bank in Ghana.

(3) Each transfer of foreign exchange to or from Ghana shall be made through a person licensed to carry out the business of money transfers or any other authorised dealer.

(4) An exporter who fails to repatriate proceeds from merchandise exports, through an external bank, commits an offence and is liable on summary conviction to a fine of not more, than five thousand penalty units or to a term of imprisonment of not more than ten years or to both.

Requirement of permission for the payment or transfer of foreign currency

16. (1) Where the Bank has reason to believe that an offence in contravention of this Act is likely to be committed or has been committed, the Bank may require a bank to obtain the permission of the Bank prior to the execution of any payment under subsection (1) of section 15.

(2) The permission shall be granted solely on the basis of a determination by the Bank that the payment is consistent with the laws of this country.

Power of the Bank to regulate foreign exchange business and transfers between residents and non-residents

17. (1) The Bank may, by notice, make rules to prescribe information required by the Bank from a person licensed to carry out foreign exchange business or foreign exchange transfers between residents and non-residents in connection with the conclusion of a transaction that involves

- (a) foreign currency,
- (b) the maintenance of bank accounts within or outside Ghana, and
- (c) the settlement of the payment by a resident or non-resident.

Power of the Bank to impose restrictions on the importation and exportation of foreign exchange

18. (1) The Bank may, by notice, make rules to impose restrictions on the importation or exportation from Ghana of:

- (a) bank notes,
- (b) bank coins,
- (c) travellers cheques,
- (d) electronic units of payment, and
- (e) securities

in the denomination of local currency or the currency of another country.

Conditions for carrying out the business of foreign exchange transfers.

19. The Bank may, by notice, make rules to prescribe the conditions required to carry out the business of foreign exchange transfers.

Imposition of temporary restrictions

20. (1) Where the Governor determines that the country is experiencing or has experienced a severe deterioration in its balance of payments that requires the temporary imposition of exchange controls beyond measures provided for in sections 17, 18 and 19, the Governor in consultation with the Minister may, by notice make rules to restrict

- (a) payments between
 - (i) residents and non residents, or
 - (ii) non-residents;
- (b) payments to or from the country;
- (c) the acquisition, holding, and use in the country of foreign currency or traveller's cheques by persons including residents; and
- (d) the frequency at which the acts of purchase and sale of foreign exchange may be effected in the country.

(2) The rules shall remain in force for a period of not more than three months.

(3) Despite subsection (2) the Governor in consultation with the Minister may extend the time frame designated for the operation of the rules for a period of not more than three months and for any subsequent period that the Governor in consultation With the Minister may determine.

(4) The Bank shall within fourteen days after any rules are made cause to be published in the *Gazette*, the reasons for the imposition of restrictions.

Enforcement and compliance

Provision of information by banks

21. (1) The Bank shall, for purposes of supervision and monitoring, require a bank in writing to submit to it any information or data that relates to

- (a) the assets, liabilities, income and expenditure of that bank and
- (b) any of that bank's affairs in the prescribed form, at intervals and within the time frame that the Bank may stipulate.

(2) A bank or any other authorised dealer which is required to submit information or data shall comply with the requirement.

(3) A bank or any other authorised dealer required by a direction to furnish information which is stored in a computer or any other electronic media, shall in addition produce books, accounts or other documents in that bank's possession or control that may be required by the Bank.

(4) A bank or any other authorised dealer that refuses to furnish information or produce books, accounts or other documents, commits an offence and is liable on summary conviction to a fine of not less than five hundred penalty units or to a term of imprisonment of not less than four years or to both.

Provision of information by persons

22. (1) The Bank may, give directions in writing to require a person to furnish the Bank, or a designated person with any information in that person's possession or control which the Bank or the designated person may require to secure compliance with or to detect an offence in contravention of this Act.

(2) The Bank may specify that the information be provided within a specific period and in the prescribed form.

(3) A person required to furnish information which is stored in a computer or any other electronic media shall in addition produce books, accounts or other documents in that person's possession or control that may be required by the Bank or by the person designated to require the information.

(4) A person who fails to furnish the information or produce the document as required, commits an offence and is liable on summary conviction to a fine of not more than five hundred penalty units or to a term of imprisonment of not more than four years or to both.

Court orders and admissibility of evidence

23. (1) A Court may in addition to a sanction imposed for an offence committed under this Act, make an order for the offender to comply with the requirement to give information or to produce a document within a specified period.

(2) The piece of information or a document obtained in accordance with sections 21 and 22 is admissible in evidence for the prosecution of the person from whom it was obtained.

Search and seizure

24. (1) If the Court is satisfied by information given under oath by a person authorised by the Bank to act for the purpose to determine

- (a) that an offence under this Act has been or is being committed and that evidence of the commission of the offence has been found at the premises specified in the information or in the vehicle, vessel, aircraft or any other means of transport specified in the information, or
- (b) that a document required to have been produced under sections 22 and 23 and which has not been produced, may be found at the specified premises or in the specified vehicle, vessel or aircraft, the court may issue a search warrant authorising a police officer or an officer of the Customs, Excise and Preventive Service or the Immigration Service together with any other person indicated in the warrant, to enter at any time within one month from the date the warrant was issued
- (c) the premises specified in the information, or
- (d) any premises upon which the vehicle, vessel or aircraft may be as specified in the information.

(2) A person authorised by the warrant to search premises or the vehicle, vessel or aircraft, may

- (a) search any person who is found in, or who the authorised person has a reasonable ground to believe has recently left or is about to enter, the premises or the vehicle, vessel or aircraft,
- (b) seize
 - (i) property found on that person or on the premises or in the vehicle, vessel or aircraft, which the authorised person has reasonable ground to believe to have been used in connection with the commission or to be evidence of an offence under this Act; or
 - (ii) any document which the authorised person has reasonable ground to believe should have been produced as required by sections 21 (3) and 22 (2).

(3) An authorised person may use reasonable force to exercise a power mandated by a warrant.

(4) Where there is a reasonable ground to suspect that a person has committed an offence under this Act, a police officer or an officer of the Customs, Excise and Preventive Service or the Immigration Service shall seize any property in that person's possession or control which appears to that police officer or that officer of the Customs, Excise and Preventive Service or officer of the Immigration Service to be

- (a) relevant evidence, or
- (b) to have been used in connection with the commission of an offence in contravention of this Act.

(5) Where moneys are seized, the seizing authorities shall deposit the money with the Bank by the next working day.

Notice

25. (1) Where property has been seized as a result of a search, the person who effected the seizure shall, within one month after the seizure, give notice in writing of the seizure and the reasons for the seizure to the owner of the property.

(2) The requirement of notice is not applicable where

- (a) the property was seized in the presence of the owner,
- (b) the owner of the property cannot be identified, or
- (c) within one month after the seizure, a person is charged with the offence for which the property has been seized.

(3) Where property has come into the possession of a prescribed authority and a period of one month has lapsed from

(a) the date of seizure, or

(b) the date of notice of the seizure if the notice has been given, the property shall, by order of Court, be forfeited to the Republic unless, within that period, the owner has claimed the property by giving notice of the claim in writing to the Bank.

(4) Where the Bank has received a notice of claim and a period of three months has elapsed from the date of receipt of the notice, the property shall be released to the owner unless, within that period, the Republic has instituted proceedings in a Court for the forfeiture of the property.

Recovery or forfeiture

26. (1) Where proceedings for the recovery or forfeiture of property have been instituted in a Court, the Court may order the property to be forfeited to the Republic if the Court finds that the property was used in connection with the commission of an offence under this Act.

(2) Where property has come into the possession of a prescribed authority, whether as a consequence of the seizure of the property or otherwise, the liability of the property to forfeiture shall not be affected by the fact that the owner of the property was not connected in any way which rendered the property liable to forfeiture.

Retention of seized property

27. (1) Despite the other provisions of this Act, where property has come into the possession of a prescribed authority, whether in consequence of the seizure of the property or otherwise, and the prescribed authority is satisfied that there is a reasonable ground to suspect the property to be evidence of the commission of an offence under this Act, the prescribed authority may retain the property for a period of twelve months from the date it came into the prescribed authority's possession.

(2) If a person is within the twelve months period prosecuted for an offence under this Act and the property is or can be properly adduced in evidence, the property shall be retained by the prescribed authority until the prosecution has been determined.

(3) A prescribed authority is a person to whom power of the Bank is delegated, or on whom a function is conferred by this Act, including a police officer or an officer of the Customs, Excise and Preventive Service.

(4) The powers conferred by this section in relation to property shall be in addition to and not in derogation from, any power otherwise exercisable in relation to that property.

Miscellaneous provisions

General prohibitions

28. (1) A person shall not

- (a) destroy, mutilate, deface or remove a document,
- (b) make a declaration which is false in a material particular,
- (c) in furnishing information for the purpose of this Act, make a statement which that person knows to be false in a material particular, or recklessly make a statement which is false in a material particular,
- (d) counterfeit or in any way falsify a document, or knowingly use a document which is counterfeit or false, or
- (e) obstruct a person in the exercise of a power conferred on that person by or under this Act

with the intention to contravene a provision of this Act.

(2) A person who fails to comply with subsection (1), commits an offence and is liable on summary conviction to a fine of not more than five hundred penalty units or a term of imprisonment of not more than four years or both.

Offences

29. (1) A person who

- (a) engages in the business of dealing in foreign exchange without a licence issued under section 5(1);
- (b) contravenes or fails to comply with a restriction imposed under Section 6;
or

(c) contravenes or fails to comply with any of the terms or conditions required to carry out the business of foreign exchange transfers
commits an offence and is liable, on summary conviction, to a fine of not more than seven hundred penalty units or a term of imprisonment of not more than eighteen months or both.

(2) Where a person is convicted of an offence under subsection (1), and the offence is connected to property, the court shall order that the property be forfeited to the Republic.

(3) Where an offence is committed under this Act or under Regulations made under this Act by a body of persons

(a) in the case of a body corporate, other than a partnership, each director or an officer of the body shall also be considered to have committed the offence; and

(b) in the case of a partnership, each partner or officer of that body shall be considered to have committed that offence.

(4) A person shall not be considered to have committed the offence under subsection (3), if the person proves that the offence was committed without the person's knowledge or connivance and that the person exercised due care and diligence to prevent the commission of the offence having regard to all the circumstances.

General penalty

30. (1) A person who commits an offence for which a penalty has not been provided is liable on summary conviction to a fine of not more than five hundred penalty units or a term of imprisonment of not more than four years or both.

Rules

31. The Bank may by notice make Rules as prescribed in this Act.

Regulations

32. (1) The Minister may, by legislative instrument, make Regulations to

(a) provide for forms of applications and licences to be made or issued under this Act;

(b) prescribe the banks, and corporate persons and bodies competent to engage in the business of dealing in foreign exchange;

- (c) prescribe the conditions required to carry out the business of foreign exchange transfers;
- (d) prescribe information required by the Bank in respect of foreign exchange business or foreign exchange transfers between residents and non-residents;
- (e) prescribe restrictions for the importation and exportation of foreign exchange;
- (f) prescribe restrictions for the temporary imposition of exchange controls; and
- (g) provide for any other matter necessary for the effective implementation of the provisions of this Act.

(2) Despite the Statutory Instruments Act 1959 (No.52) the penalty for the contravention of Regulations, shall be a fine of not more than two thousand, five hundred penalty units.

Interpretation

33. In this Act, unless the context otherwise requires-

“account” means a facility or an arrangement by which a financial institution does any one or more of the following:

- (a) accepts deposits of currency;
- (b) allows withdrawals of currency or transfers into or out of the account,
- (c) pays cheques or payment orders drawn on a financial institution or cash dealer or collects cheques or payment orders on behalf of a person, and
- (d) supplies a facility or an arrangement for a safe deposit box;

“authorised person” means an officer of the Customs, Excise and Preventive Service and any other person indicated in a warrant; “Bank” means Bank of Ghana.

“bank” means any other bank other than the Bank of Ghana; “Court” means court of competent jurisdiction; “currency” means

- (a) coins, money or notes of the Republic or of another country that is designated as legal tender and that circulates as and is customarily used and accepted as a medium of exchange in the country of issue,
- (b) 'travellers cheques' , or other financial instruments denominated in the currency of Ghana or in foreign currency,
- (c) any right to receive coins or notes in respect of a credit or balance with a financial institution or a non resident;

"financial institution" means a licensed bank or other institution which carries on any form of financial business and that is specified as a financial institution by the Bank of Ghana;

"foreign currency" means a currency other than the legal tender of Ghana and includes travellers cheques and the right to receive foreign currency in respect of any credit or balance with a licensed bank or non-resident;

"foreign exchange" means

- (a) banknotes, coins or electronic units of payment in a currency other than the currency of Ghana which is, or has been legal tender outside Ghana;
- (b) financial instruments denominated in foreign currency; and includes a right to receive those banknotes or coins in respect of any balance at a financial institution located within or outside Ghana;

"foreign exchange business" means the business of buying, selling, borrowing, lending, receiving or paying foreign exchange;

"Governor" means the Governor of the Bank of Ghana;

"licensed dealer" means a person issued with a licence under this Act;

"local currency" means banknotes and coins issued by the Bank of Ghana and includes the right to receive the banknotes or coins in respect of a balance at a financial institution located within or outside Ghana;

"material particular" means of a substantial degree;

"Minister" means the Minister for Finance and Economic Planning; "non-resident" means a person other than a resident of the country; "notice" means publication in the mass media;

“payment” means a transfer of foreign exchange made for the purpose of

- (a) discharging a liability or acquiring an asset,
- (b) creating a balance at a financial institution that can be drawn upon, or
- (c) making a gift or a donation;

“person” includes a company or an association or body of persons corporate or unincorporated;

“prescribed authority” includes a court, a person on whom official functions are conferred by or under this Act, a police officer, an officer of the Customs, Excise and Preventive Service, other than an officer, a security agency of the Government or a person authorised by a security agency;

“resident” means-

- (a) a person who has been ordinarily resident in Ghana for one year or more,
- (b) the government of Ghana and any of its diplomatic representatives located outside Ghana,
- (c) a company, firm or enterprise with the principal place of business or centre of control and management located in Ghana,
- (d) a branch of a company, firm or other enterprise with the principal place of business located outside Ghana, and
- (e) a corporation, firm or enterprise incorporated in Ghana; and excludes a foreign diplomatic representative or an accredited official of that representation located within Ghana, an office of an organisation established by international treaty located within Ghana, or a branch of a company, firm or enterprise with Ghana the principal place of business located in Ghana;

“travellers cheque” means an instrument issued by a bank or similar institution which is intended to enable the person to whom it is issued to obtain bank notes or coins in the currency of Ghana or in a foreign currency from another person on the credit of the issuer.

“transaction” means the record of a financial business or conduct.

Modification of existing enactments

34. The provisions of an enactment of relevance to this Act and in force at the commencement of this Act, shall have effect subject to the modifications necessary to give effect to this Act and to the extent that the provisions of an enactment are inconsistent with this Act, the provisions of this Act shall prevail.

Repeal, savings and transitional provisions

35. (1) The following enactments are hereby repealed and revoked;

- (a) The Exchange Control Act, 1961 (Act 71);
- (b) Exchange Control (Amendment) Decree 1973 (NRCD 220);
- (c) Exchange Control (Amendment) Decree 1977 (SMCD 99);
- (d) Exchange Control (Amendment) Law, 1986 (PNDCL 149); and
- (e) Exchange Control Regulations, 1961 (L.I. 133).

(2) Despite the repeal, of the enactments in subsection (1), a statutory instrument notice, order, direction rules or any other act lawfully made or done under the repealed enactments and in force immediately before the commencement of this Act shall be considered to have been made or done under this Act and shall continue to have effect until reviewed, cancelled or terminated.

Date of *Gazette* notification: 29th December, 2006.

Home Mortgage Finance Act, 2008
(Act 770)

ARRANGEMENT OF SECTIONS

Section

Application

1. Application
2. Application of the Mortgages Act, 1972 (NRCD 96)
3. Security for loan

Requirements for mortgage

4. Mortgage to be evidenced in writing
5. Disclosure
6. Use of loan
7. Stamping and registration
8. Insurance
9. Rates
10. Mortgagor's right to transfer restricted

Default and remedies

11. Default in payment
12. Mortgagee's remedies on default
13. Mortgagee's right to possession
14. Appointment of receiver on default
15. Duties of a receiver
16. Remuneration of a receiver
17. Obstruction of a receiver
18. Valuation of mortgaged property
19. Reserved price of mortgaged property
20. Sale of mortgaged property on default
21. Purchaser's right in the sale of mortgaged property
22. Proceeds from sale of mortgaged property

Miscellaneous

23. Offences by bodies of persons
24. Action by motion on notice
25. Regulations
26. Interpretation
27. Repeals

SCHEDULES

THE SEVEN HUNDRED AND SEVENTIETH

ACT

OF THE PARLIAMENT OF THE REPUBLIC OF GHANA

ENTITLED

HOME MORTGAGE FINANCE ACT, 2008

AN ACT to regulate home mortgage financing and for related matters.

DATE OF ASSENT: *11th December 2008.*

ENACTED by the President and Parliament:

Application

Application

1. This Act applies to transactions between financial institutions and their customers for the provision of finance for

- (a) the construction or purchase of a residential property,
- (b) the completion of a residential property;
- (c) extension to or renovation of a residential property;
- (d) improvement to a residential property for ownership, sale or rental;
- (e) construction of residential properties for sale or rental; or
- (f) purchase of fixtures and chattels related to residential properties.

Application of the Mortgages Act, 1972 (NRCD 96)

2. (1) This Act is in addition to the Mortgages Act, 1972 (NRCD 96) and does not derogate from the provisions of that Act, except as otherwise provided in this Act.

(2) Where there is an inconsistency between the Mortgages Act and this Act, the provisions of this Act shall prevail.

Security for loan

3. Where a financial institution grants a loan, security for the loan shall include a mortgage over the property for which the loan is granted and the title deeds duly stamped and registered deposited with the mortgagee.

Requirement for mortgage

Mortgage to be evidenced in writing

4. (1) A mortgage is not enforceable unless it is evidenced in writing and provides for the

- (a) name and address of the mortgagor and mortgagee;
- (b) full description of the mortgaged property;
- (c) names of persons whose consent is required; if any
- (d) date of creation of the Mortgage;
- (e) root of title of the mortgagor;
- (f) nature of the mortgagor's interest in the mortgaged property;
- (g) extent to which the mortgagor's interest is subject to the mortgage;
- (h) nature of the charge created, in case of a floating charge, the nature of the restriction on the power of the mortgagor to grant further charges that rank in priority or at the same level with the charge created;
- (i) amount of the loan;
- (j) acknowledgement of receipt of the loan by the mortgagor;
- (k) right to redeem;
- (l) insurance policy related to the property;
- (m) interest on the principal amount;
- (n) due date for payment;

- (o) terms and conditions for renewal;
- (p) covenants and conditions;
- (q) events of default;
- (r) signatures of the mortgagor and mortgagee; and
- (s) signatures of witnesses.

(2) Despite subsection (1), a mortgage agreement is enforceable with regard to form and expression if it is in the form contained in the First Schedule or in similar form or uses expressions of a similar effect.

Disclosure

5. (1) A financial institution shall, at least fourteen days before the disbursement of a loan to the mortgagor, disclose all relevant information in writing to the Mortgagor in accordance with the relevant sections of Borrowers and Lenders Act.

(2) A mortgagor shall acknowledge receipt of the information in writing within seven days.

(3) A financial institution shall provide a mortgagor a minimum period of fourteen days after the date of receipt of the application from the mortgagor to the day of the disbursement of the loan and execution of the mortgage agreement to enable the mortgagor seek legal and financial advice on the documents related to the loan.

(4) A financial institution which contravenes this section is liable to the mortgagor for

- (a) actual damages the mortgagor sustains as a result of the contravention; and
- (b) any court costs and legal fees.

(5) Without limiting subsection (4), a mortgagee who fails to comply with this section is liable to a fine of not more than one thousand penalty units.

(6) A financial institution is not liable under subsection (4) if on discovery of an error made in a disclosure, it notifies the mortgagor of the error and makes the necessary adjustments to the mortgagor's account within sixty days after the discovery of the error.

(7) The Bank of Ghana shall issue notices as it considers necessary for the effective implementation of this section.

Use of loan

6. (1) A person who obtains a loan under this Act shall not use the whole or part of the loan for a purpose other than the purpose for which the loan was obtained.

(2) A person who contravenes subsection (1) is liable to pay the whole of the outstanding amount forthwith.

Stamping and registration

7. (1) A person who obtains a loan under this Act shall stamp and register the title deeds and mortgage deeds related to the property for which the loan was obtained and deposit them with the financial institution.

(2) Without limiting

- (a) section 12 of the Stamp Duty Act, 2005 (Act 689) on stamping of instruments after execution,
- (b) section 24 of the Land Registry Act, 1962 (Act 122) on registration necessary for validity, and
- (c) section 72 of the Land Title Registration Act, 1986 (P.N.D.C.L. 152) on form and effect of mortgages, an unstamped or an unregistered mortgage made under this Act is valid only between the original parties to the mortgage.

Insurance

8. (1) A mortgagor or mortgagee shall insure a mortgaged property against loss or damage by theft, fire, earthquake or other natural disaster.

(2) Where the mortgagor covenants to insure all or part of the mortgaged property and fails to do so, the mortgagee may insure and keep insured the mortgaged property after giving notice in writing to the mortgagor and the premiums paid by the mortgagee for the insurance shall be secured with the same priority as the mortgage.

(3) Unless a contrary intention appears expressly or by necessary implication, where the mortgagee secures payment of money on behalf of the mortgagor, the

money shall be added to the principal sum with interest at the same rate as on the principal sum.

(4) Unless a contrary intention appears expressly or by necessary implication, where the mortgagor covenants to insure all or part of the mortgaged property and the insurance has been effected by the mortgagor or on behalf of the mortgagor by the mortgagee, the money received from insurance shall be applied to make good the loss or damage for which the money is received unless the mortgagor elects to apply all or part of the money toward the performance of the act or acts secured by the mortgage.

Rates

9. (1) Despite the mortgage of property, a mortgagor shall pay property rates on the mortgaged property.

(2) Where a mortgagor fails to pay property rates due in respect of the mortgaged property, the mortgagee may pay the rates and money paid is secured with the same priority as the mortgage and is added to the principal sum with interest at the same rate as on the principal sum.

Transfer of interest or creation of further charges

10. (1) A mortgagor shall not

(a) transfer an interest, or

(b) create further charges or interests

in the mortgaged property without the prior written consent of the mortgagee.

(2) A mortgagee shall not unreasonably withhold the consent required under subsection (1).

Default and remedies

Default in payment

11. (1) Where a mortgagor fails to make an instalment payment within fourteen days after the due date for the payment, the mortgagee shall notify the mortgagor in writing of this fact and request the mortgagor to take urgent steps to pay the amount due as agreed by the parties.

(2) Where the mortgagor fails to make the payment and defaults in the pay-

ment of the monthly instalment immediately following, the mortgagee shall issue a demand note in the form in the Second Schedule to the mortgagor and request for the immediate payment of the aggregate or total outstanding arrears.

(3) The mortgagee may deliver the notice and the demand note to the address provided by the mortgagor

- (a) by hand and receipt acknowledged in writing by the mortgagor;
- (b) through a person apparently above the age of eighteen years at the mortgagor's address and receipt acknowledged in writing by that person; or
- (c) by registered mail or by courier.

(4) In the case of a body corporate or a partnership, the mortgagee may deliver the notice or note to the registered or principal place of business and receipt of the notice or note shall be acknowledged in writing by an officer of the company or partnership.

(5) Where a note is delivered by registered mail or courier service, the demand note is considered to have been received by the mortgagor at the time at which the note would have been delivered in the ordinary course of post or the courier service.

(6) Where a settlement of the arrears is not made and the mortgagor has not made a satisfactory arrangement with the mortgagee for the settlement of the outstanding amount after the date of issue of the demand note, the mortgagor is considered to be in default as soon as the third succeeding month's instalment also falls into arrears.

Mortgagee's remedies on default

12. Where a mortgagor fails to perform an act secured by the mortgage, the mortgagee may

- (a) sue the mortgagor on any personal covenant to perform; or
- (b) realise the security in the mortgaged property or by any of the processes provided under this Act.

Mortgagee's right to possession

13. (1) Where a mortgagor fails to perform an act secured by the mortgage, the

mortgagee is entitled to possession of the mortgaged property as against the mortgagor and any person who has an interest in the mortgaged property through the mortgagor and whose interest is subsequent to that of the mortgagee.

(2) In the exercise of the right of possession, the mortgagee is not obliged to take court proceedings and may take possession peaceably.

(3) Where a mortgagee is unable to enforce a right of possession in a peaceable manner the mortgagee may use the services of the police to evict the mortgagor or other person in possession pursuant to a warrant issued by a court.

Appointment of receiver on default

14. (1) Where a mortgagor fails to perform an act secured by a mortgage, the mortgagee may appoint a receiver to manage the mortgaged property.

(2) In the exercise of a right of appointment of a receiver, the mortgagee is not obliged to take court proceedings.

(3) The receiver is the agent of the mortgagee.

(4) The mortgagee may revoke the appointment of the receiver in writing to the receiver.

Duties of a receiver

15. (1) The receiver may take possession of the mortgaged property in the manner specified in this Act.

(2) The receiver

(a) may collect by demand or take action in the name of the mortgagor or mortgagee for the income including arrears which accrue from the mortgaged property,

(b) shall give valid receipts for income collected, and

(c) may take any action that is necessary to manage the property.

(3) The receiver may make reasonable repairs and improvements to the property to

- (a) protect its value, or
- (b) maintain or increase the income from the property.

(4) The mortgagee may direct the receiver in writing to insure the mortgaged property and remedy any defects of insurable nature in the mortgage to the extent, if any, which the mortgagor ought to have insured and kept insured.

- (5) The receiver shall apply money received to
- (a) discharge rents, taxes, rates and other outgoings that affect the mortgaged property;
 - (b) pay sums or interest on the principal sums that are due and have priority to the mortgage;
 - (c) pay the commission and the premium to be paid in accordance with the mortgage and cost of necessary repairs;
 - (d) pay the interest accruing in respect of the principal money due under the mortgage;

(e) discharge the principal amount due under the mortgage as determined and pay the residue if any, or the money received to the person who but for the possession of the receiver would have been entitled to receive the income for which the receiver is appointed or who is otherwise entitled to the mortgaged property.

Remuneration of a receiver

16. (1) A receiver is entitled to retain a commission at a rate

- (a) of not more than five per centum of the gross amount of money received as specified in the letter of appointment, and
- (b) where no rate is specified, then at the rate of two and a half per centum of the gross amount;

out of the money received, for the receiver's remuneration and in satisfaction of the costs, charges and expenses incurred as receiver.

Obstruction of receiver

17. (1) A person shall not obstruct a receiver in the discharge of duties under this Act.

(2) A person who obstructs a receiver commits an offence and is liable on summary conviction

(a) to a fine of not more than two hundred penalty units or to a term of imprisonment of not more than twelve months or to both, and

(b) in the case of a continuing offence, to a further fine of not more than ten penalty units for each day on which the offence continues.

Valuation of mortgaged property

18. (1) Where a mortgagee intends to sell a mortgaged property, the mortgagor and mortgagee shall cause the property to be valued by a certified valuer agreed on by them.

(2) Where the mortgagor and mortgagee fail to agree on a certified valuer, the mortgagee shall appoint a valuer.

(3) Where there is a dispute over the value of the mortgaged property the party disputing the value shall apply to the Ghana Institution of Surveyors to appoint an independent valuer.

(4) The decision of the valuer appointed by the Ghana Institution of Surveyors is final as to the value.

Reserved price of mortgaged property

19. (1) A mortgagee shall not sell a mortgaged property for less than eighty-five per cent of the appraised market value of the property.

(2) Where there is no sale at eighty five per cent of the appraised market value after two attempts at sale, the property may be sold at a price less than eighty-five per cent of the appraised market value.

Sale of mortgaged property on default

20. (1) Where a mortgagor fails to carry on an act or acts secured by the mortgage, the mortgagee may sell the mortgaged property.

(2) A mortgagee may exercise the right of sale without recourse to court.

(3) The sale of mortgaged property may be by public auction or private contract.

(4) Where a sale is conducted by a public auction, the Auction Sales Act, 1989 (P.N.D.C.L. 230) shall apply except that the Auctioneer's fees shall not exceed three per centum of the gross amount realised from the sale.

(5) Except where a sale is conducted by public auction, a mortgagee who intends to exercise the power of sale shall give fourteen days notice of the sale to the mortgagor and each person of whom the mortgagee has notice to have an interest in the property.

(6) The notice required is considered to be served on the interested persons if published in a public local newspaper on the seventh and fourteenth day before the date of the sale.

(7) A mortgagee is liable for loss caused by a sale carried out in contravention of this Act.

(8) A mortgagor or a person who has an interest in the mortgaged property may purchase the property at the sale subject to the conditions in subsection (3).

Purchaser's interest in the sale of mortgaged property

21. (1) A mortgagee at whose instance sale is made shall not purchase the mortgaged property except where the sale is carried out at a public auction or subject to the approval of the mortgagor and all the persons known to the mortgagee to have an interest in the property where the sale is carried out by private contract.

(2) A mortgagee who exercises a right of sale may convey to the purchaser the whole of the mortgagor's interest in the mortgaged property.

(3) A purchaser of a mortgaged property shall take

- (a) title to the mortgaged property free of interests to which the mortgagee who requested the sale has priority but subject to interests which have priority to that mortgage, and
- (b) title documents related to the mortgaged property other than title documents held by a person with an interest of priority to the mortgage of the mortgagee who requested the sale.

(4) Without limiting the provisions of section 24 of the Lands Registry Act 1962, (Act 122) and the provisions of Part IV of the Land Title Registration Act, 1986 (P.N.D.C.L. 152)

- (a) a certificate of purchase executed by the mortgagor, the auctioneer and the purchaser pursuant to an auction sale of the mortgaged property; or
- (b) where the sale is by private contract, a statutory declaration by a mortgagee as proof of a mortgage, default by the mortgagor under the terms and conditions of the mortgage and a sale of the mortgaged property pursuant to the default *is* sufficient to establish the title of the purchaser to the mortgaged property and for registration under the Land Title Registration Act, 1986 (P.N.D.C.L. 152) or the Lands Registry Act, 1962 (Act 122).

Proceeds from sale of mortgaged property

22. (1) The proceeds from a sale of mortgaged property shall be held in trust for distribution by the mortgagee who caused the sale.

(2) Proceeds from the sale shall be used

- (a) first in payment of expenses properly incurred as incidental to the sale or any prior attempted sale,
- (b) secondly in payment of the sums secured by the mortgage or with the same priority as the mortgage, and
- (c) thirdly in payment in the order of priority of any encumbrances subsequent to that of the mortgagee who requested the sale.

(3) The residue of the amount shall be paid to the mortgagor or the mortgagor's successor in interest.

(4) A mortgagee on whom a right of trustee of sale is conferred by this section is not a mortgagor in respect of that right.

Miscellaneous

Offences by bodies of persons

23. (1) Where an offence under this Act or under any rules made under this Act is committed by a body of persons,

- (a) in the case of a body corporate, each director and officer of the body

corporate is considered to have committed the offence; and

- (b) in the case of a partnership, each partner or officer of the body is considered to have committed the offence.

(2) Despite subsection (1), a person is not liable if that person proves that the offence was committed without that person's knowledge or that the person exercised due diligence to prevent the commission of the offence having regard to the circumstances.

Action by motion on notice

24. Except as otherwise provided in this Act, an action brought under this Act shall be by motion on notice under order 19 of the High Court (Civil Procedure) Rules 2004 (C. 1. 47).

Regulations

25. The Minister may, by legislative instrument, make regulations on

- (a) matters to be disclosed,
- (b) the contents of a statutory declaration required under this Act,
- (c) sale of mortgaged property on default, and
- (d) generally for the effective implementation of this Act.

Interpretation

26. In this Act unless the context otherwise requires:

"Annual percentage rate (APR)" means the total cost of credit that the mortgagor pays, expressed as a simple annual percentage;

"certified valuer" means a member of the Ghana Institution of Surveyors who is in good standing;

"demand note" means a notice to the mortgagor for the demand of the arrears due;

"estimate" means a sum total of anticipated costs that will be borne by the mortgagor in the mortgage transaction;

“financial institution” includes a bank and non-bank entity licensed by the Bank of Ghana to carry on the business of banking;

“floating charge” means an equitable charge over the whole or specified part of the company’s undertaking and assets both present and future;

“guidelines” means instructions drawn up in furtherance of this Act or regulations made pursuant to this Act;

“loan” includes any credit or other financial assistance granted by a financial institution;

“mortgage” means an encumbrance on the property charged;

“mortgage agreement” means an agreement between a Mortgagor and a mortgagee which grants the mortgagee a charge over the mortgaged property as security for the loan which sets out the terms and condition of the loan;

“Mortgages Act” means the Mortgages Act, 1972 (NRCD 96);

“mortgagor” includes a person who has taken a loan and any person who derives title through the original mortgagor or entitled to redeem a mortgage according to an interest in the mortgaged property.

“mortgagee” includes an institution that grants loans for the purpose specified in section 1 and any person who derives title through the original mortgagee;

“purchaser” includes a person who buys property in good faith for valuable consideration, a lessee or mortgagor.

Repeals

27. (1) The Home Mortgage Finance Act, 1993 (P.N.D.C.L. 329) is repealed.

(2) The National Mortgage Financing and Guarantee Scheme Act, 1976 (S.M.C.D. 23) is repealed.

(3) Despite sub sections (1) and (2), regulations, orders, directions, notifications, exemptions, approvals, decisions and other executive or administrative acts made, given or done under the repealed Acts shall upon commencement of this Act continue in force until amended or repealed in accordance with this Act.

SCHEDULES

FIRST SCHEDULE

(Section 4(2))

Form of Mortgage Agreement

This Mortgage is made the..... day of..... Two Thousand and..... (20..) BETWEEN [Name and Address of Mortgagor] (hereinafter referred to as the "Mortgagor" which expression shall where the context so admits or requires include the personal representatives successors and assigns of the mortgagor) of the one part

AND

[Name of Bank/Financial Institution] a limited liability company incorporated under the laws of Ghana and having its registered office situate [address] (hereinafter referred to as the Mortgagee") of the other part.

WHEREAS:

[Recitals]

- * Root of Title
- * Person(s) whose consent and/or concurrence is required.
- * Mortgagor's need for the loan and
- * Mortgagees willingness to grant the Loan

1. Consideration and personal covenant to pay

In consideration of the loan of [amount] granted to the Mortgagor by the Mortgagee (receipt of which the Mortgagor acknowledges), the mortgagor covenants with the mortgagee to duly and punctually repay the said loan together with interest at [percentage of interest]% within [term of loan] and [additional charges under disclosure requirements] [according to the payment schedule in the second schedule.

2. Mortgage

The Mortgagor as beneficial owner hereby mortgages the [description of property] which property is particularly described in the first schedules hereto (hereinafter referred to as the "Property") together with all fittings and fixtures attached thereto now or to be attached hereafter to the Mortgagee to secure the repayment of the loan, interest and other money hereby covenanted to be paid by the Mortgagor.

3. Payment of principal, interests and other costs

1. The Mortgagor covenants with the Mortgagee to repay the loan as follows:

(a) at the interest rate in *[no. of instalments]* equal monthly instalments of..... *[amount]* each within *[term of loan]* years, the first instalment to be made on..... *[date]* and the subsequent payments to be made not later than the first day of each month in arrears.

(b) In the event of a delay on the payment of any installment, the delayed instalment shall attract an interest of []% per annum.

2. Where a mortgagor makes a payment over and above the required monthly installment, that payment would be treated as an advance payment and applied to future repayments of any payments payable under this agreement unless the Mortgagor indicates that the extra amount should be regarded as a prepayment.

3. Where the Mortgagor makes a prepayment of [] 1% or more of the Loan at any time during the mortgage, that prepayment shall attract a penalty of [] of the amount prepaid.

4. In the event of prepayment, the monthly instalment of the Loan shall be adjusted accordingly to take effect from the second month following the month in which the prepayment was made.

5. The Mortgagor shall pay an estimated Annual Percentage Rate of [] in addition to the principal payable *[mode of payment]*

6. The Mortgagor shall pay the additional charges provided in the Second Schedule as good faith estimates of the charges, fees and costs of this mortgage agreement.

4. Insurance

(1) The Mortgagor shall insure and keep insured, at the mortgagor's own expense during the subsistence of this mortgage, the property together with all fittings and fixtures attached thereto now or to be attached hereafter, against loss or damage, with a reputable insurance company to be mutually agreed on between the parties, *[in the names of both the Mortgagor and the Mortgagee]*.

(2) The Mortgagor is required to pay yearly insurance premiums in full prior to the commencement of the Mortgage and thereafter not later than fourteen days before the expiry of such insurance cover.

(3) The Mortgagor shall duly and punctually pay all premiums and money necessary for effecting and maintaining that insurance and deposit evidence of such payments with the Mortgagee.

(4) A mortgagor shall at any time at the request of the Mortgagee produce the insurance policy and the premium payment receipts for the inspection of the Mortgagee or its duly authorised agents.

5. Where the Mortgagor fails to insure all or any part of the property in accordance with this Agreement, the Mortgagee is entitled to insure and keep insured the mortgaged property.

6. Where premiums are paid by the Mortgagee on behalf of the Mortgagor under of this Agreement the premiums shall attract an annual interest rate of [] % and a default interest [] % and is payable as additional loan in [no. of installments] equal monthly installments from the date of payment of such premiums.

7. Any money received under any policy of insurance effected or maintained by the Mortgagor or on behalf of the Mortgagor by the Mortgagee, whether or not pursuant to the Mortgagor's obligation under this Agreement shall be applied to make good the loss or damage in respect of which the money is received.

8. Restriction on transfer

Mortgagor shall not without the prior written consent of the mortgagee during the subsistence of this mortgage sell, lease, or part with possession or transfer all or part of the interest in the property.

9. Mortgagor's covenants

1. The Mortgagor covenants with the mortgagee as follows:

- (a) that the Mortgagor or with the consent or concurrence of all other persons whose consent or concurrence is required, has full power to mortgage the property expressed to be mortgaged by the mortgagor in the manner in which it is expressed to be mortgaged,
- (b) that if either or both the Mortgagee and persons deriving title through the Mortgagee enter into possession of the mortgaged property, the Mortgagor and every person concurring in the mortgage by his direction and every person deriving title through the Mortgagor (other than 'a person having an interest to which the mortgage is expressly made

subject) shall not interfere with, interrupt or disturb the possession of such person in possession,

- (c) that the mortgaged property is freed and discharged from, or otherwise by the Mortgagor sufficiently indemnified against, all interests, encumbrances, claims and demands whatsoever, other than those to which the mortgage is expressly made subject,
- (d) that the Mortgagor and every person concurring in the mortgage by the Mortgagor's direction, and every person deriving title through any of them, and every other person having or rightfully claiming any interest in the mortgaged property other than an interest to which the mortgage is expressly made subject will, from time to time and at all times on the request of the Mortgagee or any person deriving title through him, execute and do all such assurances and things for further or more perfectly assuring the title to the security interest as such person may reasonably request, the expenses in respect of this covenant to be borne by the Mortgagor during the life of the mortgage and thereafter by the person making the request,
- (e) that the Mortgagor and every person deriving an interest through the Mortgagor, other than a person having an interest to which the mortgage is expressly made subject, will at all times during the life of the mortgage preserve, protect, repair and maintain the mortgaged property so as not to diminish its value below what is reasonably required as security for the performance of any act secured by the mortgage but which has yet to be performed,
- (f) that the lease is at the date of the mortgage a, valid lease of the mortgaged property.
- (g) that all the rents reserved by, and all the covenants, conditions and agreements contained in, the lease and to be paid, observed or performed by the Mortgagor and persons deriving title through him have been paid, observed and performed up to the time of the mortgage,
- (h) that the Mortgagor, or the person deriving title through the Mortgagor during the subsistence of the Agreement, observe and perform or cause to be paid, observed and performed, all rents reserved by the lease and all covenants, conditions and agreements contained in the lease, which he or they are bound to pay, observe and perform.

10. Mortgagee's covenants

1. The mortgage made is discharged when the Mortgagor performs all the obligations under this Agreement and undertakes to issue a written discharge to the Mortgagee as soon as the Mortgagor has duly fulfilled all obligations under this mortgage.

2. The Mortgagee shall furnish or deliver to the Mortgagor a [monthly/quarterly/annual] statement of Account on the Loan payments on or before the [] day of [Month] of [period] and the Mortgagor may raise any queries on the statement if any. In the event that the Mortgagor raises any queries the Parties shall reconcile the accounts.

11. Mortgagee's rights and powers

1. The Mortgagee shall hold all title documents relating exclusively to the Property and shall keep same whole, uncanceled and undefaced.

2. The Mortgagee acknowledges the right of the Mortgagor to the production of the title documents and to the supply of copies of same.

3. The Mortgagee shall upon receiving a [duration of notice] notice permit the Mortgagor or its representative to inspect the title documents.

4. The parties agree that the Mortgagee has the right to irrevocably assign any of its rights under this Agreement to any third party without prior notice to the Mortgagor.

12. Events of default

1. Any breach of this Agreement shall amount to an Event of Default in addition to the following:

- (a) where the Mortgagee is considered to be in default under section 6 of the Home Mortgage Finance Act,
- (b) where the Mortgagor dies, becomes bankrupt or makes any arrangement with creditors generally or takes or suffers similar action as a result of the debt,
- (c) where an execution is levied upon the Mortgagor's property,
- (d) where the Mortgagor becomes of unsound mind,

- (e) where the Mortgagor fails to comply with any of the terms, conditions covenants or obligations under this Agreement; or
- (f) where an representation or warranty given by the Mortgagor to the Mortgagee is found out to be false.

13. Rights of mortgagee upon default

1. In the event of the occurrence of an Event of Default, the Mortgagee shall exercise any one or more of the Mortgagee's rights in accordance with the Home Mortgage Finance Act, 2008 (Act 770).

2. The parties agree that the Mortgagee's right upon default by the Mortgagor may be exercised in the Mortgagee's behalf by a trustee or any beneficiary to whom the Mortgagee's rights might have accrued.

14. Termination

This Agreement shall remain valid and may terminate after the Mortgage is discharged and the Mortgagee has issued the written discharge required under section [] of this Agreement.

15. Renewal of mortgage

If the Mortgagor shall duly and punctually repay the principal money, interest and other money the Mortgagor has covenanted to pay to the Mortgagee in accordance with section 3 of this Agreement then, if the Mortgagor so desires, the security hereby made is used to secure further advances not exceeding, in aggregate of *[amount]* the Mortgagee shall give the Mortgagor at the original interest rate and priority. The Mortgagor shall give at least *[length of notice]* months' notice, in writing to the Mortgagee of the Mortgagor's intention to enforce this provision.

16. Notice

Any notice required to be served under this mortgage is sufficiently served on the Mortgagee if its delivered either by hand and a receipt acknowledged in writing by the Mortgagor; or by leaving it for the Mortgagor with a person apparently over the age of eighteen years at the Mortgagor's address and acknowledged in writing by that person; or by pasting the notice on a reasonably noticeable part of the mortgaged premises; or sent by registered mail or by courier or to the last known address provided by the Mortgagor.

17. Stamping and registration

1. The Mortgagor shall immediately after the execution of this Agreement

- * Stamp this Agreement in accordance with section 12 of the Stamp Duty Act 2005 Act 689.
- * Register this Agreement in accordance with section 24 of the Lands Registry Act 1962, (Act 122) and the provisions under Part IV of the Land Title Registration Act 1986 (P.N.D.C.L. 152).

18. Waiver

Failure or neglect by either party to enforce a provision of this Agreement shall not be construed or considered to be a waiver of rights of the whole or part of this Agreement.

19. Entire agreement

This Agreement constitutes the entire and only agreement between the parties and supercedes all previous understandings, commitments and agreements whether oral or written relating to this Agreement.

20. Amendments

Any term condition or provision contained in this Agreement may be amended on the mutual consent of both parties and any agreed amendment is in writing, executed by both parties and annexed to this Agreement.

21. Jurat [applicable when Mortgagor is illiterate and/or blind]

I..... (name and position of employee or representative of Mortgagee) declares that on..... day of..... (day/month/year) I read and explained the contents of this Agreement to the Mortgagor herein, who is illiterate and/or blind in the. . . [language] language and seemed perfectly to understand and approve of the contents before executing it.

IN WITNESS WHEREOF the Mortgagor has set his/her hand and the Mortgagee has caused its hand and seal to be hereunto affixed on the day, month and year first above written.

[Detailed description of property and site plan]

Signed by the within named Mortgagor

Name:
Address:
Fax:
Tel:
Email:

In the presence of

Name:
Address:
Fax:
Tel:
Email:

Signed by or on behalf of the Mortgagee

Name:
Address:
Fax:
Tel:
Email:

In the presence of

Name:
Address:
Fax:
Tel:
Email:

Second Schedule

*Section 11(2)
Demand Notice*

[On Mortgagee's Letterhead]

Dear Sir/Madam,

MORTGAGE DEMAND NOTE

We refer to:

1. The [Mortgage Agreement] dated [] entered into between [] and the [] for a total amount of [] in respect of which there is a current outstanding indebtedness of [] plus interest of [] making a total of []

2. The notification of default dated []
Despite the above, as at [date] the amount outstanding remains unpaid. We hereby issue this demand, in accordance with section 11(2) of the Home Mortgage Finance Act, 2008 (Act 770) and Section [] of the [Mortgage Agreement] for the immediate payment of the amount outstanding plus interest, from you as primary obligor, within seven (7) days of the date of this letter.

Please note that if a settlement of the arrears is not made within the stipulated time and no arrangement is entered with [the financial institution] for the settlement of the amount outstanding, we are entitled to exercise our rights against you in accordance with sections 11-17 of the Home Mortgage Finance Act, 2008 (Act 770).

Please be advised accordingly.

Signed:

.....Date:

Date of *Gazette* notification: 19th December, 2008

**Non-Bank Financial Institutions
Act, 2008, (Act 774)**

ARRANGEMENT OF SECTIONS

Section

Application and licensing

1. Application of this Act
2. Licence required for Non-Bank Financial Services
3. Qualification for a licence
4. Application procedures
5. Licensing procedures
6. Display of licence
7. Revocation, suspension, or restriction of licence
8. Notification of change in particulars
9. Branches, Agencies, etc.
10. Prohibited actions

Capital, liquidity, and other requirements

11. Minimum requirements
12. Paid-up capital
13. Liquid assets
14. Single party exposure
15. Related party transactions
16. Requirements for lending to related parties
17. Restrictions on lending to staff
18. Dividends

Ownership and corporate governance

19. Ownership
20. Mergers, amalgamations, sale of assets
21. Directors
22. Appointment of Directors and employees
23. Responsibilities of Directors

Accounts and financial statements

24. Accounting records
25. Internal audit
26. Appointment of external auditor

27. External auditor's report
28. Submission of audited financial statements
29. Audited financial statements to be made public
30. Non-compliant financial statements

Powers of supervision and control

31. Supervision
32. Returns
33. Examination
34. Power to intervene
35. Remedial action
36. Additional powers of intervention
37. Power to investigate and make orders concerning exempted services

Liquidation

38. Liquidation
39. Voluntary winding-up

Miscellaneous matters

40. Protection of officers
41. Confidentiality
42. Know your customer
43. Offences
44. Rules
45. Regulations
46. Interpretation
47. Repeals, transitional and savings

SCHEDULES

REPUBLIC OF GHANA
THE SEVEN HUNDRED AND SEVENTY-FOURTH
ACT
ENTITLED
NON-BANK FINANCIAL INSTITUTIONS ACT, 2008

An Act to provide for the regulation of non-bank financial institutions and for related purposes.

DATE OF ASSENT: *23rd December, 2008.*

ENACTED by the President and Parliament:

Application and licensing

Application of this Act

1. This Act applies to non-bank institutions and non-bank financial services as set out in the First Schedule to this Act, but does not apply to

- (a) operators of micro finance services with risk assets which are not more than the amounts prescribed by the Bank of Ghana and whose sources of funds do not include deposits from the public; and
- (b) any other institution or person as the Bank may specify by Notice published in the *Gazette*.

Licence required for Non-Bank Financial Services

2. (1) A person shall not provide any of the services specified in the First Schedule unless that person holds a valid licence issued for that purpose under this Act.

(2) A license issued under this Act shall indicate among other things whether the licensee may engage in all or some of the services specified in the First Schedule.

Qualification for a licence

3. A person shall not be licensed to provide a non-bank financial service unless that person

- (a) is a body incorporated in Ghana under sections 8 and 9 of the Companies Act 1963 (Act 179) with the sole authorised business of carrying on of a non-bank financial service; or

(b) is in the case of a credit union registered and incorporated under sections 5 and 6 of the Co-operative Societies Act, 1968 (NLCD 252); and has satisfied the minimum capital requirements determined in accordance with section 12 of this Act.

Application procedures

4. (1) An application for a licence to provide a service specified in the First Schedule, shall be

- (a) made in writing in the form determined by the Bank for that purpose, and
- (b) submitted to the Bank for consideration.

(2) The application shall be accompanied with

- (a) certified copies of its regulations or other instruments of incorporation of the applicant;
- (b) full particulars of and detailed and clear definition of activities it proposes to carry out;
- (c) details of registered place of business, a principal place of business accessible to the public and suitable for the services contemplated and a description of other places where it proposes to do business, and the areas it proposes to serve;
- (d) financial data which include financial statements and feasibility reports which contain among others a business plan and financial projections for the first five years of operations;
- (e) documentary evidence of sources of funds for the proposed business;
- (f) names, addresses, occupations and corporate affiliations of persons who hold or intend to hold significant shareholdings directly or indirectly, in the proposed business and the respective values of their shareholdings or proposed shareholdings;
- (g) particulars, including backgrounds and business interests, of directors and key management personnel concerned with the management of the business;

- (h) other information that relates to the viability of the business;
- (i) information on other matters that the applicant considers relevant to its application;
- (j) other additional information which the Bank considers relevant for the determination of the application; and
- (k) a non-refundable application fee specified by the Bank.

(3) The application shall be signed by the members of the board of directors or other governing body of the applicant, or by any representatives of the applicant legally authorized to sign the application.

Licensing procedures

5. (1) The Bank in considering an application for a licence under section 4, shall conduct investigations that it considers necessary to ascertain

- (a) the validity of the documents submitted under section 4 (1) and (2);
- (b) the financial status and history of the applicant;
- (c) the nature of business of the applicant including the range of services and products proposed;
- (d) the suitability of significant shareholders and directors of the applicant in line with the Bank's "fit and proper person" test as defined in this Act;
- (e) the competence and integrity of persons proposed to occupy key management positions;
- (f) the adequacy of the applicant's capital structure, earning prospects, business plans, and financial plans in line with levels specified by the Bank; and
- (g) any other matter which the Bank may regard as relevant to the application.

(2) Within ninety days after the receipt of an application, or where additional information or clarification had been sought, after the receipt of the additional information or clarification, the Bank may if it is satisfied that the application is in accordance

with this Act, and the specified fee has been paid

- (a) issue a licence to an applicant to carry on business;
- (b) refuse to issue the licence if not satisfied and inform the applicant of the refusal giving reasons for the refusal; or
- (c) issue the licence on conditions that it considers necessary.

(3) Where a licence is issued on condition, the Bank may vary the condition as it considers appropriate.

Display of licence

6. A licensee shall at all times display the licence or copies of the licence, its name and a statement of the fact that it is licensed to carry on business under this Act, in a conspicuous position on the premises at which it carries on business.

Revocation, suspension, or restriction of licence

7. (1) The Bank may revoke the licence by notice in writing to the licensee if the licensee

- (a) ceases to satisfy a qualification required under this Act;
- (b) ceases to carry on business or is wound up or otherwise dissolved;
- (c) conducts business in a manner detrimental to the interests of depositors or customers;
- (d) except in the case of a credit union, has without the consent of the Bank been amalgamated with another company or has sold or has otherwise transferred its assets and liabilities to another company;
- (e) in the case of a credit union has amalgamated or transferred its assets in a manner contrary to section 14 of the Cooperative Societies Act, 1968 (NLCD 1968);
- (f) has failed to comply with any of the conditions stipulated in its licence;
- (g) has contravened any provision of this Act or any Regulation, rule, Notice, or other directive issued by the Bank in furtherance of this Act; or

(h) has provided the Bank with false, misleading or inaccurate information, in connection with an application for a licence.

(2) The Bank may suspend or restrict a licence issued under this Act where it finds it necessary to do so.

(3) The Bank shall, before it suspends or revokes a licence under subsection (2), give notice to the affected licensee, specifying the defect, omission or breach for which the licence is liable to suspension or revocation and request the person to remedy the defect

(a) within ninety days after the notice, or

(b) some other period determined by the Bank.

(4) If the defect, omission or breach is remedied within the time specified, the Bank shall by notice in writing to that person restore its licence, otherwise the Bank may suspend or revoke the licence and issue a public notice to that effect.

(5) A licence may be restricted by

(a) the imposition of a limit on its duration that the Bank considers fit;

(b) the imposition of additional conditions that the Bank considers desirable for the protection of depositors or potential depositors;

(c) the prohibition of the licensee from entering into any other transaction or class of transactions;

(d) requiring the removal of a director, manager or other officer of the licensee.

(6) A licensee who fails to comply with a requirement or contravenes any prohibition imposed on it under this section is liable to pay to the Bank, a penalty of not less than two hundred and fifty penalty units.

(7) The Bank shall issue a public notice of any suspension, restriction, or revocation of a licence under this Act.

(8) A person who is dissatisfied with the decision of the Bank to revoke, suspend, or restrict a licence may within thirty days after that person has been informed of the decision, apply to the Bank for a review of the Bank's decision.

(9) The Bank may by notice, publish rules of procedure for

- (a) the submission of applications for review under subsection (8), and
- (b) hearing and determination of the applications.

(10) A person who is dissatisfied with the decision of the Bank in respect of a review may apply to the High Court for a review of that decision.

Notification of change in particulars

8. A non-bank financial institution shall give notice to the Bank of

- (a) an alteration in its regulations or other constitutional document,
- (b) a change of a director or member of its governing body, and
- (c) an alteration in the nature of its business

within twenty-eight days after the occurrence of the event.

Branches and Agencies

9. (1) A non-bank financial institution shall not open, close, or change a branch, office, sub-office, booth, agency or mobile unit in the country without the prior approval in writing of the Bank obtained at least thirty days before the date of the opening, closing, or change.

(2) Before the closure or change of location of a place of business of a non-bank financial institution, the Bank shall ensure that the institution provides opportunity to depositors who do not want their accounts transferred to another branch or office or the relocated branch to withdraw their funds.

(3) Before approval is granted for the opening of a branch, office, sub-office, booth, agency or mobile unit, the Bank may have regard to the adequacy of the applicant's capital for operating the branch office, sub-office, booth, agency or mobile unit

Prohibited actions

10. (1) A non-bank financial institution shall not without the written approval of the Bank change its name as contained in its licence.

(2) A non-bank financial institution shall not in furtherance of the business for which it is licensed under this Act, use or refer to itself

- (a) by a name other than the name under which it is licensed;
- (b) by an abbreviation of that name unless the abbreviation has been approved by the Bank; or
- (c) by the word "bank" in its name, advertisement or correspondence.

Capital, liquidity, and other requirements

Minimum requirements

11. (1) A non-bank financial institution licensed under this Act, shall comply with the minimum requirements imposed under this Act and that may be imposed by the Bank regarding core capital, liquidity, loans and advances, based on the Bank's assessment of risks posed by their respective activities.

(2) The Bank may for the purpose of imposing or revising the requirements impose different requirements having regard to the number and types of services provided by the institution or to other relevant considerations, based on the Bank's assessment of risks posed by their activities.

Paid-up capital

12. A non-bank financial institution shall maintain separate and unimpaired minimum paid-up capital and reserves in the amount specified in the Fourth Schedule to this Act or as may be specified by the Bank.

Liquid assets

13. A non-bank financial institution shall maintain the minimum holding of liquid assets of a specific amount and composition as provided in the Fourth Schedule or as the Bank may specify.

Single party exposure

14. (1) A non-bank financial institution shall not

- (a) grant an advance or credit or issue financial guarantee or indemnity to or in respect of any person or group of persons;

(b) invest in the equity of any company; or

(c) carry out any other transaction for any person which constitutes in the aggregate a liability to the institution amounting to more than the proportion of the net worth of the institution as specified in the Fourth Schedule or as may be specified by the Bank.

(2) A non-bank financial institution shall not grant an unsecured advance, credit, or issue any guarantee or indemnity amounting in aggregate to more than the proportion of the net worth of the institution as specified in the Fourth Schedule or as may be specified by the Bank.

Related party transactions

15. (1) A non-bank financial institution shall not assume unsecured financial exposure in respect of

(a) any of its directors or significant shareholders,

(b) a firm or company in which a director or a significant shareholder of that institution is interested as director,

(c) a controlling shareholder, partner, proprietor, employee or guarantor of that institution,

(d) a holding or subsidiary company of that institution in which a director is interested, or

(e) a director's relative or a significant shareholder's relative, unless the prior written approval of the Bank is obtained in respect of that unsecured exposure.

(2) The aggregate liability to the institution as regards a director or a significant shareholder or other related party indicated in subsection (1), shall not exceed

(a) fifteen per cent of the institution's net own funds where the financial exposure is on a secured basis, or

(b) ten per cent of the institution's net own funds where the financial exposure is on an unsecured basis.

(3) The board of the institution shall be the only authority to approve or sanction any financial exposures of the institution to any of its directors or significant shareholders or related parties.

(4) The financial exposure of the institution to a director, a significant shareholder and other related party shall not be written off or waived fully or partially, without the approval of the institution's board and the approval in writing of the Bank.

(5) A non-bank financial institution which contravenes this section shall pay to the Bank a penalty of one thousand penalty units.

(6) For the purposes of this section "relative" includes spouse, son, daughter, step son, step daughter, brother, sister, father and mother.

Requirements for lending to related parties

16. (1) In considering the approval of credit facilities to any of its directors, executive officers or persons related to them, under section 15, a non-bank financial institution shall satisfy itself that

- (a) the person to whom the credit facility is given has credit worthiness which is not less than that normally required by the institution from other persons to whom credit facilities are given;
- (b) the terms of the credit facility are not less favourable to the institution than those normally offered to other persons;
- (c) the giving of the credit facility is in the interests of the non- bank financial institution;
- (d) the credit facility has been approved by all other directors of the institution at a duly constituted meeting of the directors where not less than three quarters of the directors of the institution were present; and
- (e) the approval has been recorded in the minutes of that meeting.

(2) A non-bank financial institution which contravenes subsection (1) shall pay to the Bank a penalty of not more than one thousand penalty units or be subject to sanctions that the Bank may determine.

Restrictions on lending to staff

17. (1) A non-bank financial institution shall not grant to any of its officers or employees an unsecured advance or credit facility, the aggregate amount of which exceeds two years' salary of the officer or employee.

(2) The limitations applicable to directors under section 16 apply to advances granted to an executive officer.

(3) A non-bank financial institution which grants unsecured advances or credit facilities in contravention of subsection (1) is liable to pay to the Bank a penalty of not more than one thousand penalty units or be subject to sanctions that the Bank may determine.

Dividends

18. (1) A non-bank financial institution shall not declare or pay dividend on its shares in any year if the level of capital adequacy of the institution is less than that provided for under this Act or specified by the Bank.

(2) A non-bank financial institution shall not pay dividend on its shares unless it has completely recovered all of its capitalized expenditure.

(3) The Bank may suspend or revoke a licence if dividends are declared or paid in contravention of this section.

Ownership and corporate governance

Ownership of shares in non-bank financial institution

19. (1) A person who

- (a) has been convicted for felony or who has been adjudged to have participated in illegal financial activities in this country or elsewhere,
- (b) is not financially solvent or is incapable of meeting the subscription and payment of allotted shares,
- (c) has a non-performing loan in any financial institution in this country,
- (d) in the case of a company, subject to subsection (2), has been declared bankrupt by a court,
- (e) has been disqualified from operating current accounts,
- (f) has been suspended from acting as director, trustee, manager, administrator or proxy in any financial institution, or

(g) has been disqualified by the Bank from acting as internal auditor or other officer in any financial institution shall not legally or beneficially hold shares in a non-bank financial institution and the Bank shall direct the cancellation of any shares held by that person.

(2) Where a company ceases to be a bankrupt company for at least ten years and has within that period re-establish itself as a financially sound and responsible company, the Bank may, subject to conditions that the Bank may determine, such as the posting of a bond for a specified number of years, permit the company to own shares in a non-bank financial institution.

Mergers, amalgamations, sale of assets

20. (1) A non-bank financial institution shall submit to the Bank for approval, any proposal or agreement which it intends to enter into with another party for the sale or disposal by amalgamation or otherwise of its business, or a part of its business.

(2) Subject to prior written approval of the Bank

- (a) a non-bank financial institution may, other than in the ordinary course of its business, sell the whole or part of its assets in the country to another licensed non-bank financial institution;
- (b) except in the case of a credit union, one or more non-bank financial institutions may merge or consolidate with each other or with other licensed financial institutions, as the case may be; and
- (c) a licensed non-bank financial institution may sell or transfer the whole or part of its shares to an individual or body corporate.

(3) A transfer of assets or a merger or consolidation shall, in the case of a Credit Union, be in accordance with section 14 of the Cooperative Societies Act, 1968 (NLCD 252) and is subject to approval by the Bank.

(4) A non-bank financial institution which breaches a provision of this section shall pay to the Bank a penalty of one thousand penalty units or a lesser amount that the Bank may determine in the case of a Credit Union; and the transfer shall be void.

Directors

21. A non-bank financial institution shall have a board of directors comprising not less than five directors, each of whom must demonstrate an understanding of the

financial institution's financial standing and reporting requirement.

Appointment of directors and employees

22. (1) A person shall not be appointed or elected, or accept to be appointed or elected as a director, chief executive officer or employee of a non-bank financial institution, if that person

- (a) has been declared to be of unsound mind or is detained as a criminal lunatic under a law in force in this country;
- (b) has
 - (i) been declared insolvent, or
 - (ii) entered into terms with another person for payment of debt and has suspended payment of the debt;
- (c) is convicted of an offence involving fraud, dishonesty or moral turpitude;
- (d) has been convicted for felony or has been adjudged to have participated in illegal financial activities in this country or elsewhere;
- (e) has been a director or manager of or is associated with the management of an institution which is being or has been wound up by a court or the Bank due to
 - (i) offences committed under a law, or
 - (ii) bankruptcy;
- (f) has a non-performing loan in a financial institution in this country;
- (g) is a director of more than one other financial institution;
- (h) has been disqualified from operating a current account;
- (i) has been permanently suspended from acting as director, trustee, manager, administrator or proxy in a financial institution;
- (j) has been disqualified by the Bank from acting as an internal auditor or other officer in any financial institution;

(k) is under the age of eighteen years; or

(l) is not, in the opinion of the Bank a fit and proper person to be a director.

(2) Where a person is disqualified under subsection (1) that person shall immediately cease to hold office and the institution shall immediately terminate the appointment of that person.

(3) Where subsection (1) is contravened, both the person who appoints the director and the person appointed as director commit an offence and each is liable on summary conviction to a fine of not more than two hundred and fifty penalty units or to a term of imprisonment of not more than twelve months.

Responsibilities of Directors

23. The board of directors of a non-bank financial institution among other things shall ensure that,

(a) its management is in full control of the affairs and business operations of the institution;

(b) the business of the institution is conducted in a safe and sound manner;

(c) the internal controls systems, and management information systems of the institution,

(i) provide reasonable assurance of the integrity and reliability of the financial statements of the institution,

(ii) adequately verify, safeguard and maintain accountability of the assets of the institution based on established and written policies and procedures,

(d) the policies and procedures are implemented by trained and skilled officers with an appropriate segregation of duties which are continuously monitored, reviewed and updated by the board of directors so that no material breakdown occurs in the functioning of the controls, procedures and systems, and

(e) the institution or operator is in compliance with all applicable laws.

(2) The board shall promote good corporate governance and efficient

performance of the institution and report to the shareholders on all its activities at the annual general meeting of the institution.

Accounts and financial statements

Accounting records

24. (1) A non-bank financial institution licensed under this Act shall keep accounting records in a manner that gives an accurate and reliable account of its transactions and the accounts prepared from the records shall give a true and fair view of the state of affairs of the institution and its results for the accounting periods.

(2) The books of account and other accounting records to which this section applies shall be kept in Ghana and shall comply with the requirements of

- (a) the Companies Act 1963 (Act 179),
- (b) International Financial Reporting Standards, and
- (c) other requirements that the Bank may prescribe in writing.

(3) A non-bank financial institution shall preserve the books of account and other accounting records referred to in this section for a period of not less than ten years.

Internal audit

25. (1) A non-bank financial institution shall establish an internal audit unit that reports directly to its board of directors or other governing body.

(2) The audit unit shall be managed by a person with relevant qualifications and experience in banking or accounting or in the supervision or management of non-bank financial institutions business and shall be subject to approval by the Bank.

Appointment of external auditor

26. (1) A non-bank financial institution shall appoint an external auditor who shall audit its books of accounts and records at least once in a year.

(2) A person shall not be appointed an auditor under subsection (1) unless that person is

- (a) a member of the Institute of Chartered Accountants established under the Chartered Accountants Act, 1963 (Act 170);
- (b) resident in the country or if not resident, that person's residence outside the country has been specifically approved in writing by the Bank;
- (c) not an employee or director or officer of the institution for which the appointment is made; and
- (d) not disqualified by law from being appointed as auditor.

(3) An external auditor shall within three months after the end of the financial year submit a statutory audit report and a long form audit report to the institution audited.

External auditor's report

27. The external auditor shall state in the statutory audit report whether or not

- (a) the accounts give a true and fair view of the state of affairs of the institution;
- (b) the external auditor was able to obtain all the information and explanation required for the efficient conduct of the audit; and
- (c) the institution's transactions are within the powers of the institution.

Submission of audited financial statements

28. A non-bank financial institution shall

- (a) submit a copy of its audited financial statements to the Bank not later than three calendar months after the end of its financial year, and
- (b) simultaneously publish the financial statements at least once in a local newspaper of national circulation.

Audited financial statements to be made public

29. A non-bank financial institution shall exhibit throughout the year at a conspicuous place in every office and branch, a copy of its last audited financial statement and

shall within four months after the end of each financial year, cause a copy of the balance sheet to be published on its website or in any other manner specified by notice by the Bank.

Non-compliant financial statements

30. (1) Where the Bank is satisfied that the audited accounts of a non-bank financial institution

(a) do not comply with the requirements of this Act;

(b) contain information that may be misleading; or

(c) are not published in the specified form;

the Bank may require the institution to

(d) amend the audited accounts to comply with this Act;

(e) correct the misleading information;

(f) re-publish the amended audited accounts; or

(g) submit to the Bank further documents or information that relate to the audited accounts.

(2) The Bank may impose sanctions that it considers appropriate in addition to any orders made in subsection (1).

Powers of supervision and control

Supervision

31. (1) A non-bank financial institution shall be supervised by the Bank.

(2) Despite subsection (1), the Bank under section 4(2), (3), and (4) of the Bank of Ghana Act, 2002, (Act 612) may appoint an authorized agent which includes an apex body, network, industrial association, self regulatory organisation, society or group to regulate and supervise specified activities of a particular tier or category or class of non-bank financial institutions.

(3) The Bank may supervise a holding company of a non bank financial institution in relation to financial transactions between the holding company and the non-bank financial institution.

Returns

32. (1) The Bank may require a non-bank financial institution to submit to it or its authorized agent information or data that relates to

(a) the assets, liabilities, income, and expenditure of that institution, or

(b) any of the institution's affairs,

in a specified form, at intervals and within the times that the Bank or its authorised agent may stipulate and that non-bank financial institution shall comply with the requirement.

(2) The Bank may impose a penalty of not more than two hundred and fifty penalty Units on a non-bank financial institution for

(a) non-submission,

(b) incomplete submission,

(c) delayed submission, or

(d) inaccurate submission

of the required information, data, statements or returns.

Examination

33. (1) The Bank or its authorized agent may, at any time, cause a non-bank financial institution and its books, accounts and records to be examined.

(2) A non-bank financial institution and every officer and employee of that institution shall make available to a person who conducts an examination under subsection (1), within the period directed by that person in writing,

(a) the books, accounts, records and other documents of the institution, and

(b) correspondence, statements and information that relate to the non-bank financial institution, its business and conduct, required by that person.

(3) Failure to produce a book, an account, record, document or information

within the period specified constitutes a contravention of this Act.

(4) The person who conducts the examination shall submit a report to the Bank, and the report shall draw attention to

- (a) any breach or contravention of this Act or any Regulations made under this Act; and
- (b) any mismanagement or other matter that relates to the business of the non-bank financial institution which is not consistent with sound business practice.

Power to intervene

34. The Bank may intervene in the affairs of a non-bank financial institution if

- (a) the institution has contravened a provision of this Act or any other law or condition on which the licence, was issued;
- (b) the affairs of the institution are being conducted in a manner detrimental to the interests of creditors or prejudicial to the interests of the financial institution;
- (c) the institution has refused to submit itself to inspection, or has provided false information; or
- (d) the institution has insufficient assets to cover its liabilities.

Remedial action

35. The Bank may, without prejudice to any other course of action

- (a) order in writing that a non-bank financial institution take remedial action to comply with this Act or Regulations, notices or orders issued under this Act;
- (b) issue directives regarding measures to be taken to improve the management, financial soundness or business methods of the non-bank financial institution; or
- (c) require the directors or management of a non-bank financial institution to execute an agreement concerning its implementation of orders or directives issued by the Bank.

Additional powers of intervention

36. (1) Where a non-bank financial institution fails, refuses or neglects to comply with an order, direction, or agreement made under section 35, the Bank may

- (a) make a "cease and desist" order, of either temporary or indefinite duration requiring the non-bank financial institution and its management to
 - (i) stop the improper or unacceptable practice,
 - (ii) put a limit to lending, or
 - (iii) stop the declaration of dividends;
- (b) remove or suspend a person from the management of the affairs of the institution or operation;
- (c) impose specified penalties on the offending member of management;
- (d) appoint a person who, in the opinion of the Bank is suitably qualified and competent to advise and assist the institution generally or for the purposes of implementing the orders, directions, or agreements under paragraphs (a), (b), or (c) and the advice of the person appointed shall
 - (i) have the same force and effect as a direction made under paragraphs (a), (b), and (c), and
 - (ii) be deemed to be a directive of the Bank under this section;
- (e) appoint a person, suitably qualified and competent in the opinion of the Bank, to manage the affairs of the institution for the period necessary to rectify the problem and require the institution to add capital as may be specified;
- (f) impose any other measures or sanctions as the Bank considers appropriate in the circumstances;
- (g) by notice in the *gazette*, revoke or cancel any existing power of attorney, mandate, appointment or other authority by the institution in favour of any officer or employee or another person.

(2) A person who is not satisfied with the decision of the Bank under subsection

(1) may apply to the High Court for redress.

Power to investigate and make orders concerning exempted services

37. (1) Where in the opinion of the Bank the operations of a person engaged in non-bank financial services, which are not regulated under this Act, are not conducive to the stability of the financial sector, the Bank, may commence investigations into the operations of that person and may issue orders to that person or group as appropriate.

(2) A person who fails or neglects to comply with the orders issued under subsection (1) commits an offence under this Act and is liable on summary conviction to a fine of one thousand penalty units or a term of imprisonment of not less than twelve months and where the offence continues after conviction to a fine of not less than two thousand penalty units for each day the offence continues.

Liquidation

Liquidation

38. (1) If a non-bank financial institution becomes insolvent, the Bank may, notwithstanding the provisions of the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) or any other law, appoint a liquidator to wind up the affairs of the insolvent institution or operator, and the appointment has the same effect as the appointment of a liquidator by the Court.

(2) The Minister in consultation with the Bank may by legislative instrument make Regulations or Rules prescribing the procedures necessary to give effect to this section.

(3) A person, who is not satisfied with the decision of the Bank under this section or of the liquidator may apply to the High Court for redress.

Voluntary winding-up

39. (1) Despite anything to the contrary in the Companies Act, 1963 (Act 179) or any other law, a non-bank financial institution shall not voluntarily wind up its operations unless the Bank has certified in writing that the non-bank financial institution is able to meet its obligations in full to the creditors as the obligations accrue.

(2) If the Bank, at any stage of the voluntary winding up, considers that the non-bank financial institution which is being wound up is unable to meet its obligations in full to creditors, the Bank shall appoint a liquidator to wind up the affairs of the institution and the provisions of section 38 shall apply.

*Miscellaneous matters***Protection of officers**

40. (1) The Bank or any officer, employee or authorized agent of the Bank is not liable to a civil suit for anything which is done in good faith under this Act.

(2) Subsection (1) does not apply where the action or claim arises out of negligence.

Confidentiality

41. Subject to any law that relates to sharing of information on credit transactions, a non-bank financial institution and its staff shall ensure that transactions are conducted in strict confidence and that the confidentiality of customers is maintained.

Know your customer

42. A non-bank financial institution shall

- (a) demand proof of and record the identity of its clients or customers, when establishing business relations or conducting transactions, in particular;
 - (i) opening of accounts or issuing of passbooks where applicable,
 - (ii) entering into fiduciary transactions, or
 - (iii) performing large cash transactions, and
- (b) through its directors, officers and employees report promptly to the Bank and relevant law enforcement agencies any suspected money laundering activity related to an account held with the non-bank financial institution.

Offences

43. (1) Where a body of persons is convicted of an offence under this Act, in the case of a body corporate, each director and officer of that body shall also be deemed to have committed the offence.

(2) A person shall not be convicted under subsection (1) if that person proves that the offence was committed without the consent or connivance of that person and

that that person exercised due diligence to prevent the commission of the offence having regard to all the circumstances.

Notices

44. (1) Except otherwise provided under this Act, the Bank may issue Notices for anything required or authorized to be provided for by the Bank under this Act.

(2) Without limiting the effect of subsection (1), the Notices may among other matters

- (a) clarify regulatory functions which may be delegated to agents of the Bank;
- (b) set out transitional matters to be complied with by institutions holding licences specified in the Second Schedule immediately before the commencement of this Act;

(3) Except otherwise provided under this Act failure to comply with a Notice issued by the Bank shall attract administrative penalties specified by the Bank including revocation or suspension of licences.

Regulations

45. The Minister in consultation with the Bank, may by legislative instrument make Regulations for the effective implementation of this Act.

Interpretation

46. (1) In this Act, unless the context otherwise requires,

“applicant” means a person who has applied for a licence or registration under this Act;

“authorized or designated agent” is an institution and it includes an apex body, an industry association or group which has been appointed by the Bank under section 4 (2), (3), and (4) of the Bank of Ghana Act, 2002 (Act 612) to regulate and supervise any category of non-bank financial or microfinance services;

“Bank” means the Bank of Ghana;

“borrower” means a person who has concluded a loan agreement with a non-bank financial institution;

“Capital Adequacy Ratio” means the percentage of a non-bank financial institution’s risk-weighted credit exposure or as the Bank shall more specifically define from time to time;

“core capital” means permanent shareholders equity in the form of issued and fully paid-up shares together with all disclosed reserves except goodwill or any intangible assets;

“credit facility” means

- (a) the granting by an institution of an advance, loan or other facility which enables a customer of the institution to access funds or financial guarantees, or
- (b) the incurring of liabilities by an institution on behalf of a customer with the prior written consent as a mechanism for loan disbursement;

“deposit-taker” means a person, other than a bank licensed under the Banking Act 2004 (Act 673) who offers debt securities to the public and is in the business, directly or indirectly, of lending money or providing other financial services determined by the Bank;

“director” means a natural person occupying the position of director, by whatever name called, of a body corporate, and “board of directors” or “directors” refers to the directors of a body corporate as a body;

“financial statements” includes the balance sheet, profit and loss accounts, statements of funds flow and notes to the financial statements;

“fit and proper person” means a person who is fit and proper person to hold the particular position which that person holds or is to hold as regards to

- (i) that person’s probity, competence and soundness of judgment for fulfilling the responsibilities of that position;
- (ii) the diligence with which that person fulfils or is likely to fulfill those responsibilities; and
- (iii) whether the interest of depositors or potential depositors of the financial institution are, or are likely to be, in any way threatened by that person holding that position;

- “gearing ratio” means the ratio of a non-bank financial institution’s level of long-term debt to its equity capital as expressed in percentage form;
- “government securities” includes treasury bills and government bonds issued by the Government of Ghana;
- “licence” means a licence issued under section 5 (2);
- “liquid assets” means the cash in till, balances deposited with the Bank and such other assets as the Bank may determine from time to time.
- “liquid assets ratio of non-bank financial institution” means the ratio of the non-bank financial institution’s total assets readily convertible into cash as expressed in percentage form;
- “loan agreement” means an agreement, acknowledgement of a debt, or any other lending instrument concluded between a lender and a borrower;
- “manager” means an officer of a financial institution empowered to control, direct, and influence decision-making of the financial institution;
- “microfinance services” means financial services provided by institutions however organized whether as companies limited by guarantee, limited by liability or unlimited, Non-Governmental Organisations, cooperatives or cooperative societies, rotating savings and credit associations or groups, common bond institutions, self-help groups or associations promoting self-help groups, providing loans not exceeding an amount determined by the Bank to a single borrower whether directly to borrowers, contributors or members or through intermediaries, and whether accepting deposits from members or not;
- “minimum capital” for purposes of this Act means minimum equity capital of a non-bank financial institution;
- “Minister” means the Minister responsible for finance;
- “non-bank financial services” mean. non-deposit taking financial institution which provides a service specified in the First Schedule;
- “person” includes an individual, a company, a partnership, an association, and any other group of persons acting in concert, whether incorporated or not;

“prescribed” means prescribed by Regulations, Rules, Notices, or directives as the case may be, issued by the Bank;

“significant shareholding” means a direct or indirect holding in a non-bank financial institution which

(a) represents ten per cent or more of the capital or of the voting right, or

(b) makes it possible to exercise a significant influence over the management of the institution in which the holding subsists, and

“single exposure or obligor limit” means the limit of a non-bank financial institution’s exposure to a single borrower in relation to that non-bank financial institution’s net worth.

Repeals, transitional and savings

47. (1) The Financial Institutions (Non-Banking) Act, 1993 (P.N.D.C.L. 328) and the Money Lenders Ordinance (Cap 176) as variously amended are hereby repealed.

(2) Despite subsection (1), Regulations, rules, instruments, licences, orders and decisions made under the repealed Acts, shall, in so far as they are consistent with this Act, remain valid and binding and shall be deemed to have been made under this Act.

(3) Despite subsection (2), a person who holds a licence for a service specified in the Second Schedule, immediately before the coming into force of this Act, shall within six months after the commencement of this Act, apply to the Bank in a form and on terms and conditions to be prescribed by the Bank, for a licence to cover the service specified in the First Schedule of this Act.

(4) Despite subsection (2) a person who holds a licence under the Money Lenders Act, 1941 (Cap 176), immediately before the commencement of this Act shall apply to the Bank within six months after the commencement of this Act, for a licence under this Act on terms and conditions to be prescribed by the Bank.

(5) Except as otherwise provided in this Act the provisions of the Co-operative Societies Decree 1968 (NLCD 252) shall continue to apply to Credit Unions after the commencement of this Act.

(6) On the coming into force of this Act, the financial institutions specified in the Second and Third Schedules shall be reclassified and regulated as specified under those Schedules.

FIRST SCHEDULE

(Sections 2 and 4)

Section 2: Non-Bank Financial Services

1. Leasing Operations
2. Money lending operations
3. Money Transfer services
4. Mortgage Finance operations
5. Non-deposit-taking microfinance services
6. Credit Union operations
7. Any other services or operations as the Bank of Ghana may from time to time by notice designate as such.

SECOND SCHEDULE

(Sections 44(2), 47(3) and (6))

Institutions previously regulated under Financial Institutions (Non-Banking) Law, 1993 (P.N.D.C.L. 328) immediately before the coming into force of this Act and to be converted into other licensed non-bank financial services under this Act.

1. Acceptance Houses
2. Building Societies
3. Discount Houses

THIRD SCHEDULE

(Section 47(6))

Institutions Previously Regulated under Financial Institutions (Non-Banking) Law, 1993 (P.N.D.C.L. 328) immediately before the coming into force of this Act and to be

migrated to other regulatory regimes.

1. Savings and Loans Companies, Finance Houses, and deposit-taking microfinance institutions, to be regulated under the Banking Act 2004 (Act 673) as amended.

FOURTH SCHEDULE

(Sections 11 to 16: Regulatory Limits)

Category	Limit
(1) Minimum Capital	GH¢1 million
(2) Capital Adequacy Ratio (CAR)	8%
(3) Gearing Ratio (GR) No of time borrowings or liabilities could exceed your capital	8
(4) Liquid Assets Ratio	Nil
(5) Single Exposure/Obligor Limit (Secured)	25%
(6) Single Exposure/Obligor Limit (Unsecured)	10%

Date of *Gazette* notification; 9th January, 2009.

**ARB Apex Bank Ltd.
Regulations, 2006 (L.I. 1825)**

ARRANGEMENT OF REGULATIONS

Regulation

Application and incorporation

1. Application of Banking Act and Companies Code
2. Status
3. Head office and branches

Objects, functions and duties of the Bank

4. The objects of the Bank
5. Core functions
6. Ancillary functions
7. Non-member customers
8. Duties

Membership

9. Qualification for membership
10. Requirements for membership
11. Admission
12. Rights of members
13. Obligation of members
14. Complaints
15. Termination of membership
16. Administrative sanction

Capital, dividends and reserve funds

17. Authorised capital
18. Issuance of shares
19. Reserve funds and dividends

Organs of the Bank

20. Principal organs
21. Meetings
22. Powers and functions of General Meeting of Shareholders
23. Notice
24. Voting rights

25. Resolutions
 26. Minutes
 27. Managing Director
 28. Deputy Managing Director
 29. Delegation
 30. Board of Directors
 31. Composition of the Board
 32. Appointment of Directors
 33. Qualification for appointment as director
 34. Tenure of office of directors
 35. Functions of the Board
 36. Disclosure of interest
 37. Meetings of the Board
 38. Allowances
 39. Inspection and Audit Department
 40. Appointment of Head of Inspection and Audit Department
 41. Secretary of the Bank
 42. Other staff
 43. Organisational structure
- Inspection and supervision of rural and community banks*
44. Power of inspection and supervision
 45. Rescue of failing bank
- Relationships*
46. Inter-relationship of the Bank and the Bank of Ghana
 47. The Bank and rural or community banks
 48. The Bank and other banks
 49. The Bank and the Association of Rural Banks
 50. Bank of Ghana and rural banks
 51. Bank of Ghana and the Association of Rural Banks
 52. Relationship with the other banks and micro-finance institutions
 53. Role of Association of Rural Banks
 54. Intra rural or community banks

55. Relationship of the Bank with the Government

Financial matters

56. Board to approve budget for each financial year

57. Accounts and audit

58. Appointment of auditor

59. Duties and powers of an auditor

Miscellaneous provisions

60. Liquidation of the Bank

61. Application of seal of the Bank

62. Contracts

63. Service of documents

64. Offences

65. Protection of directors and officers

66. Disclosure of information

67. Dispute resolution

68. Rules and bye-laws

69. Interpretation

SCHEDULES

In exercise of the powers conferred on the Minister of Finance and Economic Planning by Section 51 of the Banking Act, 2004 (Act 673) these Regulations are made this 19th day of October, 2006.

Application and incorporation

Application of Banking Act and Companies Code

1. (1) These Regulations shall be subject to the Bank of Ghana Act, 2002, (Act 612), the Banking Act, 2004, (Act 673) and the Companies Code, 1963 (Act 179).

(2) These Regulations apply to rural and community banks.

(3) The Bank of Ghana may amend these Regulations in consultation with the Minister.

(4) The ARB Apex Bank Limited is responsible for the effective implementation of these Regulations.

Status

2. (1) The Bank is incorporated under the Companies Code, 1963 (Act 179) as a public company limited by shares.

(2) The Bank is licensed by the Bank of Ghana to carry on banking business and other related activities approved by the Bank of Ghana.

Head office and branches

3. (1) The head office of the Bank is in Accra.

(2) The Bank may open branches of the Bank throughout the country subject to the approval of the Bank of Ghana

Objects, functions and duties of the Bank

Objects of the Bank

4. The objects of the Bank are to

(a) promote the interest of the members of the Bank through

(i) the provision of banking services; and

(ii) the provision of related non banking services; and

(b) engage in banking business.

Core functions

5. To achieve its objects, the Bank shall perform the following functions under the supervisory authority of the Bank of Ghana:

- (a) keep accounts for the members and maintain primary cash reserves in accordance with the Bank of Ghana's monetary regulations;
- (b) monitor, inspect and supervise the operations of the members through off-site review of their prudential returns, on-site examinations and ensure compliance with banking laws and regulations to complement the supervisory role of the Bank of Ghana
- (c) lend to rural and community banks that face temporary liquidity problems;
- (d) maintain a clearing account with the Bank of Ghana and provide its representative capacity at each clearing house in the country
- (e) handle the cheque clearing activities of members;
- (f) provide specie management and specie movement services, to include the drawing of cash from the Bank of Ghana in Accra or any of its currency centres;
- (g) supply cash to and receive excess cash from members;
- (h) render funds management services to rural and community banks;
- (i) guarantee payment instruments issued by a member to any third party outside the local clearing system by allowing drafts to be drawn on the Bank;
- (j) provide internal audit and inspection services to the members;
- (k) identify the resource needs of members and mobilize domestic and external funds for on-lending to any member rural or community bank;
- (l) develop credit assessment procedures and encourage members to enforce them;
- (m) monitor loans and advances made by members;

- (n) design a mechanism through which members in financial or management difficulties shall be supported by the Bank; and
- (o) perform any other function that is incidental to the attainment of the objects of the Bank.

Ancillary functions

6. The Bank may perform non-bank support functions including but not limited to the following:

- (a) provide training for directors and employees of the Bank and other members of the Bank in a manner that the Bank may consider necessary for the efficient performance of its functions;
- (b) establish a Rural Bank College to provide technical and professional training to the staff directors and members of the Bank; and
- (c) provide a deposit insurance scheme to protect the deposits of customers in the event of the failure of a member of the Bank.

Non-Member Customers

7. (1) The Bank may extend its activities to non-members who are customers of a rural or community bank and whose activities will directly benefit members of a rural or community bank where the rural bank is located.

(2) The Bank may promote financial intermediation services in the informal and semi-formal micro-finance sectors.

(3) The Bank shall prescribe guidelines to define how the Bank may deal with non-members.

Duties

8. The Bank shall

- (a) properly and profitably manage the funds entrusted to it by a member;
- (b) issue general rules regarding the implementation of policies and the enforcement of procedures by the members;
- (c) advise the members of its business to provide a wide range of financial services to the members and customers;

- (d) supervise the management and administration of the members;
- (e) disseminate knowledge and information on the services provided to its members;
- (f) conduct research and develop products and services,
- (g) undertake the public relations and advertising of the Bank,
- (h) relate to the following sectors;
 - (i) the public sector,
 - (ii) trade and industry, and
 - (iii) the banking and financial industry and
- (i) pursue programmes that will promote an integrated and sustainable rural or community banking system that promotes the interest of its members and customers.

Membership

Qualification of membership

9. Membership of the Bank is mandatory for rural and community banks established by law and any other body or person that the Board in consultation with the Bank of Ghana may determine.

Requirements for membership

10. (1) The requirements for membership of the Bank are as follows:

- (a) the Regulations of a rural or community bank shall provide that the rural or community bank
 - (i) is authorised to purchase shares in the Bank;
 - (ii) is obliged to comply with the rules, procedures and policies made by the Bank;
 - (iii) requires the approval of the Bank to amend its regulations;

- (iv) undertakes to participate in arrangements made to safeguard the fulfilment of the obligations of the Bank and those of its members;
 - (b) the Board of Directors of a rural or community bank shall pass a resolution to authorise the purchase of the required number of shares and shall ensure compliance with the other conditions of membership; and
 - (c) each new rural and community bank shall subscribe fully to the shares at the existing par value after the establishment of the Bank.
- (2) A rural or community bank shall apply to the Bank for registration as specified in the First Schedule.

Admission

11. (1) Each admitted member shall file a statement of acceptance of the membership within thirty days in the form provided in the Second Schedule and the particulars shall be entered in the membership register of the Bank.

(2) Further provisions concerning application for membership and other related matters may be made by bye-laws.

Rights of members

12. A member may

- (a) attend general meetings, submit proposals, take part in the discussions and exercise their voting rights,
- (b) propose the appointment or removal of the directors subject to these Regulations, the requirements of the Banking Act and the Companies Code,
- (c) receive
 - (i) the minutes of the preceding general meeting, and
 - (ii) the financial accounts of the preceding financial year in accordance with the provisions of the Banking Act on payment of the fee involved,
- (d) inspect,
 - (i) the membership register,

- (ii) the minutes of any general meeting held in a previous year, and
- (iii) the annual accounts of any year at the offices of the Bank, free of charge,
- (e) access copies of or extracts from documents referred to under paragraph (d), on payment of the fee involved,
- (f) access the services provided by the Bank specified in these Regulations, and
- (g) access a share in the profits of the Bank.

Obligation of members

13. A member shall

- (a) comply with the provisions of the Bank's regulations, rules, bye-laws and the resolutions that maybe made pursuant to the regulations;
- (b) take an equal minimum share in the Bank;
- (c) not borrow funds from another bank, place deposits with another bank including members of the Bank, or borrow and place deposits with any other lender without approval from the Bank;
- (d) keep the funds which it is by law required to deposit with the Bank of Ghana in a current account with the Bank;
- (e) undertake to give access to the Bank to examine its account and other records, documents and procedures in order to ensure that acceptable practices and standards are maintained;
- (f) transmit copies of its annual budget together with its adopted annual accounts to the Bank in the form and within the period determined by the Board of Directors of the Bank;
- (g) co-operate generally with other members of the Bank, and refrain from canvassing directed at any person who resides or any business that is established in the operational area of any other member of the Bank within the framework of an integrated rural banking system;

- (h) provide the Bank with all the statements and information which the Bank considers necessary in the performance of its functions and discharge of its duties on request;
- (i) initially invite the Bank to make an appraisal before seeking the approval of the Bank to open new offices, agencies, branches or mobilisation centres;
- (j) observe the solvency, liquidity and other prudential requirements and any other relevant additions made by the Bank of Ghana; and
- (k) undertake to participate in arrangements laid down by the Bank for safeguarding the continuity and solvency of the business carried on by the members.

Complaints

14. (1) A member in dispute with the Bank or with another member shall fill a complaint form as specified in the Third Schedule.

(2) The procedure to file a complaint shall be as specified in the Fourth Schedule.

(3) A member aggrieved by the decision taken by the Bank may appeal to the Bank of Ghana.

Termination of membership

15. Membership of the Bank shall terminate

(a) on liquidation, or

(b) on revocation of the banking licence of the member by the Bank of Ghana

Administrative sanction

16. The Bank may impose an administrative sanction on a member for noncompliance of these regulations as stipulated in the rules or bye-laws.

Capital, dividends and reserve funds

Authorised capital

17. (1) The authorised capital of the Bank shall be ten million shares of no par value.

(2) The Board may from time to time, with the consent of the shareholders, increase the share capital of the Bank.

Issuance of shares

18. (1) Each rural or community bank shall subscribe to and hold an equal minimum number of shares.

(2) The Board may offer additional shares to a financially strong rural or community bank.

(3) The Board shall decide on the number of initial share offering to a rural or community bank and shall issue those shares to the bank concerned.

(4) A resolution to give effect to the Bank's decision and authorisation shall be adopted at a General Meeting on the recommendation of the Board.

(5) A rural or community bank which is capable of maintaining the prescribed capital adequacy ratio may subscribe fully to the shares of the Bank.

(6) Each member shall participate in any issue received to in sub-regulation (1) in the same proportion as existed in the preceding year.

(7) Where a member's membership terminates, the member's shares shall be taken back by the Bank against payment of the amount.

(8) The Bank shall keep an accurate record of all the shares issued or taken back in accordance with the regulations of the bank and the provisions of the Companies Code.

(9) The record shall include the date of issue and repurchase shall serve as conclusive evidence of the member's shareholdings.

(10) A member shall receive a statement of the shares entered in the name of the member in the share register at least once every year.

(11) The liability of a holder of shares in the Bank shall be limited to the amount unpaid on the shares held by the holder or member.

Reserve funds and dividends

19. The Bank shall keep reserve funds and pay dividends in accordance with the provisions of the Banking Act.

*Organs of the Bank***Principal organs**

20. For the purposes of the effective performance of the functions of the Bank, it shall have

- (a) a General Meeting of shareholders,
- (b) Extraordinary General Meeting.
- (c) a Board of Directors,
- (d) an Inspection and Internal Audit Department, and
- (e) an Inspectorate and Supervisory Department.

Meetings

21. The convening and conduct of meetings shall be done in accordance with the regulations of the Bank, the Companies Code and any other rules or bye-laws made by Bank of Ghana.

Powers and functions of General Meeting of shareholders

22. The powers and functions of the general meeting shall include the following:

- (a) the adoption and amendment of the regulations of the Bank;
- (b) the dissolution of the Bank subject to the requirements of the Banking Act;
- (c) the suspension and dismissal of members of the Board;
- (d) the adoption of the annual accounts and the declaration of dividends to be distributed on shares;
- (e) the approval and endorsement of the management conduct and supervision;
- (f) the approval of the member banks' regulations; and
- (g) the adoption of rules of procedures, stipulating among other things which persons other than the voting delegates may address the Meeting.

Notice

23. Notice of a Meeting shall be given in accordance with sections 152 to 156 of the Companies Code.

Voting rights

24. (1) Members shall have equal voting rights.

(2) In the absence of the chairperson of a bank, a member of the Board shall act as a voting delegate at the General Meeting.

Resolutions

25. (1) Members at a general meeting may pass resolutions by simple majority of members present and voting.

(2) Seventy five percent of the members present and voting shall be required to pass a special resolution.

(3) A blank vote shall not be considered to have been cast.

(4) The chairperson shall determine the manner of voting, where the manner for voting is not laid down in the rules of procedure.

Minutes

26. (1) Minutes of the proceedings at meetings, shall be prepared by the Secretary of the Bank.

(2) The minutes shall be signed by both the chairperson of the Board and the Secretary of the Bank and sent to members as soon as practicable.

Management and administrative provisions

Managing Director

27. (1) The Bank shall have a Managing Director who is a person of recognised financial experience appointed by the Board subject to requirements of the Banking Act.

(2) The Managing Director shall be a member of the Board.

(3) The Managing Director shall hold office for four years on the terms and conditions that the Board may determine and shall be eligible for re-appointment for a further period of not more than four years.

(4) The Managing Director is the Chief Executive of the Bank responsible for the direction of the day to day business of the Bank.

Deputy Managing Director

28. (1) There shall be appointed two Deputy Managing Directors.

(2) In the absence or incapacitation of the Managing Director, the most Senior Deputy Managing Director shall perform the duties of the Managing Director.

Delegation

29. (1) The Managing Director may, in order to promote efficiency, delegate a function in writing to an officer of the Bank.

(2) The delegation of a function of the Managing Director does not relieve the Managing Director of the ultimate responsibility of the delegated function.

Board of Directors

30. (1) The general direction and control of the affairs and business of the Bank shall be vested in the governing body of the Bank, a Board of Directors.

(2) In the discharge of its duties, the Board shall act on sound commercial and financial considerations to support the business of rural and community banks.

Composition of the Board

31. The Board of Directors of the Bank consists of

(a) nine representatives of rural and community banks elected to represent the nine chapters of the Association of Rural Banks,

(b) one representative of the Ministry of Finance,

(c) one representative of the Bank of Ghana,

(d) one representative of the National Council of the Association of Rural Banks,
and

(e) the Managing Director of the Bank.

Appointment of directors

32. The Bank shall, with the approval of the Bank of Ghana, appoint other Directors for the Bank.

Qualification for appointment as director

33. A person shall not qualify for appointment as Director of the Bank or continue in office as a Director of the Bank if that person

- (a) has been declared insolvent or bankrupt under any enactment,
- (b) is of unsound mind or incapable of carrying out official duties,
- (c) is convicted of a crime or any offence involving fraud, dishonesty or moral turpitude,
- (d) is disqualified or suspended from practicing a profession in Ghana or in any other country by an order of a competent authority,
- (e) is disqualified on any grounds under the Banking Acts of Ghana, and
- (f) is not resident in the country.

Tenure of office of directors

34. (1) A Director shall hold office for a period of not more than three years and is eligible for re-appointment but that Director shall not be appointed for more than two terms.

(2) A Director may at any time resign from office in writing addressed to the chairperson of the Bank.

(3) A person shall cease to be a director when the person ceases to belong to the organisation that person represents, or ceases to be a director of a rural or community bank or Managing Director of the Bank.

(4) A Director who ceases to belong to an organisation may serve the full term on the authorisation of the organisation the Director represents

(5) The Board shall appoint a person to act in the place of a Director in the absence of a Director from the country or if the Director is incapacitated by illness from performing the functions of the Director.

(6) A person appointed to act in the place of a Director shall hold office

(a) for the unexpired portion of the Director's term of office, or

(b) until the Board is satisfied that the incapacity of the person concerned has ceased.

Functions of the Board

35. (1) The Board shall ensure that any application for financial accommodation is dealt with and considered strictly on financial and economic merit to ensure that the bank

- (a) performs its functions and conducts its affairs in accordance with sound business, financial and administrative standards and practices; and
- (b) takes measures that are necessary to ensure that any financial assistance rendered by the Bank to any member is utilised for the intended purpose.

(2) The Board shall formulate borrowing and lending policies for the Bank.

(3) The Board may propose to any rural or community bank or the Bank of Ghana, measures for the efficient and-profitable management or operation of a rural bank and the proposals may include mergers, acquisitions, amalgamations and reconstructions.

(4) For purposes of this regulation, financial accommodation means financial assistance in times of liquidity crisis or financial distress.

Disclosure of interest

36. (1) The Bank shall not invest or engage in a financial transaction with an enterprise in which a director of the bank is a partner, director or shareholder, or is directly or indirectly interested in.

(2) A Director who has an interest in a matter for the consideration of the Board shall disclose in writing the nature of the interest and is disqualified from participating in deliberations on the matter.

Meetings of the Board

37. (1) The chairperson of the Board shall summon meetings of the Board for the despatch of business once every three months at the times and in the places determined by the chairperson.

(2) The chairperson shall at the request in writing of not less than one third of the membership of the Board convene an extraordinary meeting of the Board at the place and time determined by the chairperson.

(3) The quorum at a meeting of the Board shall be seven members of the Board, including any substitute and alternate Directors.

(4) The chairperson shall preside at meetings of the Board and in the absence of the chairperson a member of the Board elected by the members present from among their number shall preside.

(5) Matters before the Board shall be decided by a majority of the members present and voting and in the event of an equality of votes the person presiding shall have a casting vote.

(6) The Board may co-opt a person to attend a Board meeting as an adviser but that person shall not have the right to vote on a matter for decision at the meeting.

(7) The proceedings of the Board shall not be invalidated by reason of a vacancy among the members or a defect in the appointment or qualification of a member.

Allowances

38. Members of the Board shall be paid fees and other allowances that may be determined from time to time by ordinary resolution at a General Meeting.

Inspection and Internal Audit Department

39. The Board shall set up an Inspection and Internal Audit Department for the Bank.

Appointment of Head of Inspection and Internal Audit Department

40. (1) The Board shall appoint a person as Head of the Inspection and Internal Audit Department.

(2) The Head of the Inspection and Internal Audit Department is answerable to the Board in the performance of functions under these regulations.

(3) The Head of the Inspection and Internal Audit Department shall prepare quarterly reports on the inspection and internal audit work carried out during the period of three months immediately before the preparation of the report and submit a copy of the report to the Board and the Managing Director.

(4) The Head of the Inspection and Internal Audit Department shall state in each report the observations for the conduct of the financial affairs of the Bank during the period to which the report relates.

Secretary of the Bank

41. (1) The Bank shall have a Secretary who shall act as Secretary to the Board.

(2) Subject to the directions of the Board, the Secretary shall arrange the business of the Bank and keep the books and proper records of meetings and correspondence of the Board.

(3) The Secretary shall also perform any other function that the Board may in writing direct or the Managing Director may in writing delegate to the Secretary.

(4) The Secretary shall be assisted in the discharge of the duties by employees of the Bank that the Board may, on the recommendations of the Managing Director determine.

Other staff

42. (1) The Bank shall engage other employees as may be necessary for the efficient discharge of the objects and functions of the Bank.

(2) The staff shall hold office on the terms and conditions the Board may determine.

(3) The Bank may also engage the services of consultants and advisers on the recommendations of the Managing Director.

(4) The Board is responsible for the appointment, discipline and removal of employees of the Bank in accordance with the policies of the Bank.

Organisational structure

43. The organisational structure of the Bank comprises the following departments:

- (a) Banking Operations;
- (b) Inspection and Internal Audit;
- (c) Human Resources & Administration;
- (d) Training
- (e) Finance and Treasury;
- (f) Legal, Regulatory and Compliance;
- (g) Credits;
- (h) Information Communication Technology,

- (i) Marketing, Research and New Product Development;
- (j) Inspectorate and Supervisory; and
- (k) any other department that the Board may consider convenient for the efficient performance of the functions of the Bank.

Inspection and supervision of rural and community banks

Power of inspection and supervision

44. (1) The Bank shall inspect and supervise the management and operations of rural and community banks for the purpose of complementing the supervisory work of the Bank of Ghana.

- (2) In the performance of these functions, the Bank has the power to
 - (a) monitor the reserve and liquidity requirements of each rural and community bank,
 - (b) examine and analyse copies of prudential return,
 - (c) monitor the observance of capital adequacy ratio and minimum capital requirements, risk exposure limits, investments, reserve funds, dividend payments and any other prudential requirements,
 - (d) monitor the activities of agencies of the rural and community banks and appraise applications for the opening of agencies, subject to the final approval by the Bank of Ghana,
 - (e) approve loans granted to directors of rural and community banks and take any appropriate action, in addition to those required to be taken by the rural and community banks, to ensure repayment,
 - (f) issue directives to rural and community banks generally or to a particular rural or community bank where the Bank is of the opinion that it is necessary
 - (i) to secure proper management,
 - (ii) to prevent the affairs of a bank being conducted in a manner detrimental to the interests of depositors or prejudicial to the interests of the Bank, or
 - (iii) in the interests of banking policy, and

(g) prescribe the necessary incentives for member banks either on case-by-case basis or generally in respect of compliance with banking policies, rules and regulations.

(3) A rural or community bank which does not comply with the Bank's directives shall be liable to pay any penalty prescribed by the rules of the Bank approved by the Bank of Ghana.

(4) A director or officer of a rural or community bank who does not comply with the directives of the Bank is jointly liable with the bank for contravention of the by-laws.

(5) The Bank may propose to the Bank of Ghana other penalties and sanctions that may be imposed on a rural and community bank for the breaches of banking regulations and on approval by the Bank of Ghana, the affected bank shall enforce the rules relating to the fines and penalties alongside those made by the Bank of Ghana and report the outcome to the Bank of Ghana.

(6) Prior to the enforcement of any new fines or other sanctions, the Bank shall explain to the member banks the requirement for the fines or sanctions and the nature and effect of the rules.

Rescue of failing bank

45. (1) Where in the opinion of the Bank, a rural or community bank fails to comply with the prudential requirements and the failure suggests that the bank in question is likely to run into a distress status, the Bank shall immediately inform the Bank of Ghana, and initiate appropriate action.

(2) The actions that may be taken by the Bank may include corporate financial restructuring of the affected bank subject to the approval of the Bank of Ghana

Relationships

Inter-relationship of the Bank and the Bank of Ghana

46. (1) The Bank of Ghana shall license rural and community banks and supervise their management and operations.

(2) Subject to the powers and functions of the Bank of Ghana under the Constitution or any other enactment, the Bank of Ghana may delegate specified supervisory functions to the Bank to,

(a) maintain the primary cash reserve of the rural and community banks,

- (b) monitor, inspect examine and supervise rural and community banks in accordance with relevant rules, regulations and policies,
- (c) lend to rural and community banks facing temporary liquidity problems, and
- (d) provide specie movements and management services.

(3) In furtherance of the efficient performance of the supervisory duties and other functions, the Bank shall

- (a) open a clearing account with the Bank of Ghana,
- (b) submit periodic prudential returns to the Bank of Ghana,
- (c) comply with relevant enactments and rules made by the Bank of Ghana,
- (d) undertake the supervisory functions delegated to it by these Regulations,
- (e) collaborate with the Banking Supervision Department and the Treasury Department of the Bank of Ghana in monitoring and supervising the rural and community banks, and
- (f) perform any other functions incidental to the performance of its specified supervisory functions or assigned to it by the Bank of Ghana.

The Bank and rural or community banks

47. (1) The Bank shall provide for rural and community banks the following services:

- (a) open current and other interest bearing accounts;
- (b) provide cheque clearing services;
- (c) provide specie movement and specie management services;
- (d) monitor, inspect, examine, audit and supervise the management and operations;
- (e) keep and maintain the primary and secondary reserves;
- (f) manage funds deposited with the Bank;
- (g) lend monies to meet temporary liquidity problems;
- (h) provide guarantee support;

- (i) arrange funds from international banks and financial institutions for on-lending to the rural and community banks;
 - (j) offer training to directors and staff of these banks;
 - (k) organise deposit insurance facilities to protect the deposits of rural bank customers; and
 - (l) provide any other banking service that may promote the viability and sustainability of the rural and community banks.
- (2) The rural and community banks shall:
- (a) be shareholders of the Bank;
 - (b) participate in the appointment and removal of the directors of the Bank
 - (c) be customers of the Bank;
 - (d) in addition to returns required by the Bank of Ghana submit prudential returns to the Bank;
 - (e) comply with all banking laws and regulations,
 - (f) provide access to the Bank when discharging its duties under these Regulations or any other enactment; and
 - (g) co-operate with the Bank to achieve its objectives.

The Bank and other banks

48. The Bank shall maintain a normal banking relationship with other banks in the banking industry.

The Bank and the Association of Rural Banks

49. (1) The Bank may be a banker for the Association of Rural Banks.

(2) The Bank may seek the opinion of the Association of Rural Banks in designing projects for the member banks.

(3) The Association of Rural Banks may provide advice to a rural and community bank or any member bank in respect of the rural banking system and the Bank may consider the advice and provide a feedback to the Association.

(4) The Association shall furnish the Bank with reports on its activities for any necessary action.

(5) The Association shall supervise meetings of its regional chapters convened purposely for the election of Directors to the Board.

(6) The Association shall deal with any relevant matter referred to it by the Bank for advice.

(7) The Association shall collaborate with the Bank to achieve the goal of an efficient, effective and integrated rural banking system.

(8) The Bank shall support the activities of the Association of Rural Banks with annual grants in accordance with its donations policy as determined by the Board.

Bank of Ghana and rural banks

50. (1) The Bank of Ghana shall continue to exercise primary supervisory powers over rural and community banks and in particular, reserves the right to

- (a) license new rural banks,
- (b) revoke banking licences,
- (c) issue prudential regulations and other regulatory instructions to every rural and community bank,
- (d) receive from rural and community banks prudential returns, and to analyse them,
- (e) monitor, examine, inspect and supervise the management and operations of the banks, and
- (f) ensure compliance with banking policies, laws and regulations.

(2) The Bank shall

- (a) examine the feasibility report presented by the promoters of a rural or community bank to determine its viability for the grant of a banking licence by the Bank of Ghana, and
- (b) inform the Bank of Ghana about malpractices of any rural or community bank which is likely to result in the suspension or revocation of the licence

of the rural or community bank.

(3) A rural or community bank shall in its relationship with Bank of Ghana

(a) submit periodically to the Bank of Ghana statutory prudential returns,

(b) comply with the recommendations of the central supervisory agents of the Bank of Ghana, namely the Banking Supervision Department and the Treasury Department, and

(c) comply with the relevant banking enactments, policies, regulations and directives issued by the Bank of Ghana.

Bank of Ghana and the Association of Rural Banks

51. (1) The Bank of Ghana shall continue to recognize the existence of and collaborate with the Association of Rural Banks as a voluntary non-profit organization established to promote and protect the interest of rural and community banks.

(2) The Bank of Ghana may continue to support programmes of the Association in the promotion of activities related to rural and community banking.

(3) The Association shall, submit to the Bank of Ghana reports of its activities and annual programmes for consideration, guidance and support where necessary.

Relationship with other banks and micro-finance institutions

52. (1) The Bank may keep accounts with a bank in the country or in any other country and may receive from that bank overdrafts, loans or any other financial accommodation.

(2) The Bank may, subject to the provisions of these Regulations, seek the co-operation of, and co-operate with, other banks in the country where necessary.

(3) The Bank may appoint a bank within the country or in any other country, or branches of any bank to act as the Bank's agent for the furtherance of the Bank's business and the Bank may also act as the agent of any other bank.

(4) The Bank shall promote financial intermediation services in the informal and semi-formal micro-finance sectors including forward and backward linkages.

Role of Association of Rural Banks

53. The Association of Rural Banks shall among other functions contained in its Constitution, perform the following roles for the rural and community banks:

(a) advocacy role;

- (b) provide a forum for rural and community banks to share ideas and experience;
- (c) resolve disputes between member banks;
- (d) provide advisory services; and
- (e) undertake activities that are outside the legal purview set for the Bank but fall within the focus of rural and community banking, including the education of communities on issues relating to rural banking.

Intra-rural or community banks

54. (1) The rural and community banks shall consider themselves owners and customers of the Bank with a common interest and goal.

(2) The rural and community banks shall maintain normal banking relations and collaborate with each other to the extent that an activity shall not conflict with the powers, functions and duties of the Bank or its organisation and management structures.

Relationship of the Bank with the Government

55. The Bank may act generally as agent for the Government or for any statutory corporation, company or district assembly in accordance with these Regulations.

Financial matters

Board to approve budget for each financial year

56. (1) The Managing Director shall, not less than two months before the commencement of each financial year, cause to be prepared budgetary proposals for the year for consideration of the Board.

(2) The Board shall consider the proposals by the first day of the financial year to which the budget relates and subject to any modifications to be determined by the Board, approve an annual budget of the Bank for that financial year.

(3) Within the first financial year of the Bank, the Managing Director shall submit the proposals within two months after the date of commencement of business by the Bank.

Accounts and audit

57. (1) The Board shall keep books of accounts and proper records in relation to them.

(2) The account of the bank shall be balanced on the last day of each financial year and shall be audited by the external auditor of the Bank.

(3) The annual statement of account as audited shall be signed by the chairperson of the Board and any other director of the Bank and shall be forwarded to the Bank of Ghana within three months after the commencement of the succeeding financial year.

(4) The annual statement of account shall give a true and fair view of the audited accounts of the bank for the period to which it relates.

(5) The Bank shall

(a) exhibit throughout the year in a conspicuous manner in each office or branch of the Bank a copy of the last audited accounts,

(b) within three months after the end of the financial year submit the audited accounts to the shareholders at a general meeting and cause a copy of the audited accounts to be published in a daily newspaper circulating in the country, and

(c) not later than twenty one days before the date of the general meeting send a copy of the audited accounts to each person entitled to attend the meeting.

Appointment of auditor

58. (1) The Board shall appoint an auditor prior to the first Annual General Meeting and the remuneration shall be fixed at an Annual General Meeting of shareholders of the Bank.

(2) An auditor appointed under these Regulations may be a customer of a member bank.

(3) A director or employee of the Bank shall not be eligible to be appointed as auditor.

(4) Where the auditor is for any reason unable to act, the Board may appoint another auditor to act until a new auditor is elected at an Annual General Meeting or until the Bank of Ghana appoints an auditor under section 75 of the Banking Act.

(5) An auditor may be eligible for re-election.

(6) A person shall not qualify to be appointed as an auditor under this regulation unless that person is qualified in accordance with section 74 (3) of the Banking Act.

(7) The auditor appointed by the Board shall cease to act as an auditor in any of the circumstances referred to in section 80 of the Banking Act.

Duties and powers of an auditor

59. (1) The Managing Director shall ensure that in the discharge functions under these Regulations, the auditor of the Bank has access at reasonable times to the books, accounts and other documents of the Bank.

(2) The auditor may at the expense of the Bank employ an accountant or any other person to assist in examining the accounts of the Bank.

(3) The auditor shall submit an audit report on the account audited to the Board.

(4) The auditor shall make a report to the shareholders on the annual statement of accounts and indicate whether the balance sheet is fair, contains the necessary particulars and properly drawn up to exhibit the transparent state of the Bank's affairs and, where the auditor has called for an explanation or information from the Board, indicate whether the report given by the Board is satisfactory.

(5) A report made to the shareholders shall be read together with the report of the Board at the Annual General Meeting.

(6) An auditor appointed by the Board or elected at an Annual General Meeting is entitled to have access to all notices and other communications relating to any general meeting by the Bank which a shareholder of the Bank and is entitled to receive and shall be entitled to attend any meeting and be heard on any part of the business of the meeting which concerns the auditor but shall not vote on any matter before the meeting.

Miscellaneous provisions

Liquidation of the Bank

60. The Bank shall be placed in liquidation subject to these Regulations, the Banking Act and any other enactment.

Application of seal of the Bank

61. (1) The application of the common seal of the Bank to a document shall be authenticated if signed by the Managing Director and witnessed by the Secretary of the Bank.

(2) The signatures of the Managing Director and the two other directors shall be independent of the signature of any other person who is required or authorised to sign a document as a witness.

Contracts

62. (1) A contract on behalf of the Bank may be entered into by

- (a) individual persons which by law shall be in writing and under seal, may be entered into and on behalf of the Bank in writing under the common seal of the Bank;
- (b) individual persons which by law shall be in writing, signed by the parties to be responsible and may on behalf of the Bank be entered into in writing and signed by a person acting under the Bank's express or implied authority; or
- (c) individual persons by parol on behalf of the Bank by any person acting under its express or implied authority.

(2) A contract entered into shall bind the Bank, its successors and other parties to the contract.

(3) A contract may be varied or discharged in the same manner in which it is required to be made.

(4) The Bank may, in writing under its common seal empower a person, generally or in respect of any specified matter, as an attorney to execute deeds on behalf of the Bank at anyplace.

(5) A deed signed by an attorney on behalf of the Bank and under the attorney's seal, bind the Bank and has the same effect as if it were under the Bank's common seal.

Service of documents

63. A document may be served on the Bank by leaving the document at or sending it by registered post to the Head Office of the Bank or at the Bank's regional branches.

Offences

64. (1) A person shall not obstruct or refuse to co-operate with any adjudicating panel in the performance its functions under these Regulations.

(2) A person who contravenes sub-regulation (1) commits an offence and is liable on summary conviction to a fine of not more than two hundred penalty units or a term of imprisonment of not more than one year or to both.

Protection of directors and officers

65. Subject to any other enactment, a director, officer or other employee of the Bank shall not be liable for an act done in good faith in the performance of functions under these Regulations.

Disclosure of information

66. A person, who participates in the decision, administration, control and the management of the Bank, shall not disclose any written or oral information which the person has obtained by virtue of a function under these Regulations, unless the person is ordered to give evidence in a court or to fulfill an obligation imposed by law or in the discharge of that duty.

Dispute resolution

67. Where a member is aggrieved by a decision taken by the Board under these Regulations and the matter cannot be resolved amicably, the matter may be settled by arbitration under the Arbitration Act 1961 (Act 38) or any other enactment concerned with arbitration.

Rules and bye-laws

68. (1) The Board may make rules or bye-laws on any matter for the implementation of these Regulations.

(2) Without limiting the scope of sub-regulation (1), rules or bye-laws may provide for any of the following matters:

- (a) the conditions, subject to which the shares of the Bank may be held and transferred;
- (b) matters that relate to the rights and duties of the shareholders;
- (c) the duties and powers of the chairperson;
- (d) the manner, conditions and terms of issue and redemption of funds and debentures;
- (e) the conditions on which advances, loans and credits may be granted to
 - (i) a person who performs a function under these Regulations, and
 - (ii) an individual with whom a co-operative society and any other body corporate with which the relative of the person is connected as a partner, director, manager, servant, or shareholder;
- (f) the conduct of business at meetings of the Board and the committees;
- (g) the procedure for the recovery of loans and other debts including those owed to the Bank;

- (h) the disclosure of interest, direct or indirect, of a Director in an application for a loan;
- (i) the recruitment of the employees of the Bank, the terms and conditions of service, the constitution and management of provident funds for the employees of the Bank;
- (j) the duties and conduct of employees and agents; and
- (k) the form of returns and statements.

Interpretation

69. In these Regulations, unless the context otherwise requires

"ARB Apex Bank Limited" means the Bank established through incorporation under the Companies Code, 1963 (Act 179) and licensed by the Bank of Ghana referred to as "ARB Apex Bank Limited",

"Association of Rural Banks" means the voluntary non-profit organization formed by rural and community banks to promote common interests, referred to as the "ARB" or the "the Association",

"Bank" means the Apex Bank;

"Banking Act" means the Banking Act, 2004 (Act 673);

"bank" means a rural or community bank which is a member of the Apex Bank;

"Board" means the Board of Directors of the ARB Apex Bank Limited;

"capital adequacy" means the ratio of the adjusted capital base to the adjusted risk assets of a bank as computed under the provisions of the Banking Act 2004;

"catchment areas" means the accepted geographical areas of operation of a rural or community bank as determined by the Bank of Ghana;

"Companies Code" means the Companies Code 1963 (Act 179);

"District Assembly" includes a Municipal and Metropolitan Assembly,

"fund management service" means the investment of financial resources by the Bank on behalf of the rural and community banks;

"member" means a rural or community bank which is a shareholder of the ARB

Apex Bank and any institution permitted by these Regulation to hold shares in the Bank;

“micro finance” means the financing of small-and micro-scale enterprises and low income earning individuals;

“Minister” means the Minister responsible for Finance;

“prudential regulations” means regulations that derive from the Banking Act, 2004 (Act 673) and aimed at ensuring that banks are operated prudently in conformity with set limits and ratios;

“prudential requirement” means any limit or ratio set under the prudential regulations;

“prudential returns” means periodic statements of amounts, statistics and ratios required to be submitted to a supervisory authority by regulated institutions;

“Regional Chapter” means the intermediate body of rural bank directors that represent the interests of a cluster of rural and community banks in a region;

“reserve funds” means the account that holds the percentage of annual profits that has to be ‘ploughed back’ into the banks operation and is not available for paying dividends;

“risk exposure limits” means any limit set under the prudential regulation to limit single customer, single group, single currency or total foreign currency exposures of a bank;

“rural bank”, includes a community bank, which is a unit bank promoted, owned and managed by individual persons and located essentially in rural communities and licensed by the Bank of Ghana;

“specie management services” means service offered by the Bank to rural or community banks aimed at the determination and maintenance of efficient cash holdings and of adequate insurance policies;

“specie movement services” means the timely and efficient delivery of and evacuation of cash to or from a rural or community bank by the bank; and

“voting delegate” means the mandated manager or board member empowered to vote at the Annual General Meeting of the Bank on behalf of a rural or community bank.

SCHEDULES
FIRST SCHEDULE
(Regulation 10 (2))

**ARB APEX BANK LIMITED
APPLICATION FOR MEMBERSHIP OF THE
ARE APEX BANK LIMITED**

TheRural and Community Bank wishes to apply for membership of the ARB Apex Bank Limited.

For this purpose we provide you with the following particulars and documents of our bank.

A. PARTICULARS

- 1. Date of establishment of bank:
- 2. Postal Address:
- 3. Location:
- 4. Telephone No.:
- 5. Fax No:
- Email Address:
- 6. Total Capital:
- 7. Reserve Fund:
- 8. Capital Adequacy Ratio:
- 9. Value of Total Assets:
- 10. No. of Shareholders of the bank:
- 11. No. of Court Cases pending against the bank:

12. Names and addresses of current Directors:

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)
- (g)
- (h)

13. Names and addresses of External Auditors:.....

.....

.....

B. DOCUMENTS

Copies of the underlisted documents are herewith attached:

- (a) Certificate of Incorporation
- (b) Certificate to Commence Business
- (c) Operating Banking Licence
- (d) Current Audited Report of the Accounts and affairs of the bank.
- (e) Resolution of shareholders supporting the application.

We solemnly and sincerely declare that the information and records provided are true and correct.

We also undertake to be bound by all laws, regulations, rules or bye-laws and guidelines governing the ARB Apex Bank Limited arrangements should the bank's application be accepted.

Signature:.....

Signature:.....

Name:.....

Name:.....

Chairperson

Manager/Secretary:.....

Board of Directors

Date:.....

SECOND SCHEDULE
(Regulation 11(1))

ARB APEX BANK LIMITED

The Chairman
Board of Directors
ARB Apex Bank Limited
Accra

ARB APEX BANK LIMITED
STATEMENT OF ACCEPTANCE

BYRURAL AND COMMUNITY
BANK

Following the approval of our bank’s application for membership of the ARB Apex Bank Limited by our Board of Directors, we write to accept the terms and conditions governing the membership.

We enclose our cheque in favour of the ARB Apex Bank Limited for the sum of
.....
.....(¢.....)
in payment of the shares issued to our bank.

We request that you enter our bank’s name in the register of members of the ARB Apex Bank Limited and forward to our above address a share certificate in respect of the issued shares.

Signature:.....	Signature:.....
Name:.....	Name:.....
Chairperson:.....	Manager/Secretary:.....
Date:.....	Date:.....

THIRD SCHEDULE
(Regulation 14 (1))

COMPLAINT FORM

.....(Complainant)
and

.....(Respondent)

1. (a) Full Name of complainant:.....
(b) Postal AddressL:.....
(c) Telephone No.....
(d) Fax No.....
(e) E-mail Address:.....
(f) Official Address:.....
2. (a) Name of Respondent:.....
(b) Postal Address:.....
(c) Telephone No.:.....
(d) Fax No.:.....
(e) E-mail Address:.....
(f) Official Address:.....
3. Summary of complaint:.....
.....
.....
4. Nature of harm suffered by complainant:.....
.....
.....
5. Relief sought:.....
.....
.....

DECLARATION

I, being an authorised Director/Officer of the bank,
hereby declare that the above particulars are to the best of my knowledge correct.

.....
(Signature of Applicant)

Dated theday of20

FOURTH SCHEDULE
(Regulation 14 (2))

PROCEDURE TO FILE A COMPLAINT

In exercise of the powers conferred on the Banking Supervision Department of the Bank of Ghana (referred to as "the BSD") to adjudicate on disputes between the Bank and its members, the Bank and its members shall follow the procedure outlined below:

1. Form of complaint

(1) A member of the bank may file a complaint against another member with the Association of Rural Banks.

(2) A member may file a complaint against the Bank with the BSD.

(3) A complaint to either the ARB or BSD shall be in writing, addressed respectively to the President of the ARB or the Head of BSD and in the format provided in the Third Schedule.

2. Contents of complaints

A complaint lodged with either the ARB or BSD shall contain:

- (a) the full name and contact address of the complainant;
- (b) the member against whom the complaint is made;
- (c) particulars of the nature of the complaint together with copies of any document in support of the complaint;
- (d) the nature of the injustice or harm that the complainant has suffered as a result of the action, inaction or omission of the person against whom the complaint is made;
- (e) the relief sought by the complainant; and
- (f) any other matter relevant to the complaint.

3. Procedure for complaint

(1) The BSD may use the services of an expert to assist in the resolution of a complaint.

- (2) Where a complaint is made against a person, the BSD shall cause a copy of the complaint to be sent to the person against whom the complaint is made within seven days after the date of receipt of the complaint.
- (3) The person against whom a complaint is made shall within fourteen days after the date of receipt of the complaint or a further period that the BSD may specify submit its response to the BSD.

4. Initial settlement of complaint

- (1) The BSD shall make a preliminary enquiry into the complaint.
- (2) If the BSD considers that the complaint may be mediated upon and settled, it shall invite the parties concerned and initiate a settlement of the complaint.
- (3) If the complaint cannot be settled, the BSD shall follow the procedure for a formal hearing of the complaint as provided in these Regulations and in this Schedule.

5. Formal hearing of complaint

- (1) For the purposes of making a full enquiry by formal hearing into a complaint, the BSD shall in writing invite:
 - (a) the complainant;
 - (b) the person against whom the complaint is made; and
 - (c) any other person considered relevant to the complaint by the BSD to appear before it at a date, time and place specified in the notice.
- (2) The date for attendance at the formal hearing shall be not less than fourteen days after the date of notice.
- (3) A person appearing before the BSD to answer a complaint shall:
 - (a) take an oath or affirm the faith;
 - (b) be informed again of the particulars of the complaint and the relief sought; and
 - (c) be afforded full opportunity to answer the complaint.

- (4) Persons appearing before the BSD shall appear themselves or maybe represented by counsel or another expert.
- (5) The BSD shall take a decision on the complaint and keep a record of the proceedings.

6. Panel for formal hearing

- (1) The Head of BSD shall constitute a panel to conduct a formal hearing of a complaint.
- (2) The panel shall comprise at least three and not more than five persons one of whom shall be a lawyer.
- (3) The chairperson of the panel shall be the Head of BSD, the deputy or a lawyer
- (4) A person appearing before a panel may raise an objection to membership of the panel to the chairperson for determination.
- (5) Any question before a panel shall be determined by a majority of the members present and voting.

7. Conduct of formal hearing

- (1) Subject to paragraph 5, the formal hearing shall be conducted with fairness and impartiality and the panel may order the production of any information or document from any of the parties.
- (2) The panel shall regulate the course of proceedings and conduct of the parties and their representatives and may question any person or enquire into any matter related to the complaint.
- (3) The panel shall make full report to the Head of BSD of a formal hearing and shall include its recommendations for the resolution of the complaint.

8. Action by BSD

- (1) The Head of BSD shall consider the report and may accept, reject or modify the recommendations.
- (2) If the BSD rejects the recommendations it may ask for further enquiry or give directions to any of the parties to the dispute.

9. Enforcement of decisions or directives

The BSD may exercise a power conferred on it by statute or apply to the High Court for the enforcement of its decisions or directives.

HON. KWADWO BAAH WIREDU (M.P)
Minister for Finance and Economic Planning

Date of *Gazette* notification: 3rd November, 2006.

Entry into force: 12th December, 2006.