



Banking and Financial Laws of Ghana 1998-2006

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

September, 2007



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Introduction

The first compilation of Banking and Financial Laws of Ghana sought to bring together, in one volume, all the laws pertaining to the banking and financial industry in Ghana for, among other objectives, ease of reference. Since the Banking and Financial Laws of Ghana 1961-1998 was published in 2001, staff have attested to its benefits in various ways, and there continues to be strong demand for copies.

This second volume — Banking and Financial Laws of Ghana 1998-2006 — is a compendium of banking and financial laws passed in Ghana between 1998 and 2006. It complements the earlier publication, and has been necessitated by the rapid changes in the financial system and the attendant new laws and regulations. It is hoped that, together with the first volume, it would provide a complete source of reference for these laws.

Further compilations will be published as and when necessary to update these two volumes. Online access to the laws will also be available soon. All suggestions for improvement or inclusion are welcome.

Library and Documentation Office

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**Bank of Ghana Act 2002
(Act 612)**

ARRANGEMENT OF SECTIONS

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SCHEDULE

**THE SIX HUNDRED AND TWELFTH
ACT
OF THE PARLIAMENT OF THE REPUBLIC
OF GHANA
ENTITLED
BANK OF GHANA ACT, 2002**

AN ACT to amend and consolidate the law relating to the Bank of Ghana and to provide for related matters.

DATE OF ASSENT: *24th January, 2002.*

BE IT ENACTED by Parliament as follows:

PART I - THE BANK OF GHANA, ITS OBJECTS AND SHARES

Continued legal existence of Bank of Ghana

1. (1) The Bank of Ghana in existence immediately before the commencement of this Act shall, subject to this Act, continue to be in existence as a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.

(2) The Bank referred to in subsection (1) shall be the Central Bank of Ghana and may, in relation to its business purchase, hold, manage and dispose of movable and immovable property and may enter into a contract or a transaction as may be expedient.

(3) The application of the common seal of the Bank shall be authenticated.

(a) by the Governor, or

(b) in the absence of the Governor, by a Deputy Governor, and two directors all of whom shall certify the validity of the authentication and that signing shall be independent of the signing by any other person who may sign the instrument as a witness.

Head Office and branches

2. The Bank shall have its head office in Accra and may, where it is considered necessary for the performance of its functions, open branches and have agencies or agents in and outside Ghana.

Objects of the Central Bank

3. (1) The primary objective of the Bank is to maintain stability in the general level of prices.

(2) Without prejudice to subsection (1) the Bank shall support the general economic policy of the Government and promote economic growth and effective and efficient operation of banking and credit systems in the country, independent of instructions from the Government or any other authority.

Functions of the Central Bank

4. (1) The Bank shall for the purposes of section 3 perform the following functions:

- (a) formulate and implement monetary policy aimed at achieving the objects of the Bank;
- (b) promote by monetary measures the stabilization of the value of the currency within and outside Ghana;
- (c) institute measures which are likely to have a favourable effect on the balance of payments, the state of public finances and the general development of the national economy;
- (d) regulate, supervise and direct the banking and credit system and ensure the smooth operation of the financial sector;
- (e) promote, regulate and supervise payment and settlement systems;
- (f) issue and redeem the currency notes and coins;
- (g) ensure effective maintenance and management of Ghana's external financial services;
- (h) license, regulate, promote and supervise non-banking financial institutions;
- (i) act as banker and financial adviser to the Government;
- (j) promote and maintain relations with international banking and financial institutions and subject to the Constitution or any other relevant enactment, implement international monetary agreements to which Ghana is a party; and
- (k) do all other things that are incidental or conducive to the efficient performance of its functions under this Act and any other enactment.

(2) The Board may by legislative instrument authorise any person to exercise the power of the Bank to regulate and supervise non-banking financial institutions.

(3) An instrument issued under subsection (2) may include provisions relating to

- (a) inspection;
- (b) management audit; and
- (c) any other aspect of operation of non-banking institutions.

(4) An instrument issued under subsection (2) shall be under the signature of the Governor.

Authorised shares of the Bank

5. (1) The authorised number of shares of the Bank shall be seven hundred billion shares of no par value which shall be taken up from time to time by the Government and may be increased from time to time.

(2) The shares shall not be transferable or subject to any encumbrance.

General Reserve Fund, payment into Consolidated Fund

6. (1) There shall be a General Reserve Fund of the Bank.

(2) At the end of each financial year of the Bank, after allowing for the operational expenses out of its income and after provision has been made for bad and doubtful debts, depreciation of assets, replacement of currency, development fund, contributions to staff and superannuation fund and other contingencies, there shall be transferred to the General Reserve Fund,

- (a) one-half of the net profit of the Bank if the amount of money in that Fund is less than the paid-up capital of the Bank; or
 - (b) one-quarter of the net profit of the Bank, if the amount of money in that Fund is less than twice the amount of the paid-up capital of the Bank.
- (3) Money that remains after the transfer under subsection (2) shall
- (a) where there is a balance of government indebtedness in the books of the Bank, be used to set off the indebtedness; and
 - (b) where there is no balance of government indebtedness in the books of the Bank, be paid into the Consolidated Fund.

(4) Where at the end of a financial year the amount of money in the General Reserve Fund is more than twice the amount of the paid-up capital, a proportion of the

profit, as may be agreed upon between the Bank and the Minister, shall be paid into the Consolidated Fund.

Revaluation Account

7. (1) Profits or losses arising from a revaluation of the Bank's assets or liabilities in gold, special drawing rights or foreign securities as a result of a change in the par value of the cedi or of any change in the par value of the currency unit of any other country shall be excluded from the computation of the annual profits or losses of the Bank.

(2) The profits and losses arising under subsection (1) shall be carried to a special account to be known as the 'Revaluation Account'.

(3) Profits shall not be paid into the General Reserve Fund or the Consolidated Fund under subsection (2) or (3) of section 6 where the Revaluation Account shows a net loss, and the profits not paid into the General Reserve Fund shall be credited to the Revaluation Account in an amount sufficient to cover the loss.

(4) Where the profits referred to under subsection (1) are insufficient to cover the losses of the Bank in a financial year, the Government shall cause to be issued to the Bank redeemable negotiable interest bearing securities to the extent of the deficiency.

(5) A credit balance in the Revaluation Account at the end of a financial year of the Bank shall be applied to redeem the outstanding securities issued under subsection (4).

PART II - ADMINISTRATION OF THE BANK

The Board of Directors

8. The governing body of the Bank shall be a Board of Directors consisting of,
- (a) the Governor of the Bank who shall be the chairperson;
 - (b) the First and Second Deputy Governors appointed under section 17;
 - (c) one representative of the Ministry of Finance; and
 - (d) eight other directors appointed by the President in consultation with the Council of State.

Functions of the Board on policy formulation

9. The Board shall formulate policies necessary for the achievement of the objects of the Bank.

Terms and conditions of service of members

10. (1) The members of the Board, other than the Governor and the two Deputy Governors, shall hold office for a period of three years but are eligible for re-appointment.

(2) The members, other than the Governor and the two Deputy Governors shall be paid appropriate allowances to be determined by the Board in consultation with the Minister.

Qualifications of members

11. A person does not qualify to be appointed as a member of the Board who

- (a) is not a citizen of Ghana;
- (b) has entered into terms with any person for payment of his or her debt, has suspended payment of his or her debt or has been declared insolvent;
- (c) has been convicted of a felony or an offence involving dishonesty;
- (d) is adjudged to be a person of unsound mind; or
- (e) in the case of a person possessed of professional qualification, that person is disqualified or suspended, otherwise than at the request of that person, from practising the profession of that person by order of a competent authority made in respect of that person.

Removal from the Board

12. A member shall cease to hold office if that member

- (a) ceases to be a citizen of Ghana;
- (b) becomes a person of unsound mind or incapable of carrying out the duties of that member;
- (c) has entered into terms with any person for payment of his or her debt, has suspended payment of his or her debt or has been declared insolvent;
- (d) is convicted of a felony or of an offence involving dishonesty;
- (e) is guilty of gross misconduct in relation to the duties of that member; or
- (f) in the case of a person possessed of professional qualification, that member is disqualified or suspended from practising his or her profession by the

order of a competent authority, made in respect of that member or ceases to be a member of the profession otherwise than at the request of that member.

Vacancy on the Board

13. Where a member dies, resigns or otherwise vacates office before the completion of the term of office, another person shall be appointed

- (a) in the case of the Governor or a Deputy Governor, for a period of four years;
- (b) in the case of any other member, for the unexpired period of that member.

Meetings of the Board

14. (1) The Governor shall summon meetings of the Board as often as may be required but not less frequently than once in each month.

(2) The Governor shall preside at the meetings of the Board and

- (a) in the absence of the Governor, the First Deputy Governor shall preside, or
- (b) in the absence of the Governor and the First Deputy Governor, the Second Deputy Governor shall preside.

(3) The quorum for a meeting of the Board shall be six members including the Governor or a Deputy Governor.

(4) A member who has an interest, whether direct or indirect, in a matter that is being considered or dealt with by the Board shall disclose in writing to the Board the nature of that interest and shall not participate in a discussion or decision of the Board on that matter.

(5) Where a member fails or refuses to disclose his or her interest under subsection (4), the member shall cease to be a member.

(6) Decisions of the Board shall be determined by a simple majority of the members present and voting except that where there is an equality of votes on an issue before the Board, the person presiding shall have a casting vote.

(7) The Board may, where it considers it fit, invite a person to assist at its meeting but a person so invited is not entitled to vote at that meeting on a matter for decision by the Board.

(8) The validity of the proceedings of the Board shall not be affected by a vacancy among its membership or by a defect in the appointment or qualification of any of the members.

(9) An act done by a member acting in good faith as a member is valid, notwithstanding a defect in the appointment or qualification of that member.

(10) Except as otherwise provided in this section, the Board shall determine the procedure for its meetings.

Committees of the Board

15. The Board may appoint a number of committees that are necessary for the purpose of advising the Board.

Audit Committee

16. (1) There shall be appointed by the Board an Audit Committee whose chairperson shall be appointed by the members from among their number.

(2) The Audit Committee shall consist of three members and its responsibilities shall be to:

- (a) establish appropriate accounting procedures and accounting controls for the Bank and supervise compliance with these procedures;
- (b) monitor compliance with enactments applicable to the Bank and report to the Board thereon;
- (c) deliver opinions on any matters submitted to it by the Board or management;
- (d) receive and examine the external auditor's report and recommend to the Board any appropriate action to be taken; and
- (e) review the work of the Chief Internal Auditor.

(3) The Audit Committee shall meet ordinarily once every quarter and extraordinarily when convened by the Board or management.

Appointment of Governor and Deputy Governors

17. (1) The Governor and the two Deputy Governors shall be

- (a) persons of recognised financial or banking experience; and
- (b) appointed by the President acting in consultation with the Council of State.

(2) The Governor and the Deputy Governors shall each be appointed for a term of four years each and each one is eligible for re-appointment.

(3) Unless otherwise permitted by the Board in writing, the Governor and the Deputy Governors shall not, while holding office under this Act, occupy any other office or employment whether there is remuneration attached to it or not.

(4) Notwithstanding subsection (3), the Governor or a Deputy Governor may, with the approval of the Board,

- (a) act as a member of a commission appointed by the Government to enquire into a matter affecting currency or banking;
- (b) act as a member of the board of an international bank or an international monetary authority or any other institution to which the Government gives support.

(5) Subject to the Constitution and this section, the Governor and the two Deputy Governors shall be appointed on terms and conditions determined by the Government.

(6) The two Deputy Governors shall be designated as First Deputy and Second Deputy Governor respectively.

Functions of the Governor

18. (1) The Governor shall, subject to the directions given by the Board on matters of policy and subject as expressly provided in this Act, be entrusted with the day-to-day business and administration of the Bank, and may make decisions and exercise all powers and perform the functions which may be exercised and performed by the Bank.

(2) Without prejudice to subsection (1), the Governor shall

- (a) execute the policies of the Board;
- (b) make regular reports to the Board on the management and operations of the Bank;
- (c) provide the data, statistics and advice necessary for the attainment of the objects of the Bank; and
- (d) perform any other functions directed by the Board.

(3) The Governor shall be answerable to the Board for the acts and decisions of the Governor.

Emergency powers of the Governor

19. (1) Where there is an internal disorder, external exigencies, national disaster or critical financial or economic crisis or other exigencies requiring immediate action and there is insufficient time to call a meeting of the Board, the Governor may, after giving notice to the Minister, exercise the powers of the Board and take necessary action.

(2) The Governor shall, within seven working days after having taken action by virtue of subsection (1), call a meeting of the Board and report the action taken for ratification or review by the Board.

Functions of the Deputy Governors

20. (1) The Deputy Governors shall assist the Governor in the performance of the functions of the Governor under this Act in the area that the Governor may in consultation with the Board, determine.

(2) In the absence of the Governor, the First Deputy Governor shall have authority to perform the functions of the Governor under this Act and in the absence of both the Governor and the First Deputy Governor the Second Deputy Governor shall have authority to perform the functions of the Governor.

The Secretary

21. The Bank shall have an officer designated the Secretary who shall be appointed by the Board to perform the functions of maintaining a secretariat for the Board and ensuring accurate recording of proceedings and decisions of the Board and to perform such other functions as the Governor or the Board may direct.

Chief Internal Auditor

22. (1) The Bank shall have a Chief Internal Auditor who shall be appointed by the Board.

(2) Subject to this Act, the Chief Internal Auditor is responsible to the Governor in the performance of functions of office as Chief Internal Auditor.

(3) The Chief Internal Auditor shall, as part of the functions of office, at intervals of three months, prepare a report on the internal audit work carried out by the Chief Internal Auditor during the period of three months immediately preceding the preparation of the report, and submit the report to the Governor who shall place the report before the Board.

Other officers and employees of the Bank

23. (1) The Board shall appoint such other officers and employees as the Board considers necessary for the effective implementation of the functions of the Bank.

(2) Subject to this Act, the officers and employees of the Bank shall hold office or appointment on the terms and conditions specified in their letters of appointment.

(3) The salaries, benefits, wages or other remuneration or allowances paid by the Bank shall not be computed by reference to the net or other profits of the Bank.

Signing of documents

24. (1) The Board may empower the Governor, a Deputy Governor or an employee of the Bank in writing generally or in respect of a particular document or class of documents to sign for and on behalf of the Bank.

(2) The Governor and the employees of the Bank empowered under subsection (1), are hereby severally empowered for and on behalf of the Bank to endorse and transfer promissory notes, stock-receipt, debenture stock, shares, securities and documents of title to goods standing in the name of, or held by, the Bank.

Declaration of secrecy

25. (1) The employees of the Bank of all classes of designation shall be bound by a declaration of secrecy unless they are otherwise called upon to give evidence in a court or to fulfil an obligation imposed by law.

(2) For the purposes of this section a former employee of the Bank is similarly bound and shall not disclose any information whether documentary or otherwise relating to the affairs of the Bank except by order of a court or to fulfil an obligation imposed by law.

(3) A person who contravenes a provision of this section commits an offence and is liable on summary conviction to a fine not exceeding 500 penalty units or to imprisonment for a term not exceeding 2 years or to both.

Liability for loss

26. An employee of the Bank is liable for loss or damage suffered by the Bank as a result of any wilful default or negligence of that employee.

Monetary Policy Committee

27. (1) There is hereby established a committee of the Bank to be known as the Monetary Policy Committee of the Bank.

(2) The Monetary policy Committee shall be responsible for

(a) initiating proposals for the formulation of the monetary policies of the bank; and

(b) providing the statistical data and advice necessary for the formulation of monetary policies.

(3) The members of the Monetary Policy Committee shall be

(a) the Governor;

(b) the First and Second Deputy Governors;

(c) the head of monetary policy analysis of the Bank;

(d) the head of banking operations of the Bank; and

(e) two other persons appointed by the Minister being persons with knowledge or experience relevant to the functions of the Monetary Policy Committee.

(4) The members of the Monetary Policy Committee other than the full-time members shall be paid such allowances as the Board shall determine.

PART III - THE BANK AS BANKER AND FISCAL AGENT OF GOVERNMENT AND STATE INSTITUTIONS

Custodian of State Funds

28. The Bank shall be the sole custodian of the state funds both in and outside Ghana, and may by notice published in the *Gazette* authorise any other person or institution to act as custodian of any such funds as may be specified in the notice.

The banker for Government

29. (1) The Bank shall receive, collect, pay and remit money, bullion and securities on behalf of the Government.

(2) The Bank shall accept custody of all securities, documents and other valuable objects belonging to the Government.

(3) The Bank may act as banker to any government institution or agency.

(4) In a place where the Bank does not have a branch, the Bank may appoint a banking institution to act as its agent for the collection and payment of Government moneys.

(5) An agent which collects money for and on behalf of the Bank under subsection (4) shall, as may be specified, remit the money to the Bank.

(6) Interest shall not be paid by the Bank on amounts deposited in a government account.

(7) Except as otherwise determined by agreement with the Minister, the Bank shall not receive from the Government remuneration for its services under this section.

(8) Subject to this section, the Bank may undertake and transact a business which the Government may entrust to the Bank.

Temporary advances

30. (1) The Bank may

- (a) make advances and loans to the Government on overdraft or in any other form that the Board may determine;
- (b) make direct purchase from the Government of treasury bills or securities representing obligations of the Government.

(2) The total of the loans, advances, purchase of treasury bills and securities together with money borrowed by the Government from other banking institutions and the public at the close of a financial year under subsection (1) shall not exceed 10 percent of the total revenue of the fiscal year in which the advances were made.

(3) An advance made under subsection (1) shall be repaid within three months after the grant of the advance, and where that advance remains unpaid after the due date, the power of the Bank to make further advances in a subsequent financial year shall not be exercised unless the amounts due in respect of outstanding advances have been repaid.

(4) Where repayment of the advances and overdrafts is unduly delayed, the Bank may transfer the debt to the public through the sale of treasury bills.

(5) The Bank shall charge interest on advances granted under this section at the rate that the Board in consultation with the Minister shall determine.

(6) In the event of any emergency, the Governor, the Minister and the Controller and Accountant-General shall meet to decide the limit of borrowing that should be made by Government and the Minister shall submit a report on the issue to Parliament within seven sitting days.

Management of the Public Debt

31. The Bank shall be entrusted with the issue and management of government loans publicly issued upon the terms and conditions that are agreed between the Government and the Bank.

Adviser to Government on fiscal matters

32. The Bank shall advise Government on

- (a) the monetary transactions of the Government and government agencies;
- and

- (b) the international and local contracts to which the Government is a party and which relate to the object and functions of the Bank.

PART IV - CREDIT CONTROL

Report on unusual movement in supply of money

33. (1) Where the Board considers that there are unusual movements in the money supply and prices, detrimental to a balanced growth of the national economy, it shall subject to this Act, make as soon as practicable a report of this to the Minister specifying the causes which in its opinion led to the situation.

(2) The Bank, in counteracting unusual movements in the money supply and prices in the country shall, after consultation with the Minister, use any of the instruments of control conferred upon it under this Act or under any other enactment to maintain and promote a balanced growth of the national economy.

Managing the monetary and banking system

34. Without prejudice to subsection (2) of section 33, the Bank may, for the purposes of monetary management,

- (a) alter the minimum ratio of reserve to deposits or the minimum capital adequacy ratio which each banking institution shall maintain;
- (b) alter the discount and interest rates of the Bank to be applied in credit operations with banking institutions;
- (c) buy or sell in the open market commercial bills, Government bonds and securities or bonds and securities guaranteed by the Government;
- (d) issue, sell, re-purchase or redeem Bank of Ghana securities;
- (e) expand or contract credit facilities to the banks;
- (f) authorise a banking institution that it considers fit to accept deposits for the Government or order the transfer of government deposits with any bank;
- (g) impose special requirements on deposit with banking institutions that it may determine; and
- (h) impose such other measures as the Board may determine.

PART V - DOMESTIC OPERATIONS

Issue and redemption of notes and coins

35. The Bank shall have the sole right to issue and redeem currency notes and coins in the country.

Cover for notes and coins

36. The Bank shall hold assets to cover the currency notes and coins issued by the Bank.

Unit and denomination and form of currency

37. (1) The unit of currency shall be the Cedi which shall be divided into one hundred pesewas, one pesewa being one hundredth part of a cedi.

(2) The Bank shall issue currency notes and coins of the denominations that are approved by the Board.

(3) Currency notes and coins issued by the Bank shall be of the forms and designs that are approved by the Board.

(4) The standard weight and composition of coins issued by the Bank and the amount of remedy and variation shall be determined by the Board.

(5) The currency issued by the Bank shall be printed or minted by the Bank or under the authority of the Bank.

Appointment of other banks as currency agents

38. The Bank may appoint a banking institution to act as agent for the issue, re-issue, exchange and withdrawal of currency notes and coins on the terms and conditions that are agreed between the Bank and that banking institution.

Currency cover assets of the Bank

39. (1) The currency cover assets of the Bank may include

- (a) gold, gold coin and bullion;
- (b) convertible currency notes and coins and bank balances in convertible currency with a bank outside Ghana;
- (c) treasury bills of the Government of a country whose currency is convertible;

- (d) bills of exchange bearing at least two good signatures drawn on a place outside Ghana, payable in convertible currency and having a maturity not exceeding three months exclusive of days of grace;
- (e) securities of Government other than the Government of Ghana expressed in convertible currency;
- (f) special drawing rights;
- (g) securities or bonds in convertible currency issued by any international financial institution or bank; and
- (h) subject to subsection (2),
 - (i) treasury bills of the Government denominated in cedis and maturing within ninety-one days;
 - (ii) other securities of the Government denominated in cedis and maturing in not more than twenty years which have been publicly issued or form part of an issue which is being made to the public at the time of acquisition.
- (2) The aggregate holding of treasury bills and of securities under paragraph (h) of subsection (1) shall not at any time exceed sixty per cent of the currency in circulation.

Liabilities for issue

40. (1) The currency cover assets of the Bank shall be available to meet only the liabilities of the Bank as represented by the total of the amount of currency notes and coins issued by the Bank and are in circulation.

(2) Where at any time the assets of the Bank including funds in the General Reserve Fund and the Revaluation Account are insufficient to meet demands for the redemption of notes and coins, that deficiency shall be a charge on the Consolidated Fund.

Legal tender

41. (1) Currency notes issued by the Bank shall be legal tender at their face value.

(2) Coins Issued by the Bank shall, if those coins have not been tampered with, be legal tender for payments up to an amount not exceeding

- (a) five thousand cedis in the case of coins of denominations of one hundred, two hundred and five hundred cedis;

- (b) one thousand cedis in the case of denominations of not less than twenty cedis; and
- (c) one hundred cedis in the case of coins of denominations of less than twenty cedis.

(3) For the purposes of this Act, a coin shall be deemed to have been tampered with if the coin has been

- (a) Impaired, diminished or lightened otherwise than by fair wear and tear; or
- (b) defaced by stamping, engraving or piercing whether the coin has been thereby diminished, lightened, or not.

(4) The Bank may, on giving not less than three months notice in the *Gazette*, call in any of its currency notes and coins on payment of the face value; and the notes or coins with respect to which a notice has been given under this subsection shall, on the expiration of the notice, cease to be legal tender.

Refund of lost or imperfect currency notes or coins

42. (1) A person is not entitled to recover from the Bank the value of any mutilated or imperfect currency note or a coin tampered with.

(2) Notwithstanding subsection (1), the Governor may permit the exchange of the amount of any mutilated or imperfect currency notes or coins as determined by the Governor.

Evidence of imitation of a currency note

43. Where in proceedings in a court it has to be determined whether a document purporting to be a currency note is an imitation of a currency note, a certificate in the form set out in the Schedule to this Act under the hand of the Governor or the First or Second Deputy Governor shall be received in evidence without further proof as conclusive evidence of the fact that the document is an imitation of a currency note.

Exemption from stamp duty on currency notes

44. The Bank is not liable for the payment of a stamp duty under any enactment in respect of currency notes issued by it.

Exchange of currency

45. (1) A person who delivers to the Bank an amount of currency is entitled to receive from the Bank in exchange, without charge, currency notes or coins of the same amount and of the denomination as that person may require.

(2) Where the Bank is unable to give currency notes or coins of the denomination required under subsection (1), it shall give that person currency notes or coins of the nearest denomination.

Business transaction

46. The Bank may, subject to this Act and the policies of the Bank, undertake or transact any or all of the following:

- (a) accept deposits from and make payments to Government and other public bodies, agencies or international organisations, embassies and bodies or persons specified in notices issued by the Board;
- (b) issue demand drafts and other forms of remittances made payable at its own offices or the offices of agencies or correspondents;
- (c) purchase and sell secured export bills;
- (d) purchase, sell, discount and rediscount bills of exchange and promissory notes arising out of bona fide commercial transactions bearing two or more authorised signatures and maturing within ninety days, exclusive of days of grace from the date of acquisition;
- (e) purchase, sell, discount and rediscount bills of exchange and promissory notes bearing two or more authorised signatures drawn or issued for the purpose of financing seasonal agricultural operations or the marketing of crops and maturing within one hundred and eighty days, exclusive of days of grace from the date of acquisition;
- (f) purchase, sell, discount and rediscount treasury bills of the Government publicly issued;
- (g) purchase and sell for the Bank's account, Government securities and guaranteed securities of other public corporations;
- (h) grant, on the conditions determined by the Board, advances to financial institutions for fixed periods not exceeding three months against publicly issued treasury bills of the Government maturing within ninety-one days of the issue;
- (i) grant advances for a fixed period not exceeding three months at the interest rate determined by the Board against promissory notes secured by the pledge with the Bank of
 - (i) gold, gold coin or bullion;
 - (ii) securities of the Government which have been publicly offered for sale and are to mature within a period of twenty years;

- (iii) warehouse warrants or their equivalent (securing possession of goods) in respect of staple commodities or other goods duly insured with a letter of hypothecation from the owner;
- (j) accept from customers for safe custody moneys, securities and other articles of value; and collect proceeds whether principal, interest or dividend on the moneys, securities or articles of value; and
- (k) generally conduct the business of banking for its specified customer base.

Transactions in securities

47. The Bank may issue securities of its own, specify the conditions for the securities and sell or purchase them.

Clearing houses

48. The Bank shall facilitate the clearing of cheques and other credit instruments for banking institutions.

Business the Bank may not engage in

49. (1) Except as authorised by the Board, and for the purposes of supporting the Bank's core functions, the Bank shall not

- (a) engage in a trade or have a direct interest in any commercial, agricultural, industrial or any other undertaking except an interest that the Bank may acquire in the course of the satisfaction of debts due to it;
- (b) purchase the shares of a company except shares of a financial institution or grant loans upon the security of shares;
- (c) advance money on mortgage or otherwise on the security of immovable property or the title deeds relating to that property;
- (d) become the owner of an immovable property except in so far as it is necessary for its own business premises and residence of its staff and employees;
- (e) draw or accept bills payable otherwise than on demand;
- (f) pay interest on deposits; or
- (g) accept for discount or as guarantee for an advance made by the Bank, bills or notes signed by members of the Board or by the Bank's officials or other employees.

(2) Notwithstanding paragraph (c) of subsection (1), the Bank may for the purpose of acquisition of houses by its staff, advance money on mortgage to a member of staff on terms and conditions as determined by the Board.

PART VI - FOREIGN OPERATIONS

Transactions in assets of international value

50. (1) The Bank may

- (a) purchase and sell external convertible currencies;
- (b) discount and re-discount treasury bills drawn in convertible currencies;
- (c) purchase and sell bills of exchange drawn in convertible currencies;
- (d) import, export, refine, hold, sell, transfer or otherwise deal in gold, gold coins and bullion, silver, platinum and any other precious metals as determined by the Board;
- (e) accept deposits from foreign banking institutions, international financial institutions, foreign governments and their agencies or the organs of the United Nations;
- (f) acquire, hold and transfer foreign exchange and foreign government securities;
- (g) maintain accounts with central banks and reputable international financial institutions;
- (h) act as correspondent bank or agent for an international banking institution or a monetary authority; and
- (i) effect foreign exchange transactions of any kind.

(2) The Bank shall not acquire, hold or transfer any foreign government securities unless those securities are denominated in convertible currency.

Power to borrow and guarantee

51. (1) The Bank may,

- (a) without the prior approval of the Minister borrow money from foreign institutions for a period not exceeding ninety days for the day-to-day operations of the Bank;

- (b) in accordance with this Act or any other enactment, borrow money from foreign institutions and pledge assets held by it as security for the repayment of the loan;
- (c) lend money or grant short-term credits to any financial institutions; but the Bank may, without the approval of the Minister, lend to those institutions in the ordinary course of business.

(2) The Bank may, at the written request of the Minister, guarantee a loan granted to the Government or an agency of Government by a foreign institution.

(3) The Bank shall put a limit on the aggregate of guarantees issued by it in each year.

(4) The Bank may request security to cover its exposure for any guarantee it issues.

(5) The Government may guarantee on behalf of the Republic, a loan granted under paragraph (a) and (b) of subsection (1).

Exchange rate of the cedi

52. The Board may, in consultation with the Minister, formulate exchange rate policy.

Holding of state foreign exchange

53. The Bank shall hold all foreign exchange of the State and be responsible to Parliament in the performance of its function in relation to the foreign exchange.

PART VII - BANKING SUPERVISION AND RESEARCH

Head of Banking Supervision and supervision of financial institutions

54. (1) The Bank shall have an officer designated as the Head of the Banking Supervision Department of the Bank who shall be appointed by the Board.

(2) The Head of the Banking Supervision Department shall be responsible for the supervision and examination of all banking institutions in the country and perform functions specified under any enactment to be performed by the Head of the Banking Supervision Department.

Statistical data and publication of bulletins and reports

55. For the purpose of providing the Board with information necessary for the proper formulation of monetary and credit policies, the Bank shall

- (a) collect and prepare statistics on money and banking, public finance, prices, wages, production, the balance of payment and any other statistical data that the Board may direct;
- (b) publish a monthly and quarterly bulletin on economic and financial indicators;
- (c) prepare and publish the annual report of the Bank which shall include statements about monetary policies pursued in the year under review; and
- (d) perform any other duties that the Board may direct.

Request for research information

56. (1) For the effective conduct of research, the Bank may request from an institution or a person information relating to money or banking, balance of payments and any other subjects that the Board may direct.

(2) Information received under subsection (1) shall be treated with the utmost confidence.

(3) A publication for statistical purpose or information obtained under subsection (1) shall not include personal data.

(4) A person who fails to supply information requested under subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding 500 penalty units or to imprisonment for a term not exceeding 2 years or both and where the offence is continued after conviction, to a further fine not exceeding 50 penalty units for every day on which the offence is continued.

PART VIII - ACCOUNTS AND AUDIT**Accounts and audit**

57. (1) The Bank shall keep proper books of accounts and records in relation to them.

(2) The books of accounts of the Bank shall be audited by the Auditor-General or any other auditor appointed by the Auditor-General.

General returns

58. (1) The Bank shall, within three months after the end of each financial year,

- (a) transmit a copy of the annual accounts certified by the Auditor-General to the Minister who shall, not later than one month after receipt of the annual accounts, cause the annual accounts to be published in the *Gazette*; and
- (b) submit to the Minister an annual report of the Board on its working during the financial year in question which shall be published by the Bank within six months from the end of the financial year to which it relates.

(2) The Minister shall, not later than one month after receiving the annual report, submit the annual report with the Minister's comments on it to Parliament.

(3) The Bank shall, after the fifteenth day and the last day of each month, prepare and publish returns of its assets and liabilities as at the close of business on those days; or if either of those days is a holiday, then at the close of business on the last preceding business day; and a copy of the returns, shall be transmitted to the Minister and shall be published in the *Gazette* by the Bank within one month after receipt of the returns by the Minister.

Returns relating to foreign exchange

59. (1) The Bank shall, not later than three months

(a) after the end of the first six months of its financial year, and

(b) after the end of its financial year,

submit to the Auditor-General for audit a statement of its foreign exchange receipts and payments or transfers in and outside Ghana.

(2) The Auditor-General shall, not later than three months after the submission of the statement referred to in subsection (1), submit the report on that statement to Parliament.

Financial year of the Bank

60. The financial year of the Bank shall be the same as the financial year of the Government.

Application of Part V of the Banking Law

61. The following provisions of the Banking Law, 1989 (P.N.D.C.L. 225) or any statutory re-enactment or modification of the Law shall with the modifications that are necessary apply to accounting and auditing under this Part:

(a) section 31 (which relates to the matter of keeping a bank's account);

(b) section 34(3) (which relates to the qualifications of the auditors of banks);

(c) section 37 (which relates to the remuneration of a bank's auditors); and

- (d) section 38 (which relates to the auditors' right of access to and demand for information).

PART IX - GENERAL AND SUPPLEMENTARY PROVISIONS

Training of employees of the Bank and bankers

62. (1) The Bank may, in co-operation with banking institutions in the country or with any other bodies determined by the Board establish educational institutions and facilities for the training of employees for the Bank and for the banking institutions in the country.

(2) Subsection (1) shall be without prejudice to any other banking training facilities that an institution or individual bank may have or provide.

Exemption from income tax

63. The Bank is exempted from the payment of income tax in respect of its functions under this Act.

Liquidation

64. The Bank shall not be placed in liquidation except in accordance with legislation passed for that purpose.

Bye-laws by the Board

65. (1) The Board may make bye-laws and issue notices not inconsistent with this Act, for the purposes of regulating the administration of the Bank and for the performance of its functions.

(2) Bye-laws and notices issued under subsection (1) shall be signified under the hand of the Secretary to the Board.

Regulations

66. The Minister may, after consultations with the Board by legislative instrument, make Regulations that are necessary to give effect to this Act.

Offences and penalties

67. Except as otherwise provided in this Act, a person who

- (a) contravenes a provision of this Act or Regulations made under this Act, or anything prescribed or direction made or given under this Act and published in the *Gazette*; or

- (b) knowingly makes an incorrect statement in a document submitted by that person or an incorrect reply to a question asked of that person for the purposes of this Act,

commits an offence and is liable on summary conviction to a fine not exceeding 500 penalty units or to imprisonment for a period not exceeding 2 years or to both.

Offences by bodies of persons

68. (1) 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, every director or an officer of that body shall be deemed to have committed that offence; and
- (b) in the case of a partnership, every partner or officer of that body shall be deemed to have committed that offence.

(2) A person shall not be convicted of an offence by virtue of subsection (1), if that person proves that the offence was committed without the knowledge or connivance of that person, and that that person exercised all due care and diligence to prevent the commission of the offence having regard to all the circumstances.

Interpretation

69. In this Act, unless the context otherwise requires,

“Auditor-General” includes an auditor appointed by the Auditor-General;

“Bank” means the Bank of Ghana continued in existence by section 1;

“Board” means the Board of Directors specified under section 8;

“financial institution” means an entity which may be either a depository financial institution such as a commercial bank, savings and loans company, mutual savings company, credit union or a non-depository financial institution such as a brokerage firm, insurance company, pension fund, investment company, which carries on the business of or part of whose business is any of the following activities:

- (a) taking of deposits of money from the public repayable on demand and withdrawable by cheques, drafts, orders or by other means;
- (b) financing of any activity by way of creating financial assets such as loans and advances, securities, bank deposits or otherwise, other than its own;

- (c) companies dealing in shares, stocks, bonds or other securities;
- (d) leasing, letting or delivering goods to a hirer under a hire purchase agreement;
- (e) carrying on by insurance companies of any business other than insurance;
- (f) collecting of money or accepting employer contributions and paying it out for legitimate claims or for retirement benefits;

“financial system” means a network of deposit-taking and non-deposit taking financial institutions and entities providing financial services to the public.

“foreign exchange” means

- (a) currency notes, bank notes or coins other than the currency of Ghana which are legal tender in any other country and are convertible into currency which is legal tender in any other country;
- (b) bills of exchange, travellers cheques, convertible currency, foreign government treasury bills, securities and bonds, promissory notes and balance in a bank payable otherwise than in the currency of Ghana;

“foreign institutions” means banking or financial institutions of foreign governments and agencies or institutions acting on behalf of foreign governments, banking or financial institution;

“Government” means the Government of Ghana;

“liquid assets” means the cash in till, balances deposited with the Bank of Ghana and such other assets as the Bank of Ghana may determine.

“member” means a Director of the Board;

“Minister” means the Minister responsible for Finance;

“prescribed” means prescribed by Regulations made under section 66.

“settlement system” means an arrangement by which action is taken to discharge any obligation in respect of funds or security transfers between two or more parties.

Repeals and savings

70. (1) The Bank of Ghana Law 1992 (P.N.D.C.L. 291) is hereby repealed.

(2) Notwithstanding the repeal of the enactment specified in subsection (1) any Regulations, bye-laws, notices, orders, directions, appointments, other act lawfully made

or done under the repealed enactment and in force immediately before the commencement of this Act shall be deemed to have been made or done under this Act and shall until revoked, cancelled, withdrawn, or terminated continue to have effect.

(3) Every contract in respect of any matter subsisting between the Bank and any other person and in force immediately before the commencement of this Act, shall be deemed to subsist between the Bank and that other person.

(4) The assets and liabilities of, and property vested in the Bank immediately before the coming into force of this Act shall, without further authority than this subsection vest in the Bank.

SCHEDULE
(Section 43)

I,Governor/Deputy Governor of the Bank of Ghana for the time being acting as the chief executive officer of the Bank, do hereby certify that I have examined the document marked
which purports to be a bank note of the denomination
bearing the numberand datedand that the document is an imitation of a bank note and is not a bank note issued or deemed to be issued by the Bank of Ghana.

Date of *Gazette* notification: 25th January, 2002.

Banking Act 2004 (Act 673)

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**THE SIX HUNDRED AND SEVENTY-THIRD
ACT
OF THE PARLIAMENT OF THE REPUBLIC
OF GHANA
ENTITLED
THE BANKING ACT, 2004**

AN ACT to amend and consolidate the laws relating to banking, to regulate institutions which carry on banking business and to provide for other related matters.

DATE OF ASSENT: *29th January, 2004*

BE IT ENACTED by Parliament as follows:

PART I - PRELIMINARY MATTERS

Application of the Companies Code

1. (1) This Act shall be in addition to the Companies Code, 1963 (Act 179) and shall not except as otherwise provided in this Act derogate from the provisions of that Code.

(2) Where there is a conflict or inconsistency between the Companies Code and this Act, the provisions of this Act shall prevail.

Functions of the Bank of Ghana

2. (1) The Bank of Ghana shall have an overall supervisory and regulatory authority in all matters relating to banking business and shall be responsible for

- (a) promoting an effective banking system;
- (b) dealing with any unlawful or improper practices of banks, and
- (c) considering and proposing reforms of the laws relating to banking business.

(2) The Bank of Ghana shall establish within its organisation, a Banking Supervision Department.

(3) The Bank of Ghana may authorise the Head of the Banking Supervision Department or any other official or person to exercise a power and do an act that it considers appropriate in order to discharge its responsibilities under this Act.

(4) The Bank of Ghana may, in relation to the operation of a bank; authorise any other person either generally or in respect of a particular matter, to perform a function that otherwise would be performed by the Bank.

PART II - LICENSING OF BANKS**Eligibility restricted to Ghanaian Corporate Bodies**

3. No person other than a body corporate incorporated in Ghana shall carry on the business of banking in Ghana.

Banking licence mandatory

4. (1) No person shall carry on the business of banking except by or under the authority of a licence issued in accordance with this Act.

(2) A person who carries on banking business 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 not exceeding three thousand penalty units, and
- (b) in the case of an individual to a fine not exceeding three thousand penalty units or to a term of imprisonment not exceeding ten years

Application for licence

5. (1) An application for a licence shall be made in writing to the Bank of Ghana and shall be accompanied with

- (a) a certified true copy of the Regulations or other instrument relating to the proposed bank or under which a person proposing to carry on banking business was established;
- (b) the names, addresses, and occupations of persons including their corporate affiliations who will hold significant shareholdings, directly or indirectly, in the proposed banking business and the respective values of the share holdings and their certified financial positions;
- (c) the particulars of the directors or key management personnel concerned with the management of the banking business, including their background, certified financial position, business interests and performance of the business concerns under their control or management;
- (d) the feasibility reports including a business plan and financial projections for the first five years and areas of specialisation intended;
- (e) documentary evidence of the capital, their sources and other sources of funds; and
- (f) any other particulars that the Bank may require.

(2) The Bank of Ghana may interview the promoter, directors and proposed senior management personnel in the course of an appraisal and may also inspect their books and records to satisfy itself about the representations made or information furnished by the applicant.

Provisional approval

6. (1) The Bank of Ghana may issue a provisional approval 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; and
- (b) the applicant has an initial paid-up capital that is required to hold a licence, which in the case of a
 - (i) Ghanaian bank, is not less than five billion cedis; or
 - (ii) foreign bank, is not less than eight billion cedis, of which not less than sixty per cent shall be brought into Ghana in convertible currency;
 - (iii) development bank for medium or long term financing is not less than ten billion cedis; or
 - (iv) rural bank, is not less than one hundred million cedis.

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

Invitation to public to subscribe to shares

7. (1) The applicant shall not invite capital through public issue of shares for the purpose of the proposed banking business unless the provisional approval is given in accordance with section 6.

(2) An applicant who contravenes a provision of subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding 1500 penalty units.

Final approval and issue of banking licence

8. The Bank of Ghana shall issue to the applicant a final approval and a licence to carry on banking business, after the Bank of Ghana is satisfied

- (a) with the organisational and infrastructural arrangements made by the applicant, and
- (b) that the applicant has complied with the terms and conditions stipulated in the provisional approval

Refusal of licence

9. (1) The Bank of Ghana may refuse an application for licence to carry on banking business if the Bank of Ghana is not satisfied with the merits of the application or in view of prevailing conditions in the banking sector or in keeping with its banking policy.

(2) The Bank of Ghana may give reasons for the refusal of an application.

(3) A person whose application is refused, may petition the Minister in writing.

(4) The Minister shall refer the matter to a panel.

(5) The panel shall consist of three experts, one chosen by the Bank and two by the Minister.

(6) The panel shall prepare a report which shall be submitted to the Minister for his decision.

Time limit for decision on application for banking licence

10. The Bank of Ghana shall communicate its decision on an application for a banking business licence within three months from the date of receipt of complete information.

Permissible activities of banks

11. (1) A bank shall not carry on any business other than any of the following:

- (a) acceptance of deposits and other repayable funds from the public;
- (b) lending;
- (c) financial leasing;
- (d) investment in financial securities;
- (e) money transmission services;
- (f) issuing and administering means of payment including credit cards, travellers cheques and bankers' drafts;

- (g) guarantees and commitments;
- (h) trading for own account or for account of customers in,
 - (i) money market instruments,
 - (ii) foreign exchange, or
 - (iii) transferable securities;
- (i) participation in securities issues and provision of services related to those issues;
- (j) advice to undertakings on capital structure, acquisition and merger of undertaking;
- (k) portfolio management and advice;
- (l) the keeping and administration of securities;
- (m) credit reference services;
- (n) safe custody of valuables;
- (o) electronic banking; and
- (p) any other services as the Bank of Ghana may determine.

(2) The Bank of Ghana may by notification, restrict the permissible activities of banks in general or a class of banks or an individual bank or remove the restriction so imposed as it considers appropriate

Restrictions on commercial, agricultural or industrial activities and immovable property

12. (1) Subject to subsections (2), (3) and (4), a bank shall not directly engage in any commercial, agricultural or industrial undertaking unless it establishes for that purpose a subsidiary company of the bank registered in Ghana.

(2) The equity capital invested in a subsidiary company by the bank shall not exceed fifteen per cent of the net worth of the bank and where the bank has more than one subsidiary company the equity capital invested in those subsidiary companies by the bank shall not exceed in the aggregate twenty-five per cent of the net worth of the bank.

(3) The aggregate amount of any loan, advance, credit or other facility and equity capital which a bank may grant and invest under subsection (2) shall not at any one time exceed

- (a) twenty-five per cent of the net worth of the bank, in the case where the bank owns one subsidiary company; or
- (b) thirty-five per cent of the net worth of the bank, in the case where the bank owns more than one subsidiary company.

(4) A bank shall not build, purchase or take a lease of immovable property except

- (a) for the provision of premises or housing the business or staff of the bank; or
- (b) for the provision of amenities for its staff.

(5) Notwithstanding anything in this section, a bank may accept immovable property as security for any debt or other liability and may acquire an interest which a bank may lawfully acquire in the satisfaction of a debt due to it:

(6) An interest acquired under subsection (5) shall be disposed of by the bank within one year after the acquisition or within a longer period that may be determined by the Bank of Ghana on application made by the bank

(7) This section does not prevent a bank from letting or subletting a part of immovable property which is ordinarily used for housing its business where the property is in excess of the immediate requirements of the bank

(8) A bank which contravenes a provision of this section commits an offence and is liable on summary conviction to a fine not exceeding 1,500 penalty Units.

Grounds for revoking licence

13. (1) The Bank of Ghana may revoke a licence granted to a bank under section 8, if it is satisfied that,

- (a) it has, in connection with the application for the licence, been provided with false, misleading or inaccurate information by or on behalf of the applicant bank or that material information has been suppressed, or
- (b) the bank has failed to fulfill or comply with the terms and conditions stipulated in the licence, or
- (c) the bank has failed to commence business within one year from the date the licence was issued.

(2) The power to revoke a licence in terms of subsection (1) are in addition to and without prejudice to the powers given under section 63 to revoke a licence or take any other penal action under this Act

Revocation procedure

14. (1) Where the Bank of Ghana proposes to revoke the licence of a bank, it shall give notice in writing to the bank, specifying the proposed action and the grounds on which the action is proposed and give the bank an opportunity to make written representations within thirty days of service of the notice.

(2) After the expiry of the notice period and considering any representations made by the bank, the Bank of Ghana may decide whether to take the proposed action or not, or take a variant of the proposed action that it considers appropriate.

(3) Where the Bank of Ghana revokes the licence of a bank, the bank shall cease to do banking business if it has already commenced banking business and shall surrender the licence.

Moratorium due to revocation of licence

15. Where the Bank of Ghana considers that a delicensed bank is not in a position to make orderly and full payment to its depositors and creditors, it shall simultaneously impose a moratorium on payments under section 66, pending the winding up or a decision on the future set up of the bank or its appeal.

Sanctions for unauthorised banking

16. A person who carries on banking business without a licence or contravenes section 17 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 which is equivalent to the amount of deposits received in contravention of this Act, and
- (b) in the case of an individual, to a fine which is equivalent to the amount of deposits received in contravention of this Act or to a term of imprisonment not exceeding five years.

Use of word 'bank'

17. (1) A person, other than a bank, shall not describe itself or otherwise hold itself out as a bank, or carry on banking in the country.

(2) The use of the word “bank” in the name of an association of banks or of employees of a bank formed for the promotion of mutual interests of its members shall not be construed as a contravention of subsection (1)

Inspection of suspected institutions doing banking without licence

18. (1) The Bank of Ghana may inspect or cause to be inspected the records of a person, if it has reasonable grounds to suspect that that person is carrying on a form of banking business without holding a valid licence issued under this Act.

(2) Where the Bank of Ghana, upon carrying out the inspection, finds out that there is evidence to prove that an unauthorised banking business is carried on, partly or wholly, the inspecting official may seize the relevant records to facilitate prosecution by the Bank.

Display of banking licence

19. (1) A bank shall display at its head office and all its branches and agencies, copies of the banking licence for the information of the public.

(2) A bank which fails to display at its head office and all of its branches and agencies copies of its banking licence shall pay to the Bank of Ghana a fine of 1000 penalty units.

Places of business to be licensed

20. (1) A bank shall not carry on banking business at a place which is not a place authorised in accordance with this Act.

(2) A bank shall not open, close or relocate

(a) a branch,

(b) an agency,

(c) a mobilization centre, or

(d) its head office,

for purposes of carrying on banking business unless specifically authorised by the Bank.

(3) A bank which contravenes a provision of this section commits an offence and is liable on summary conviction to a fine not exceeding 1000 penalty units.

Opening of representative office

21. (1) A foreign bank incorporated abroad shall not set up a representative office in the country, unless it has obtained the prior approval in writing of the Bank.

(2) A foreign bank setting up a representative office shall apply to the Bank of Ghana with the information and documents that the Bank of Ghana may require, including permission from the supervisors in the country where that bank is incorporated.

(3) A representative office permitted to be set up shall not transact any form of banking business in the country.

(4) A foreign bank which does not comply with this section commits an offence and is liable on summary conviction to a fine not exceeding 2,000 penalty units.

Changes of regulations of banks

22. (1) A bank shall, prior to the making of an amendment to its regulations or other instrument under which it was established, furnish to the Bank of Ghana particulars of the proposed amendment for approval.

(2) The bank shall file with the Bank of Ghana, a certified copy of the amendment within one month after it has been effected.

(3) A bank which contravenes this section shall pay to the Bank of Ghana a fine not exceeding 2,500 penalty units.

PART III - CAPITAL AND RESERVES

Capital adequacy

23. (1) A bank shall at all times while in operation maintain a minimum capital adequacy ratio of ten per cent.

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

(3) 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.

Additional capital in respect of special risks

24. The Bank of Ghana may require a bank to maintain additional capital backing as it may consider appropriate in respect of specific concentration of risks.

Capital adequacy on consolidated basis

25. The Bank of Ghana may require a bank which has a subsidiary to calculate and maintain the minimum capital adequacy ratio on a consolidated basis.

Notifying non-compliance with capital requirements

26. (1) Where a bank fails to comply with the prescribed minimum capital adequacy ratio, the bank shall promptly notify the Bank of Ghana of the non-compliance and provide the Bank with the particulars of that non-compliance that the Bank may require.

(2) A bank which fails to notify the Bank of Ghana as required under sub-section (1) commits an offence and is liable on summary conviction to a fine not exceeding 1000 penalty units.

Penalties for non-compliance with capital requirements

27. (1) A bank which fails to maintain the level of capital adequacy ratio determined under section 23 is liable to pay to the Bank of Ghana on each day that the deficiency continues as penalty one-half per mille of the difference between the capital adequacy ratio that the bank should have maintained and the level of capital adequacy actually maintained by the bank.

(2) Where the deficiency is not rectified within one hundred and twenty days after it has occurred, the Bank of Ghana may prohibit the bank from granting loans or credits or making investments or accepting deposits

(3) Each director and chief executive officer of a bank which fails to comply with the minimum capital adequacy ratio commits an offence and is liable on summary conviction to a fine not exceeding 500 penalty units that the Bank of Ghana may impose.

Persistent capital ratio deficiency

28. Where the Bank of Ghana, after discussion with a bank is of the opinion that the capital ratio deficiency will persist, the Bank of Ghana shall facilitate merger of the bank with a healthy bank or wind up or take whatever action that the Bank of Ghana considers appropriate.

Transfer of profits to Reserve Fund

29. (1) A bank shall maintain a Reserve Fund into which shall be transferred out of the bank's net profits for each year, before the bank declares a dividend and after it has made provision for any taxes, the following amounts:

- (a) where the amount of the bank's Reserve Fund is less than fifty per cent of its paid-up capital, an amount which is not less than fifty per cent of the bank's net profit for the year;
- (b) where the amount of the bank's Reserve Fund is fifty per cent or more but less than hundred per cent of its paid up capital, an amount which is not less than twenty five per cent of the bank's net profit for the year; or

- (c) where the amount of the bank's Reserve Fund is equal to one hundred per cent or more of its paid-up capital, an amount equal to twelve and half per cent of the bank's net profit for the year.

(2) A bank which fails to maintain a Reserve Fund in accordance with sub-section (1) commits an offence and is liable on summary conviction to a fine not exceeding 1000 penalty units.

Restrictions on declaration of dividend

30. (1) A bank shall not declare or pay dividend on its shares unless it has,

- (a) completely written-off all its capitalised expenditure
- (b) made the required provisions for non-performing loans and other erosions in assets values,
- (c) satisfied the minimum capital adequacy ratio requirement, and
- (d) completely written-of all its accumulated operating losses from its normal operations.

(2) For the purposes of subsection (1), "capitalised expenditure" includes preliminary expenses, share selling commission, brokerage losses incurred by the bank and any other item of expenditure not represented by tangible assets

(3) Where the payment of dividend results in withdrawal of a part of the free reserves due to inadequacy of the profit for the year or where the statutory report of the auditors on the annual accounts of the bank is not satisfactory, the bank may declare a dividend of its shares only after obtaining the prior approval in writing of the Bank of Ghana.

(4) Where a bank declares or pays a dividend in contravention of subsection (1) each director of the bank is liable to pay to the Bank of Ghana a penalty of not less than 100 penalty units

(5) A director is not liable to pay the penalty if

- (a) the contravention was committed without the director's consent or connivance by a person other than the director.
- (b) the director exercised all due diligence to prevent the commission of the contravention having regard to all the circumstances.

(6) A bank which contravenes a provision of this section commits an offence and is liable on summary conviction to a fine not exceeding one thousand penalty units.

PART IV - LIQUIDITY**Maintenance of Liquid Assets**

31. (1) The Bank of Ghana may prescribe

- (a) that a bank shall hold liquid assets or a specific amount and composition,
- (b) the amount provided for under paragraph (a) either as a certain percentage of all the bank's deposit liabilities or in any other manner, and
- (c) different percentages for different classes of deposits or assets, as the Bank of Ghana may determine in any particular case.

(2) Where a doubt arises as to whether a particular liability of a bank is to be regarded as a deposit, the doubt shall be resolved by the Bank of Ghana.

(3) A bank shall, at a time and in respect of a period that the Bank of Ghana may require, submit to the Bank of Ghana a report on the liquid assets of the bank.

(4) A prescription by the Bank of Ghana under this section shall be by notice addressed to the bank and may be published in the *Gazette*.

(5) A bank which fails to comply with the requirement under subsection (3) shall pay to the Bank of Ghana a fine not exceeding 250 penalty units.

Notification of non-compliance with minimum liquidity requirements

32. A bank which fails to comply with the required liquidity ratio shall promptly notify the Bank of Ghana of the non-compliance and provide the Bank of Ghana with the particulars of the non-compliance.

Penalties for non-compliance with liquidity requirements

33. (1) A bank which fails to hold liquid assets in accordance with section 31 commits an offence and is liable in addition to any other penalty to pay interest to the Bank of Ghana at a rate to be prescribed by the Bank of Ghana on the difference between the total amount of liquid assets which it is required to hold and the total amount of liquid assets held by it, in respect of a period during which a difference exists.

(2) The Bank of Ghana may direct that during a period specified in the direction, the bank

- (a) shall discontinue or limit in a manner specified, the granting of credit or the making of investments or capital expenditure, and
- (b) shall not distribute dividends to its shareholders.

(3) A bank which makes a fresh advance to a person during the existence of a deficiency in the amount specified of its liquid assets without the approval of the Bank of Ghana shall pay to the Bank of Ghana a fine not exceeding 500 penalty units.

(4) A bank which contravenes a provision of this section shall, in addition, be liable to pay to the Bank of Ghana,

- (a) in the case of a contravention of subsection (1), a penalty in respect of each day during which the deficiency continues, of an amount calculated as one half per mille of the deficiency which exists on that day; and
- (b) in the case of a contravention of subsection (3), a fine of not less than 40 penalty units for each day that the contravention continues.

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

(6) A bank which fails to furnish the information required under subsection (5) within the period specified shall pay to the Bank of Ghana a fine not exceeding 250 penalty units for each day during which the default continues.

(7) The Bank of Ghana may also levy on the directors or chief executive officer of the non-compliant bank or both, a penalty in respect of each day during which the deficiency continues of an amount calculated as one half per mille of the deficiency which exists on that day or any other amounts that the Bank of Ghana may consider appropriate.

PART V - OWNERSHIP AND CONTROL

Transfer of shares affecting significant shareholdings

34. A person

- (a) shall not acquire, directly or indirectly, shares in a bank which, together with existing direct or indirect holdings of that person, constitute a significant shareholding, or
- (b) who has a significant shareholding, directly or indirectly, in a bank, shall not sell or dispose of shares in the bank to any other person whether or not by virtue of the sale or disposal that person ceases to have significant shareholding in the bank,

unless the Bank of Ghana is notified within three months by that bank of the acquisition or disposal and that bank obtains the prior approval in writing of the Bank of Ghana.

Disapproval of transfer of shares

35. The Bank of Ghana may disapprove a proposed transfer of shares in the interest of sound and prudent management of a bank by preventing

- (a) the acquisition by a person who, in the opinion of the Bank of Ghana, may exercise influence to the detriment of that bank
- (b) the sale or disposal of shares by a promoter or a director, or a person who has a controlling interest which could be detrimental to that bank, or
- (c) a transaction in any other situation in which the Bank of Ghana has reason to believe that the transaction will be detrimental to that bank

Prohibition of transfers of, and changes in the controlling interests

36. (1) A person shall not enter into an agreement or arrangement

- (a) which will result in a change in the control of a bank or its holding company,
- (b) for the sale, disposal or transfer of the whole or a part of the business of a bank,
- (c) for the amalgamation or merger of a bank with any other bank or institution.
- (d) for the reconstruction of a bank,

unless the parties to the agreement or arrangement have submitted an application on the proposed agreement or arrangement and all other relevant information and documents for the approval of the Bank of Ghana.

(2) The Bank of Ghana may in writing require the applicants or any of them or any person who is a director or manager of any of the applicants to provide any additional information or documents

(3) Upon receiving the application and any other information and documents in accordance with subsection (2), the Bank of Ghana may consider the application and refuse or approve it.

(4) Where the application is approved, it may be made subject to the modifications, variations or conditions that the Bank of Ghana may prescribe.

Penalties for non-compliance

37. (1) Where the Bank of Ghana is satisfied that a person has contravened a provision of section 34, 35 or 36, it may by directive

- (a) annul the transfer, merger, amalgamation or reconstruction,
- (b) prohibit the exercise of voting rights in respect of the shares, or
- (c) prohibit the payment of dividend in respect of the shares, or
- (d) prohibit the issue of 'bonus shares' or 'rights issue' in respect of the shares.

(2) A directive issued by the Bank of Ghana under subsection (1), shall be in writing and shall be binding on the parties to the share transfer and the bank concerned.

Disqualification of directors, officers or employees

38. (1) A person shall not be appointed or elected, or accept appointment or election, as a director, chief executive officer or employee of a bank if that person

- (a) has been declared to be of unsound mind or is detained as a criminal lunatic under any law in force in Ghana,
- (b) has been declared insolvent, has entered into terms with any person for payment of that person's debt or has suspended payment of the person's debt;
- (c) is convicted of an offence involving fraud, dishonesty or moral turpitude,
- (d) has been a director or manager or associated with the management of an institution which is being or has been wound up by a court of competent jurisdiction due to offences committed under a law or a bankruptcy,
- (e) is a director of another bank,
- (f) is under the age of eighteen years, or
- (g) is not, in the opinion of the Bank of Ghana, a fit and proper person to be a director

(2) Where a person is subject to a disqualification under subsection (1) that person shall immediately cease to hold office and the bank shall immediately terminate the appointment of that person.

(3) A person who contravenes a provision of subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding 250 penalty units or to a term of imprisonment not exceeding 12 months.

Disclosure of interest

39. (1) A person shall before assuming office as a director of a bank, declare to that bank, that person's

- (a) professional interests or the offices that person holds as manager, director, trustee or by any other designation, and
- (b) investment or business interests in firms, companies and institutions, as a significant shareholder, director, partner, proprietor or guarantor, with a view to prevent a conflict of interest with that person's duties or interests as a director of the bank

(2) A director of a bank shall, during the tenure of office as a director of the bank, declare to the board of directors of the bank, the changes in the director's business interests or holding of offices as and when they occur.

(3) A director of a bank who has, directly or indirectly,

- (a) an interest in a proposed credit facility to be given to a person by the bank, or
- (b) an interest in a transaction that is proposed to be entered into with any other person,

shall immediately declare the nature and the extent of that interest to the board of directors and shall not take part in the deliberations and the decision of the board of directors with respect to that request.

(4) A declaration under subsection (3) shall form part of the proceedings of the meeting of the board of directors.

(5) A proposal in which a director has interest, directly or indirectly, shall be considered and decided upon by the board of directors.

(6) A person who contravenes a provision of this section ceases to be a director of the bank and the participation of that person in an approval by the board of directors renders the approval unenforceable

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 Managing Director or Deputy Managing Director of the bank, each of whom shall be ordinarily resident in the country.

(2) The managing director shall be the chief executive of the bank.

(3) Where the managing director is unable to perform the functions of the chief executive due to illness, absence from the country or any other sufficient cause, the deputy Managing director of the bank shall after notifying the Bank of Ghana, act as the chief executive.

(4) A bank shall promptly notify the Bank of Ghana of the changes in the membership of the board of directors.

(5) Where the Bank of Ghana considers that a director is not a fit and proper person, it shall direct the removal of the director after hearing the bank

(6) A bank which contravenes subsection (1) or (4) shall pay to the Bank of Ghana a fine of 1000 penalty units.

PART VI - RESTRICTIONS ON LENDING AND INVESTMENTS

Prohibition of advances against security of own shares

41. (1) A bank shall not grant any advances loans or credit facilities including guarantees, against the security of,

- (a) its own shares,
- (b) the shares of its holding company,
- (c) the shares of any of its subsidiaries, or
- (d) the shares of any of the subsidiaries of its holding company.

(2) A bank which contravenes a provision of subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding 1000 penalty units.

Limits on exposures

42. (1) A bank shall not take financial exposure in respect of any one person or a group of persons which constitutes in the aggregate a liability to the bank amounting to more than twenty-five per cent of the net own funds of the bank.

(2) For the purposes of subsection (1), the limits of the aggregate of unsecured financial exposure shall not exceed ten per cent of the bank's net own funds.

(3) Subsection (1) does not apply to transactions between banks and licensed non-banking financial institutions except otherwise specified by the Bank of Ghana.

(4) A bank which assumes financial exposure in contravention of subsection (1) shall pay to the Bank of Ghana a fine of 1000 penalty units.

Restrictions on exposure

43. (1) A bank shall not take unsecured financial exposure in respect of any of its

- (a) directors or significant shareholders,

- (b) firms or companies in which a director or a significant shareholder is interested as director, controlling shareholder, partner, proprietor, employee, or guarantor,
 - (c) holding or subsidiary companies of the company in which a director is interested, or
 - (d) directors' relatives or significant shareholders' relatives,
- unless the prior written approval of the Bank of Ghana is obtained in respect of that unsecured exposure.

(2) Where the financial exposure is on secured basis, the aggregate liability to the bank in respect of a director or significant shareholder or their related parties, as indicated in subsection (1), shall not exceed ten per cent of the bank's net own funds.

(3) The board of the bank shall be the only authority to approve or sanction any financial exposures of the bank to any of its directors or significant shareholders or related parties specified in subsections (1) and (2)

(4) The financial exposure of a bank shall not be written off or waived fully or partially, without the sanction of the bank's board and the prior approval in writing of the Bank of Ghana.

(5) A bank which contravenes a provision of this section shall pay to the Bank of Ghana a fine of 1000 penalty units.

(6) For the purposes of this section "relative" includes spouse, son, daughter, step son, step daughter, brother, sister, father and mother.

Restrictions on lending to staff

44. (1) A bank shall not grant to any of its officers and employees any unsecured advances or credit facilities, the aggregate amount of which exceeds two years' salary of the officer or employee.

(2) In the case of advances granted to an executive officer of a bank or related parties, the limitations that are applicable to directors under subsections (1) to (5) of section 43 shall apply to the executive officer.

(3) A bank which grants unsecured advances or credit facilities in contravention of subsection (1) is liable to pay to the Bank of Ghana a fine of an amount calculated as one-half per mile of the over-exposure which exists on that day and shall in addition be liable to pay to the Bank of Ghana a penalty not exceeding 1000 penalty units.

Requirements for lending to related parties

45. (1) In considering the approval of credit facilities to any of its directors, executive officers or the persons connected to them, under sections 43 and 44(2), a bank 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 bank or other persons to whom credit facilities are given;
- (b) the terms of the credit facility are not less favourable to the bank than those normally offered to other persons; and
- (c) the giving of the credit facility is in the interests of the bank.

(2) The credit facility shall be approved by all other directors of the bank at a duly constituted meeting of the directors where not less than three quarters of all the directors of the bank are present and the approval has been recorded in the minutes of that meeting.

(3) A bank which contravenes subsections (1) and (2) shall pay to the Bank of Ghana, a fine not exceeding 1000 penalty units.

Restriction on establishment of subsidiary company

46. (1) A bank shall not establish a subsidiary company without the prior approval in writing of the Bank of Ghana.

(2) A bank which establishes a subsidiary company contrary to subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding 1000 penalty units.

Limits on investment in respect of subsidiary companies

47. (1) The equity capital invested by a bank in its subsidiary company shall not exceed fifteen per cent of the net own funds of the bank.

(2) Where the bank has more than one subsidiary company, the aggregate of equity capital invested in all the subsidiary companies by the bank shall not exceed twenty-five per cent of its net own funds.

(3) The aggregate amount of financial exposure including the credit facilities which a bank may take in respect of its subsidiaries, shall not exceed

- (a) twenty-five percent of the bank's net own funds where the bank has only one subsidiary company, or
- (b) thirty-five per cent of the bank's net own funds where the bank has more than one subsidiary company.

(4) A bank which contravenes a provision of this section commits an offence and is liable on summary conviction to a fine not exceeding 1000 penalty units.

Limits on investment in respect of other institutions

48. (1) A bank shall not invest or hold investments in the share capital of a body corporate or an institution other than its subsidiaries, the aggregate amount of which exceeds ten per cent of the net own funds of the bank.

(2) A bank which contravenes subsection (1) is liable to pay to the Bank of Ghana a fine not exceeding 1000 penalty units.

Reporting of large exposures

49. (1) A bank shall report to the Bank of Ghana, the particulars of each large financial exposure, in the form and at the intervals, that the Bank of Ghana may require.

(2) A bank which fails to comply with subsection (1) is liable to pay to the Bank of Ghana a fine not exceeding 1000 penalty units.

Powers to vary the prudential limits

50. The Bank of Ghana may vary any of the prudential limits that are prescribed under the various provisions of Part VI, for all the banks or a particular bank, for the period that the Bank of Ghana thinks fit.

PART VII - POWERS OF SUPERVISION AND CONTROL**Regulations**

51. The Minister may, after consultation with the Bank of Ghana, by legislative instrument make regulations prescribing anything required or authorised to be prescribed under this Act or such regulations as may be necessary to give full effect to the provisions of this Act.

Directives

52. (1) The Bank of Ghana may issue directives to banks generally or to a particular bank where the Bank of Ghana is satisfied that

- (a) it is necessary to secure the proper management of a bank generally,
- (b) it is necessary 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,
- (c) it is necessary in the interests of bank policy.

(2) Bank of Ghana may issue directives providing for:

- (a) accounting, management information and internal controls including,
 - (i) the accuracy and reliability of the accounting system in general, and the completion of the prudential returns of the banking supervision department,
 - (ii) the effectiveness of management information systems, and
 - (iii) the effectiveness and enforcement of internal controls;
- (b) comments to be made on the financial accounts of the bank which shall contain, among others,
 - (i) the financial performance of the bank during a period under review including the reliability and composition of reported earnings, the breakdown and analysis of operating costs, the liquidity and capital adequacy ratios,
 - (ii) the accounting policies and valuation criteria applied in the preparation of the accounts,
 - (iii) re-classifications and other adjustments made by the auditors to the accounts originally submitted for audit,
 - (iv) details of the adjustments not made to the accounts because they are not considered to be material,
 - (v) details of the areas where the manual of accounting for banks issued by the Bank of Ghana has not been complied with,
 - (vi) the full accounts of the bank for the period under review;
- (c) regarding the adequacy of provisions made
 - (i) against the advances portfolio investment and other asset accounts,
 - (ii) against off-balance sheet items, and
 - (iii) for credits, accruals and other liabilities;
- (d) audit work including
 - (i) the adequacy of work undertaken by the bank's internal audit department, and

- (ii) the amount of audit work undertaken in particular areas including scope of tests, sampling criteria, coverage achieved, extended work, confirmation exercise with third parties

(3) The Bank of Ghana may modify a directive issued under subsections (1) and (2) as it considers fit and those banks or that bank shall comply with the modification

(4) A bank which fails to comply with the Bank of Ghana directives is liable to pay to the Bank of Ghana a fine not exceeding 1000 penalty units.

Information and periodic returns

53. (1) The Bank of Ghana shall, for the purposes of supervision, require a bank to submit to it any information or data relating to the assets, liabilities, income, expenditure of that bank, or any of that bank's affairs, in the prescribed form, at an interval and within the times that the Bank of Ghana may stipulate and that bank shall comply with the requirement.

(2) The Bank of Ghana may impose fines not exceeding 500 penalty units on a bank for,

- (a) non-submission,
- (b) incomplete submission,
- (c) delayed submission, or
- (d) inaccurate submission,

of the required information, data, statements or returns.

On-site examination

54. (1) The Bank of Ghana shall, without prior notice, carry out an examination of the operations and affairs of a bank, with reference to its books and records including documents, at intervals of not less than once a year.

(2) The examination shall be carried out in a month of the year as the Bank of Ghana may consider appropriate.

Investigation or scrutiny

55. Without prejudice to its powers to examine banks under section 54, the Bank may carry out investigations or scrutiny into a specific matter relating to a bank's affairs and for that purpose the Bank of Ghana shall have the necessary powers.

Power of on-site examiners

56. (1) A person who is authorised by the Head of Banking Supervision to examine or investigate or for any other purpose, shall have a right of access to the bank's books

and records including documents, minute books, customer files, personnel files, cash and securities and information in an electronic medium, and the bank shall cooperate and assist that person.

(2) A person who is authorised by the Head of Banking Supervision to examine or investigate or for any other purpose shall have a right to call upon any director, officer or any other employee of a bank to furnish that person any information and explanation which that authorised person may consider necessary and that official shall comply.

(3) A person who is authorised by the Head of Banking Supervision may, if that person considers it necessary in the course of an examination or investigation of a bank, order any bank official or employee, orally or in writing, to attend before that authorised person and testify in relation to a matter under examination and the bank official or employee shall comply with the order.

(4) A non-compliance with a requirement of subsections (1) to (3) or obstructing the authorised person from discharging those duties is an offence under this Act.

(5) A bank which or a person who fails to comply with any provision of this section is liable to pay to the Bank of Ghana, a fine not exceeding 1000 penalty units.

Taking custody of records

57. (1) An official of the Bank of Ghana, who is authorised to carry out an examination or investigation of a bank may, if that official considers it necessary, by an order in writing issued to the chief executive of that bank, take custody of any records, files or any other documents relevant to the examination or investigation after giving to that bank due acknowledgement in writing.

(2) The Bank of Ghana official authorised under subsection (1) shall take reasonable care to protect that document in that official's custody and account for its disposal.

Verification of information

58. (1) The Head of Banking Supervision may authorise any of its officials or qualified auditors to verify with reference to a bank's books and records, any return, information or data furnished to it by that bank and report on its accuracy.

(2) The bank shall provide access and facilities to the authorised official or auditor to carry out the official's or auditor's task

(3) A bank which fails to provide access and facilities to the authorised officer is liable to pay to the Bank of Ghana a fine not exceeding 1000 penalty units.

On-site examination reports

59. (1) Where an examination has been conducted by the Bank of Ghana under section 54, the Bank of Ghana shall furnish a copy of its report to the bank and call upon

the bank to provide within thirty days from the date of the receipt of the report, a written explanation on the findings contained in the report and action taken, within a specified time.

(2) A bank which fails to submit its explanation under subsection (1) is liable to pay to the Bank of Ghana a fine not exceeding 1000 penalty units

Follow-up action on on-site examination reports

60. (1) The Bank of Ghana may, after examining a bank's explanation issue a directive based on the explanation to that bank to take the remedial action that the Bank of Ghana may specify and that bank shall comply with the directive.

(2) A bank which fails to comply with a directive under subsection (1), is liable to pay to the Bank of Ghana, a fine not exceeding 1000 penalty units

Banks to co-operate with conservator

61. (1) Each director and official of the bank shall co-operate and assist the conservator to carry out the conservator's responsibilities under this Act.

(2) A director or bank official who obstructs the conservator in the performance of the conservator's functions commits an offence and is liable on summary conviction to a fine not exceeding 500 penalty units or to a term of imprisonment not exceeding 2 years.

Mandatory revocation of banking licence

62. (1) The Bank of Ghana shall revoke the licence given to a bank to carry on banking business when the entire capital base of the bank is eroded and the liabilities exceed the assets unless the shareholders are able to inject additional capital to restore the bank to normalcy within six months from the time of the capital erosion.

(2) On the revocation of the licence under subsection (1), the Bank of Ghana shall impose a moratorium under section 65 and petition the High Court for the winding up of the bank.

Hearing of banks in matters relating to revocation of licence

63. (1) When the Bank of Ghana intends to take an action under section 62, it shall give notice in writing to the bank or to the director or the managing director, and give the bank and that director or managing director an opportunity to submit any explanations within a specified time.

(2) Notwithstanding subsection (1), if the Bank of Ghana is of the opinion that delaying the intended action is not in the interests of the bank, it may proceed with its intended action and give a hearing to the persons affected by the action.

Issue of final orders after examining a bank

64. The Bank of Ghana may, after examining the explanations of the bank, the director or the managing director at any stage,

- (a) confirm the action already taken, or
- (b) decide to take the action indicated in the notice to the bank or to the persons affected by the action, or
- (c) modify the action, or
- (d) cease or refrain from taking any other action, as it may consider fit and issue orders in writing accordingly.

Moratorium

65. (1) The Bank of Ghana may, if it

- (a) is satisfied that a bank is temporarily or otherwise not likely to meet its obligations in full to its depositors or creditors, or
- (b) intends to revoke a licence issued to a bank to carry on banking business, order the bank to suspend banking operations including payments to depositors or creditors, either in full or partially, for a limited period not exceeding ninety days from the date of notice, to facilitate arrangements for orderly payments or pending decision on the bank's future set up.

(2) An order issued under subsection (1) may be extended for a further period not exceeding ninety days or modified as the Bank of Ghana may consider fit.

Appeal to Minister against orders of the Bank of Ghana

66. (1) A bank, the director or the managing director aggrieved by an order issued by the Bank of Ghana under section 65, may appeal or submit representations to the Minister of Finance, within fourteen days from the date of receipt of the Bank's order.

(2) The Minister shall give a hearing to the bank, the director, or the managing director and the Bank of Ghana and take a decision on the appeal or representations within one month from the date of receipt of the appeal or representations.

(3) The Minister shall not at any stage of the appeal or representations make an interim order suspending operation of a moratorium order issued by the Bank of Ghana under section 65.

Ceasing of operations following revocation of licence

67. (1) Where the Bank of Ghana revokes a banking licence, the bank shall cease operations, if the bank has not ceased operation following an order of moratorium, and surrender the licence to the Bank of Ghana.

(2) A bank which fails to comply with subsection (1) commits an offence and every director is liable on summary conviction to a fine of not less than 1000 penalty units or in default, to a term of imprisonment not exceeding 5 years.

Winding up of bank and appointment of liquidator

68. (1) Where the Bank of Ghana

- (a) has revoked the banking license of a bank, and
- (b) is of the opinion that the bank is not likely to pay its depositors and creditors in full, it 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 affected bank.

(2) The Bank of Ghana shall by legislative instrument make regulations prescribing the procedure necessary to give effect to this section of the Act.

(3) A person who is not satisfied with the decision of the Bank of Ghana or of the liquidator may petition the Minister, who shall refer the matter to an official mediator for consideration.

(4) The Minister shall adopt the decision or the settlement terms of the mediation.

(5) Where the mediation fails to arrive at a settlement, the Minister shall decide the matter, taking into consideration the findings and conclusions of the mediation.

Voluntary winding-up

69. (1) Notwithstanding anything to the contrary in the Companies Code 1963 (Act 179) or any other law, a bank shall not voluntarily wind up unless the Bank of Ghana has certified in writing that the bank is able to meet its obligations in full to the depositors and creditors as the obligations accrue.

(2) If the Bank of Ghana, at any stage of the voluntary winding up, considers that the bank which is being wound up is unable to meet its obligations in full to depositors or creditors, the Bank of Ghana shall appoint a liquidator to wind up the affairs of the bank and the provisions of subsections (2) to (5) of section 68 shall apply.

PART VIII - ACCOUNTS AND AUDIT**Guidelines on accounting standards and disclosures in balance sheet and profit and loss account**

70. (1) The Bank of Ghana may lay down the guidelines to be followed by banks in respect of accounting policies, practices, presentation of annual accounts and disclosure of information in the annual accounts.

(2) A bank which does not comply with subsection (1) shall pay to the Bank of Ghana a fine not exceeding 1000 penalty units.

Accounting records

71. (1) A bank 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 bank and its results for the accounting period.

(2) The accounting records of the bank shall be kept at the bank's head office in Ghana.

(3) A bank which contravenes a provision of this section commits an offence and is liable on summary conviction to a fine not exceeding one thousand penalty units.

Financial statements

72. (1) A bank shall prepare, at the expiration of each calendar year in respect of the business transacted by it with reference to that year, financial statements comprising balance sheet, profit and loss account and cash flow statement.

(2) The financial statements referred to in subsection (1) shall be approved by the board of directors of the Bank and signed by at least two directors of the bank.

(3) A bank which fails to prepare a financial statement in accordance with this section is liable to pay to the Bank of Ghana, a fine not exceeding 1000 penalty units.

Audit of bank's accounting records

73. The balance sheet and profit and loss account referred to in section 73 and the accounting records of the bank for the period shall be audited by qualified auditors duly appointed in accordance with this Act.

Appointment of auditors

74. (1) An auditor of a bank shall, except as provided in subsection (2) of this section and subsection (2) of section 75 be appointed at an annual general meeting of the bank.

(2) The directors of a bank may appoint

- (a) the first auditor of the bank; or
- (b) an auditor to act in place of the auditor who is for any reason unable or unwilling to act until a new auditor is appointed at an annual general meeting or until the Bank of Ghana appoints an auditor under section 75(2).

(3) A person shall not be appointed an auditor of a bank unless that person

- (a) is a member of the Institute of Chartered Accountants under the Chartered Accountants Act, 1963 (Act 170); or
- (b) is not disqualified by a law in force in this country *or* in any other country from being appointed as an auditor of a body corporate.

The Bank of Ghana's powers to appoint auditors

75. (1) A bank which for a continuous period of three months is without an auditor shall notify the Bank of Ghana.

(2) The Bank of Ghana shall upon being notified under subsection (1) appoint an auditor for that bank to hold office until the next annual general meeting of that bank.

(3) A bank which fails to notify the Bank of Ghana as required under sub-section (1) shall pay to the Bank of Ghana a fine not exceeding 1000 penalty units.

Auditor's remuneration

76. (1) The remuneration of an auditor of a bank shall be determined in accordance with section 134 (10) of the Companies Code, 1963 (Act 179).

(2) Where for any reason an auditor is appointed to fill a temporary vacancy in the office of the bank's auditor, that auditor shall be paid an equitable proportion of the remuneration fixed under subsection (1) as the bank, having regard to all the circumstances of the case, may determine.

Auditor's right to information

77. (1) An auditor of a bank shall have

- (a) a right of access to the accounting records, minutes book, files and other relevant documentary evidence, cash and securities of the bank, and

- (b) a right to request information and explanation from the directors, management, staff and appointed agents of the bank requisite for the efficient performance of the duties of the auditor.

(2) For the purposes of subsection (1) "accounting records" include computerised and manual files, vouchers, reports and other transactions of the bank.

Auditor's report

78. (1) An auditor of a bank shall submit

- (a) to that bank and

- (b) to the Bank of Ghana,

at least once in every year, a statutory audit report and a long form audit report.

(2) The auditor shall state in the statutory report whether or not

- (a) the accounts give a true and fair view of the state of affairs of the bank and its results for the period under review;

- (b) the auditor was able to obtain all the information and explanation required for the efficient performance of the auditor's duties;

- (c) the bank's transactions are within the powers of the bank; and

- (d) the bank has complied with the provisions of this Act.

(3) The auditor shall submit a long form audit report on the accounts and the affairs of the bank generally and in addition comment on the matters to be specified in Regulations made by the Bank of Ghana.

Special audit and additional information

79. The Bank of Ghana may, at the expense of a bank,

- (a) require the auditor to undertake a further audit or provide additional information or both as the Bank of Ghana considers necessary; or

- (b) engage an independent auditor to audit the whole or part of the accounts of the bank.

Termination of auditor's appointment

80. (1) An auditor of a bank shall cease to act as an auditor if

- (a) the Bank of Ghana in writing requests that bank to revoke the appointment of the auditor;

- (b) the auditor or a member of the auditor's firm or establishment becomes a director of that bank;
- (c) the auditor resigns by notice in writing to that bank;
- (d) the auditor ceases to qualify under section 74(3) for appointment as auditor of a bank; or
- (e) the auditor is otherwise removed by a decision taken at an annual general meeting of that bank.

(2) A bank shall comply with a request of the Bank of Ghana that the appointment of an auditor be revoked.

(3) An auditor who does not comply with subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding 250 penalty units or to a term of imprisonment not exceeding 12 months.

Display of financial statements

81. (1) A bank shall

- (a) exhibit at each one of its branches or agencies in a conspicuous place throughout the year, a copy of the last audited financial statements in respect of the operations of the bank;
- (b) not later than three months after the end of its financial year,
 - (i) furnish the Bank of Ghana with a copy of its audited financial statements together with the auditor's statutory and long term audit reports and
 - (ii) cause the financial statements together with the auditors' certificates to be published in a daily newspaper circulating in Ghana.

(2) A bank which fails to comply with this section is liable to pay to the Bank of Ghana a fine not exceeding 1000 penalty units.

PART IX – MISCELLANEOUS

Prohibition of floating charge

82. (1) A bank shall not create a floating charge on an undertaking or a property of the bank or part of the property of the bank.

(2) A floating charge created under subsection (1) is of no legal effect.

(3) A bank which creates a floating charge in contravention of subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding 1000 penalty units.

Secrecy of information

83. A director, an officer or any other employee of the Bank of Ghana shall not disclose to any other person information relating to the affairs of a bank except as required by law or by a court of competent jurisdiction or by global banking supervisory practices.

Secrecy of customer information

84. A director, an officer or any other employee of a bank shall not disclose an information relating to the affairs of a customer with that bank except where the disclosure of the information is required by law or by a court of competent jurisdiction or the Bank of Ghana or is authorised by the customer or is in the interests of that bank.

Disclosure by the Bank of Ghana of information relating to banks

85. Notwithstanding the provisions of any other section, the Bank of Ghana may

- (a) publish information obtained by it from the banks, in a consolidated form as it considers fit in the public interest, and
- (b) share supervisory information, on a confidential basis, with other official agencies, both domestic and foreign, responsible for the safety and soundness of the financial system, if the information is used only for purposes related to the effective supervision of the institutions concerned

Submission of reports on trend and progress

86. (1) The Bank of Ghana shall, not later than one hundred and twenty days after the end of its financial year, submit to the Minister a report on the trend and progress of the business of banking in the country.

(2) The Bank of Ghana shall include in the report the recommendations that it considers necessary in the interest of the business of banking in the country.

Protection for officials

87. (1) An action or claim shall not be brought against a director or an employee of the Bank of Ghana in respect of an act done in good faith by the director or employee in the course of the director's or employee's duty under this Act.

(2) Subsection (1) is not applicable where the action or claim arises out of the negligence or a wrongful act of the director or employee of the Bank of Ghana.

Offences and penalties

88. (1) The Attorney-General may, by executive instrument, authorise such officers as shall be specified in the instrument to prosecute offences that arise under this Act.

(2) Where a body of persons is convicted of an offence under this Act, then,

- (a) in the case of a body corporate other than a partnership, every director and officer of that body shall be deemed to have committed the offence; and
- (b) in the case of a partnership, every partner shall be deemed to have committed the offence.

(3) A person shall not be convicted by virtue of subsection (2), if that person proves that the offence was committed without the consent or connivance of that person and that due diligence to prevent the commission of the offence had been exercised having regard to all the circumstances.

Joinder of offences

89. Notwithstanding anything contained in any other enactment, where a person is accused of more than one offence under this Act, that person may be charged with and tried at one trial for any number of those offences committed within any length of time.

Interpretation

90. In this Act, unless the context otherwise requires,

“applicant” means a body corporate;

“the Bank” means the Bank of Ghana

“bank” means a body corporate which is issued with a licence in accordance with this Act to carry on banking business.

“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 advances, of trade, industry, commerce or agriculture and

- (c) any other business activities that the Bank of Ghana may prescribe or recognise as being part of banking business.

“banking policy” means a policy which is specified by the Bank of Ghana in the interests of the banking system or in the interests of monetary stability or sound economic growth;

“capital adequacy ratio” of a bank is the ratio expressed as a percentage of its capital base to its risk weighted exposure;

“chief executive” in relation to a bank, means a person, by whatever name called, who is responsible, subject to the authority of a bank’s board of directors, for the conduct and management of the business of the bank;

“connected lending” or “lending to related parties” means taking a financial exposure in respect of

- (a) directors or significant shareholders,
- (b) firms or companies in which a director or a significant shareholder is interested, directly or indirectly as director controlling shareholder, partner, proprietor, employee or guarantor,
- (c) holding or subsidiary companies of the company in which a director or significant shareholder is interested, directly or indirectly, as director, controlling shareholder, partner, proprietor, employee or guarantor;

“controlling shareholding” means a direct or indirect holding in a bank

- (a) which represents more than fifty per cent of the capital or of the voting rights, or
- (b) which makes it possible to exercise a significant influence over the management of the bank in which a holding subsists;

“financial exposure” of a bank to a person, firm, body corporate, or any unincorporated body of persons, concern or combination of that person, firm, body corporate, or an unincorporated body of persons, concern or combination shall be taken to be the aggregate of

- (a) the loans, advances and credit facilities (including off-balance sheet obligations) given to that person, firm, body corporate, or an unincorporated body of persons, concern or combination, and
- (b) the value of the bank’s holdings of shares and debentures and other debt securities issued by that person, firm, body corporate, or an unincorporated body of persons, concern or combination;

and in computing the financial exposure the following assets that may be held as collateral shall be deducted

- (c) cash deposit;
- (d) lien on term deposit with the bank;
- (e) market value of Treasury Bills, Government Securities, Bank Securities, and
- (f) other securities approved by the Bank of Ghana;

“foreign bank” means a bank incorporated in Ghana in which not less than sixty per cent of the equity share capital is held by foreigners;

“large exposure” means financial exposure to a single borrower or group of connected borrowers that in the aggregate exceeds ten per cent of the bank’s net own funds;

“Minister” means the Minister responsible for Finance;

“net own funds” means the sum total of share capital that has been paid-up, free reserves, including the reserves that have been created out of revaluation of fixed assets with the consent of the Bank of Ghana subject to netting out the accumulated losses and unwritten-off capitalised expenditure;

“net worth” means shareholders funds and includes stated capital, capital surplus from revaluation of assets and other reserves;

“prescribed” means prescribed by Regulations or Rules or directives issued by the Bank of Ghana;

“significant share holding” means a director indirect holding in a bank

- (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 bank in which a holding subsists.

Repeal of Banking Law, 1989

91. (1) The Banking Law, 1989 (P.N.D.C.L. 225) is hereby repealed.

(2) Notwithstanding subsection (1), regulations, orders, directions, notifications, exemptions, approvals, decisions and other executive or administrative acts made, given or done under the repealed Law shall upon the coming into force of this Act continue in force until amended or repealed in accordance with this Act.

Validity of existing licences

92. (1) A bank licensed under the Banking Law, 1989 (P.ND.C.L. 225) or established under any other Act or any other enactment and in existence before the commencement of this Act shall continue in existence subject to compliance with this Act.

(2) If a representative office of a foreign bank incorporated outside the country is already functioning on the date this Act comes into force, it shall take steps and obtain the required approval within ninety days, or close down its office.

Date of *Gazette* notification: 29th October. 2004.

**Financial Administration Act 2003
(Act 654)**

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THE SIX HUNDRED AND FIFTY-FOURTH

ACT

OF THE PARLIAMENT OF THE REPUBLIC OF GHANA ENTITLED

FINANCIAL ADMINISTRATION ACT, 2003

AN ACT to regulate the financial management of the public sector; prescribe the responsibilities of persons entrusted with financial management in the government; ensure the effective and efficient management of state revenue, expenditure, assets, liabilities, resources of the government, the Consolidated Fund and other public funds and to provide for matters related to these.

DATE OF ASSENT: *28th October; 2003.*

BE IT ENACTED by Parliament as follows:

PART I – CONTROL AND MANAGEMENT OF PUBLIC FUNDS

Powers and responsibilities of the Minister

1. (1) The Minister shall

- (a) develop and implement a macro economic and fiscal policy framework for the country and shall
 - (i) supervise and monitor the finances of the country; and
 - (ii) co-ordinate international and inter-governmental financial and fiscal relations;
- (b) advise Government on the total resources to be allocated to the public sector and the appropriate level of resources to be allocated to individual programmes and activities within that sector.

(2) The Minister shall ensure that periodically and not less than once a year

- (a) the fiscal policy of Government; and
- (b) a statement of the current and projected state of the economy and finances are presented to Parliament.

- (3) The Minister shall ensure that
- (a) systems are established throughout the public sector
 - (i) to budget for the use of resources; and
 - (ii) to approve requests for the issue of public money prior to inclusion in estimates of expenditure for submission to Parliament in accordance with this Act;
 - (b) when Parliament has approved the Consolidated Fund Expenditure Estimates, authority to disburse funds to meet the expenditure is conveyed to Principal Account Holders through the Controller and Accountant-General; and
 - (c) transparent systems are established and maintained which
 - (i) provide a full account to Parliament for the use of resources and public moneys; and
 - (ii) ensure the exercise of regularity and propriety in the handling and expenditure of public funds.
- (4) Approval of withdrawal from the Consolidated Fund of moneys allocated by Parliament shall be by warrant signed by the Minister.

Duties of the Minister

2. (1) The Minister shall, subject to the provisions of this Act and any other enactment, have responsibility for the management and control of the Consolidated Fund and such other public funds as shall be designated as being in the care of the Minister and of matters relating to the financial affairs of the Government.

(2) The Minister may make such regulations or may give such directions not inconsistent with this Act as may appear to the Minister to be necessary and expedient for the proper implementation of the intent and purpose of this Act and the safety, economy and advantage of public revenue and property.

(3) The Minister shall ensure that any directions given under this section are brought to the notice of persons directly affected.

(4) The Minister may cause the inspection of the books, records and offices of a department.

Appointment and duties of the Controller and Accountant-General

3. (1) There shall be appointed in accordance with article 195 of the Constitution, a Controller and Accountant-General who is responsible to the Minister for the custody, safety and integrity of the Consolidated Fund and other public funds designated under the care of the Controller and Accountant-General.

(2) The Controller and Accountant-General is responsible for the compilation and management of the accounts prepared in relation to the Consolidated Fund and other public funds and for this purpose the Controller and Accountant-General may give general instructions to the Principal Spending Officers of departments which shall not be inconsistent with this Act or any regulations or instructions issued under this Act.

(3) The Controller and Accountant-General is the Chief Accounting Officer of the Government who has responsibility to keep, render and publish statements of public accounts as required by this Act or any other enactment.

(4) As Chief Accounting Officer, the Controller and Accountant-General is the chief adviser to the Minister and the government on accountancy matters and is the person who approves accounting instructions of departments and promotes the development of efficient accounting systems within departments.

(5) The Controller and Accountant-General receives, disburses and provides secure custody for moneys payable into the Consolidated Fund and other funds and for this purpose shall establish such accounts with the Bank of Ghana and its agents as are considered necessary for the deposit of the moneys.

(6) A bank account shall not be opened for any department except under the authority of the Controller and Accountant-General and a bank shall not open an account for any department without the authority of the Controller and Accountant-General.

(7) Without limiting the generality of these duties the Controller and Accountant-General shall

- (a) in consultation with the Auditor-General specify for departments, the accounting basis, policies and the classification system to be applied in public accounting and ensure that a proper system of accounting is established in each case; and
- (b) ensure, in so far as is practicable, that adequate provisions exist for the safe custody of public money, securities and accountable documents.

Appointment and duties of Deputy Controller and Accountants-General

4. (1) There shall be appointed in accordance with article 195 of the Constitution, such number of Deputy Controllers and Accountants-General as may be considered necessary for the purposes of this Act.

(2) A Deputy Controller and Accountant-General shall perform such functions of the Controller and Accountant-General as the Controller and Accountant-General shall determine.

(3) The terms and conditions of service of a Deputy Controller and Accountant-General shall be as specified in the person's letter of appointment.

PART II — PUBLIC FUNDS**Public funds**

5. (1) In accordance with article 175 of the Constitution, the public funds of Ghana consist of the Consolidated Fund, Contingency Fund and such other funds as may be established by or under an Act of Parliament.

(2) Except as otherwise provided in this Act, any fund other than the Consolidated Fund shall be governed by the enactment establishing the fund.

Consolidated Fund

6. (1) In accordance with article 176 of the Constitution, there shall be paid into the Consolidated Fund,

- (a) revenue or other moneys raised or received for government business or on behalf of the Government; and
- (b) any other moneys raised or received in trust for or on behalf of the Government.

(2) The revenue and other moneys referred to in subsection (1) exclude revenue or other moneys

- (a) payable by or under an Act of Parliament into some other fund established for a specific purpose; or
- (b) that may, under an Act of Parliament, be retained by the department or agency of Government that received them for the purpose of defraying the expenses of that department or agency.

(3) Where under sub-section (2), provision is made in any enactment for an agency of Government to retain its internally generated funds for the purpose of defraying its expenses pursuant to article 176 (2) (b) of the Constitution, the agency shall make full disclosure of internally generated funds to the Minister at the end of every month.

(4) Notwithstanding any provision to the contrary in any enactment in existence immediately before the coming into force of this Act, no investment in Government securities shall be made of internally generated funds by an agency of Government without prior approval in writing of the Minister.

The Contingency Fund

7. (1) In accordance with article 177 of the Constitution, there shall be paid into the Contingency Fund, moneys voted for the purpose by Parliament; and advances may be made from that Fund by the Committee responsible for financial matters in Parliament whenever the Committee is satisfied that there is an urgent or unforeseen need for expenditure for which no other provision exists to meet the need.

(2) Where an advance is made from the Contingency Fund a supplementary estimate shall be presented as soon as possible to Parliament to replace the amount advanced.

Other special funds

8. (1) Moneys received by or on behalf of the Government for a special purpose and paid into the Consolidated Fund, may be paid out of that Fund, subject to the provisions of an Act of Parliament.

(2) Subject to any enactment, interest may be allowed in respect of any money to which subsection (1) applies at rates fixed by the Minister in Regulations or administratively.

Custody of public moneys and moneys received in trust for Government

9. (1) A person who collects or receives public moneys or moneys in trust for Government shall keep a record of receipts and deposits in a form and manner that the Controller and Accountant-General may prescribe.

(2) Any person who collects or receives any public moneys or moneys in trust for Government without the prior authority of the Controller and Accountant-General shall immediately pay the moneys into the Consolidated Fund and explain to the Controller and Accountant-General the circumstances under which these moneys came into the possession of that person.

(3) Persons authorised to collect or receive public moneys and moneys in trust for Government shall pay the moneys promptly into the Consolidated Fund in such manner as may be prescribed in regulations or as the Controller and Accountant-General may direct.

Payment for services rendered by Government departments

10. Where a service is rendered by a department to any person, and the Minister is of the opinion that a charge for that service should be borne by the person to whom the service is rendered, the Minister may, subject to the provisions of an enactment relating to that service, prescribe the fees to be charged.

Receipt and payment of deposits

11. (1) Where money is received by a public officer from any person, such as a deposit to ensure the doing of an act or thing, the public officer shall hold or dispose of the money in such manner as the Minister may prescribe.

(2) Where money is paid by a person to a public officer for a purpose that is not fulfilled, the money may, less such sum as in the opinion of the Minister is properly attributed to service rendered, be returned or repaid or otherwise dealt with as the Minister may direct.

(3) Money paid to the credit of the Consolidated Fund, not being public money, may be returned or repaid in such manner as the Minister may prescribe.

(4) The Minister may determine the amount of cash or securities held to meet obligations under this section.

Deletion from the accounts

12. (1) The Minister may, subject to the approval of Parliament, in the public interest, recommend the deletion from the public accounts or other government accounts, in whole or in part, of any obligation or debt due to the Government or any claim by the Government.

(2) The deletion from the accounts does not constitute a remission of the obligation, debt or claim and does not debar subsequent proceedings for recovery, should the Minister see fit.

(3) The Minister may by regulation delegate the power of deletion under this section, subject to such terms and conditions as the Minister may require, to any public officer who shall personally exercise the delegated powers.

(4) The obligations, debts and claims deleted from the accounts shall be reported in financial statements required under sections 54 and 55 of this Act.

Payment out of the Consolidated Fund

13. (1) A payment shall not be made out of the Consolidated Fund except as provided by article 178 of the Constitution.

(2) A payment shall not be made in excess of the amount granted under an appropriation for any service.

(3) The Minister may by legislative instrument prescribe for the approval of Parliament, procedures to be followed to make payments out of the Consolidated Fund in times of emergency.

Appropriation of public money.

14. (1) When departmental estimates of expenditure are approved by the President they shall become subject to Article 179 of the Constitution.

(2) Each estimate shall indicate the officer in control of and accountable for the use of public moneys.

(3) When an appropriation for a department has been approved in accordance with article 179 of the Constitution, it shall be used only in accordance with the purpose described and within the limits set by the classification within the estimate of the department.

(4) The Minister may, by legislative instrument, authorise the reallocation of expenditure within the ambit of a department's appropriation.

Charges on appropriation and orders for disbursement

15. (1) A charge shall not be made against an appropriation except on the requisition of the appropriate head of the government department for which the appropriation was made or a deputy authorised by that head.

(2) A requisition for payment out of the Consolidated Fund shall be in such form, with such documents and certified in such manner as the Controller and Accountant-General may require.

(3) The Controller and Accountant-General shall reject a requisition if the Controller and Accountant-General is of the opinion that payment on it

- (a) would not be a lawful charge against the appropriation;
- (b) would result in expenditure in excess of the appropriation; or
- (c) would reduce the balance available in the appropriation in such a manner that it would not be sufficient to meet the commitments to be charged against it.

(4) The Controller and Accountant-General may transmit to the Minister any requisition for the direction of the Minister and the Minister may order that the requisition be made or refused.

(5) The officer named on the requisition may issue an order for payment to be made on the authority of a requisition certified by the Controller and Accountant-General as valid for payment.

(6) Where any payment is refused by the Controller and Accountant-General, the head of department concerned may report the circumstances to the Minister for decision, and the Minister may confirm or reverse the refusal of the Controller and Accountant-General and give such directions as are necessary to carry out the decision.

Payment for work done

16. (1) Payment shall not be made for work done, goods supplied or services rendered whether under a contract or not, in connection with any part of the public service, unless in addition to any other voucher or certificate that is required, the head of the government department or any other officer authorised by the head of department certifies

- (a) that the work has been performed, the goods supplied or the service rendered, and that the price charged is according to the contract or if not specified by the contract, is reasonable; or
- (b) where payment is to be made before the completion of the work, delivery of the goods or rendering of the service, that the payment is in accordance with the contract.

(2) Where the Controller and Accountant-General reports in respect of any contract under which a cost audit is required to be made, that any cost or charges claimed by the contractor should not be allowed, the costs or charges shall not be allowed unless the Minister otherwise directs.

(3) Where taxes are required to be paid in respect of payment for work done, goods supplied or services rendered, whether under a contract or not, the head of the department concerned shall be responsible to ensure that any tax is paid.

Payment for contracts

17. (1) Subject to the Loans Act, 1970 (Act 335), a contract that provides for the payment of any money by the government shall not be considered valid without the prior approval of the Minister.

(2) The Minister shall signify approval, on the basis of a signed certificate to the effect that there is sufficient unencumbered balance available out of any appropriation or out of an item included in the estimates, to discharge any commitments under the contract that would come in the course of payment, during the financial year in which the contract was entered into.

(3) In the case of forward commitments, the certificate shall state that if and when the government grants an appropriation, the commitments will be entered as an encumbrance against the appropriation.

(4) Copies of each contract made under this section shall be submitted to the Auditor-General and to the Controller and Accountant-General as soon as it is made.

Government contracts

18. (1) Subject to the provisions of the State Property and Contracts Act, 1960 (C.A. 6), the Minister with the prior approval of Parliament may by legislative instrument make Regulations with respect to the following:

- (a) the conditions under which contracts may be entered into; and
- (b) the security to be given in the name of the Government to secure the due performance of contracts and may direct in the Regulations or the order that no contract shall be entered into or have effect unless execution of the contract has been approved by Parliament where payments are required in excess of the prescribed amount.

(2) Where payment under a contract is withheld to ensure the due performance of the contract, the payment may be charged to the appropriation for the contract and the amount charged may be credited to a special account to be paid out in the manner prescribed by the contract.

Modalities for making payments out of the Consolidated Fund

19. (1) There shall be opened, under the authority of the Controller and Accountant-General and in accordance with section 3, special bank accounts for each department into which shall be lodged departmental allocations under an Appropriation Act.

(2) Except otherwise determined by the Minister, special bank accounts shall be opened with the Bank of Ghana and the balance at any time shall form part of the Consolidated Fund.

(3) Subject to Article 178 of the Constitution, every payment out of the special bank account relating to an appropriation shall be made under the direction and control of the head of the department concerned, either by cash, cheque or other instrument in such form and authenticated in such manner as the Minister may by legislative instrument prescribe.

(4) Every head of department shall ensure that a record is kept of cheques or other instruments issued under the direction of that department.

(5) The Minister may, in consultation with the Auditor-General by legislative instrument provide for the destruction of cheques or other negotiable instruments.

Balance of appropriation

20. (1) The balance of an appropriation made for a financial year that remains unexpended at the end of the financial year shall lapse and subordinate authorities made under the appropriation shall lapse with it.

(2) Every head of department shall prepare and submit to the Minister a statement of the commitments entered into but undischarged before the end of the financial year in which they were incurred.

(3) The Minister may by legislative instrument determine the time limits for the submission of a statement of undischarged commitments.

(4) If the Minister is satisfied that the undischarged commitments may be properly carried forward and that unexpended balances of the previous year's appropriation are available to finance their discharge, the Minister may issue a warrant to be known as the revote warrant to provide for their due discharge.

(5) The moneys specified in the revote warrant shall, as soon as possible after that, be included in the first supplementary estimates of the new financial year to be presented for the approval of the Parliament.

Investment of public moneys in securities

21. (1) The Minister may cause public moneys to be invested on behalf of the Government in the purchase of securities for such periods and on such terms as the Minister thinks fit except that public moneys may not be invested in government securities.

(2) The interest received in respect of securities shall be paid into the Consolidated Fund as revenue, except where the securities are held on behalf of a trust fund and an enactment or agreement requires that the interest shall be paid into the trust fund.

(3) The Minister may, where it appears expedient, cause the investment to be sold or converted into money and the proceeds either credited to the Consolidated Fund or re-invested on behalf of the Government.

(4) Profits and losses realised on the sale of securities shall be charged to revenue or expenditure, except where the securities are held on behalf of a trust fund and an enactment or agreement provides that the profits or losses shall be chargeable to that fund.

(5) At least once in every year, the Auditor-General shall inspect certificates in respect of the securities and other investments.

(6) The annual return of securities and other investments shall be prepared by the Controller and Accountant-General and forwarded for verification to the Auditor-General.

(7) The investment of the funds shall not constitute a withdrawal from the Consolidated Fund as defined in this Act.

Advances from the Consolidated Fund

22. (1) Subject to Article 181 of the Constitution, no public moneys shall be advanced from the Consolidated Fund except under authority of Regulations made by the Minister and approved by Parliament.

(2) Such Regulations shall specify the terms of release and repayment of advances and require the completion of agreements between the government and the borrowers as a condition for release.

(3) Parliament may require that interest be payable in respect of the advances and shall determine the rate to be paid.

(4) The Controller and Accountant-General may recover an advance or any portion of it that is not repaid or accounted for, as required by Regulations or by agreement out of any moneys payable by the Government to the person to whom the advance was made.

(5) Each accountable advance that is not repaid or accounted for as required by subsection (4) shall be reported in the public accounts.

(6) The Minister shall, when annual estimates are being submitted for the approval of Parliament, include for approval, schedules showing the amounts by which it is proposed that advances shall be increased or diminished in the ensuing financial year and shall seek the prior approval of Parliament for any subsequent revision of the limits set by it.

Loans from the Consolidated Fund

23. (1) Subject to Article 181 of the Constitution, the President may with the approval of Parliament, authorise the Minister to enter into an agreement to grant a loan from the Consolidated Fund.

(2) An agreement entered into under subsection (1) shall be laid before Parliament and shall not come into operation until it has been approved by Parliament and shall contain a clause to this effect.

(3) Parliament may, by resolution of majority of all the members, authorise the Minister to approve particular classes of loan subject to such limitations as may be specified by Parliament.

(4) The Minister shall, when annual estimates are being submitted for approval by Parliament,

- (a) include for approval a schedule of the loans to be payable or repayments to be recovered during the year; and
- (b) seek the prior approval of Parliament for any additional amounts that may be required under a general authority to lend, given in accordance with subsection (3).

(5) The amount issued as loans from the Consolidated Fund shall be shown in the public accounts as an asset of the Consolidated Fund until recovery has been effected.

(6) The interest on loans shall be paid into the Consolidated Fund as revenue, and recoveries shall be paid into the Consolidated Fund.

(7) For the purposes of this section the term “loan” means moneys issued from the Consolidated Fund on condition of return or repayment over or after a period of more than one year.

Equity investments of the Consolidated Fund

24. (1) The President, with the approval of Parliament, may authorise the Minister to provide for, acquire by agreement, or purchase from the Consolidated Fund all or part of the equity capital of a company or other organisation on grounds of state policy.

(2) The Minister shall, when annual estimates are being submitted for approval by Parliament, include for approval a schedule for the equity investments to be made or to be sold or otherwise disposed of during the year.

(3) The amounts issued for provision, acquisition or purchase or equity investments from the Consolidated Fund shall be shown in the public accounts as an asset of the Consolidated Fund until the asset has been sold or otherwise disposed of by authority of Parliament.

(4) The profits and dividends or proceeds of sale arising from the equity investments shall be paid into the Consolidated Fund.

(5) A detailed statement of government’s equity investments shall be reported annually in the annual statement of the public accounts.

PART III — REVENUE AND EXPENDITURE

Estimates of revenue and expenditure

25. (1) Subject to Article 179 of the Constitution, the President shall cause to be prepared and laid before Parliament at least one month before the end of the financial year, estimates of the revenues and expenditure of the Government for the following financial year.

(2) The estimates of the expenditure of departments and agencies

(a) shall be classified under programmes or activities which shall be included in a Bill to be known as the Appropriation Bill and which shall be introduced into Parliament to provide for the issue from the Consolidated Fund or such other appropriate fund of the sums of money necessary to meet that expenditure and the appropriation of those sums for the purposes specified in that Bill;

- (b) shall outline for each vote of expenditure a statement of the performance criteria to be met in providing the required out- puts; and
- (c) shall in respect of payments charged on the Consolidated Fund, be laid before Parliament for the information of Members of Parliament.

(3) Parliament shall determine the procedure for the presentation of Appropriation Bills.

(4) Where, in respect of a financial year, it is found that the amount of moneys appropriated by the Appropriation Act for any purpose to a government department is insufficient or that a need has arisen for expenditure for a purpose for which no sum of moneys has been appropriated by that Act, a supplementary estimate showing the sum of money required shall be laid before Parliament for its approval.

(5) Where in the case of a financial year, a supplementary estimate has been approved by Parliament in accordance with subsection (4), a supplementary Appropriation Bill shall be introduced into Parliament in the next financial year to provide for the appropriation of the sum approved for the purposes specified in that estimate.

(6) Notwithstanding the provisions of the preceding subsections of this section, the President may cause to be prepared and laid before Parliament, estimates of revenue and expenditure in the country for periods covering more than one year”.

(7) This section shall not apply to a department or agency to which section 6 (2) (b) applies.

Expenditure in advance of appropriation

26. (1) In accordance with Article 180 of the Constitution, where it appears to the President that the Appropriation Act in respect of any financial year will not come into operation by the beginning of that financial year, the President may, with the prior approval of Parliament by a resolution, authorise the withdrawal of moneys from the Consolidated Fund to meet expenditures necessary to carry on the services of the Government in respect of the period expiring three months from the beginning of the financial year or on the coming into operation of the Act whichever is earlier.

(2) Notwithstanding the provisions of section 1 of the Revenue Agencies (Retention of Part of Revenue) Act, 2002 (Act 628), where the President is satisfied at the beginning of any financial year that insufficient revenue has been collected by the Revenue Agencies and that revenue determined to be retained by the Revenue Agencies is inadequate to meet the expenditure to carry out the functions of the Revenue Agencies, the President

may, with the prior approval of Parliament, authorise the withdrawal of moneys from the Consolidated Fund to meet the expenditure necessary to carry out the functions of the Revenue Agencies for the period expiring three months from the beginning of the financial year, but this money shall be refunded to the Consolidated Fund before the end of the financial year.

Duration of appropriations and warrants

27. Except for statutory payments, every appropriation by Parliament of public moneys for the service of a financial year and every warrant or other authority issued under this Act in respect of the financial year shall lapse and cease to have any effect at the close of that year and the unexpended balance of any moneys withdrawn from the Consolidated Fund shall be repaid to the Consolidated Fund.

Tax revenue

28. Tax revenue shall be administered by the revenue agencies in accordance with legislative provisions.

Non-tax revenue

29. (1) The estimates of non-tax revenue of Ministries, departments and agencies other than those that generate tax revenue, shall be classified in accordance with directives issued by the Minister.

(2) Ministries, departments and agencies shall prepare annual estimates for each class of non-tax revenue and shall outline for each revenue classification, performance criteria to be met to attain the estimated revenue.

PART IV — GOVERNMENT STORES

Government stores

30. (1) Each government department shall maintain adequate records of stores and the Minister in consultation with the Public Procurement Board, established under the Public Procurement Act may make Regulations governing the acquisition, receipt, custody, control, issue and disposal of the stores.

(2) Except as determined by the Minister and subject to any other enactment, government stores shall be procured from only Value Added Tax registered persons.

Joint acquisition of stores

31. (1) Subject to the provisions of this Part, two or more departments may for the purposes of economy or convenience acquire stores together.

(2) Heads of departments acquiring joint stores shall be responsible for their respective share of resources committed to the joint stores.

Responsibility for government stores

32. (1) A person is responsible for the proper custody, care and use of government stores under the control of that person.

(2) Notwithstanding subsection (1), a head of department is responsible for the general management of government stores held within the department and for the due performance of the duties of subordinate staff in relation to the government stores.

Procurement of stores

33. Procurement of government stores for departments shall be by or under an enactment of Parliament.

Transfer of Government stores

34. Subject to any other enactment, a transfer, lease, loan or sale of government stores shall not be made to any person except by or under the authority of an enactment.

Discharge of accountability for Government stores

35. (1) A head of department is accountable for the government stores from the time of acquisitions to the time they are of no further use or value to government.

(2) Accountability is discharged when government stores have been

- (a) consumed in the course of public business and records are available to show that the government stores have been consumed;
- (b) worn out in the normal course of public business and deletion from the accounts has been approved by the Minister and they have been disposed of in accordance with the Minister 's directions;
- (c) lost, stolen, destroyed, damaged or rendered unserviceable other than by fair wear and tear, and *if* deletion from the accounts has been approved by Parliament.

(3) The Minister may by regulation delegate powers of deletion and disposal under subsection (2)(b) to a principal spending officer and the delegated power shall be personally exercised by the principal spending officer.

(4) If the Minister is satisfied that the retention of any government stores is no longer in the public interest, the Minister may authorise disposal in accordance with section 30 of this Act subject to any Regulation approved by Parliament governing the disposal.

(5) Authority for deletion from the accounts in cases that fall within subsection (2)(c), rests with the Minister who may by Regulations delegate powers of deletion to the principal spending officers and the delegated power shall be personally exercised by the principal spending officer.

(6) Deletions from the accounts under subsection (5) shall be reported in the annual financial statements of the department concerned in such manner as Regulations made under this Act may prescribe.

Special enquiry

36. (1) Where the Minister has good reason to believe that a malfeasance has occurred in connection with government stores, the Minister shall bring this to the notice of Parliament and the Auditor-General.

(2) Parliament may request the Auditor-General to enquire into and report on the matter.

Application of stores

37. Subject to section 34, government stores shall not be applied for any purpose other than towards the furtherance of the programmes and objectives of government departments.

PART V — ACCOUNTS AND AUDIT

Basis of accounts

38. (1) The accounts submitted in accordance with this Part shall state the basis of accounting used in the preparation of the accounts and identify any significant departures and the reasons for the departures.

(2) Without limiting subsection (1), financial statements shall be prepared in accordance with generally accepted accounting principles.

Classification of accounts

39. The Controller and Accountant-General shall, with reference to the approved Government Chart of Accounts, determine the classification of accounts.

Monthly statement of public accounts

40. (1) Within a period of fifteen days, or such other period as Parliament may by resolution appoint, after the end of each month, there shall be prepared and transmitted to the Auditor-General and the Minister by the Controller and Accountant-General in respect of the month, the public accounts which shall be published in the *Gazette* and shall comprise (a) a balance sheet showing the assets and liabilities of the Consolidated Fund as at the end of the month;

(b) a statement of revenue and expenditure of the Consolidated Fund for the month;

(c) cash flow statement of the Consolidated Fund for the month; and

(d) notes that form a part of the accounts.

(2) The accounts submitted under this section shall

(a) be prepared in accordance with generally accepted accounting principles and in accordance with any instructions issued by the Controller and Accountant-General in consultation with the Auditor-General; and

(b) state the basis of accounting used in the preparation and identify any significant departures and the reasons for the departure.

(3) The Controller and Accountant-General shall prescribe, in Departmental Accounting Instructions, which items are to be classified as the assets and liabilities of the public accounts.

(4) Subject to subsection (3), the Controller and Accountant-General shall maintain a composite record of public property classified as assets and for this section, departments shall include schedules of their assets in the notes to their respective accounts required under section 41.

Annual statement of accounts

41. (1) Within a period of three months, or such other period as Parliament may by resolution appoint, after the end of each financial year, there shall be prepared by the

(a) head of each department and transmitted to the Auditor-General, the Minister and the Controller and Accountant-General in respect of the financial year, accounts of the department which shall comprise

(i) a balance sheet showing the assets and liabilities of the departments as at the end of the year;

(ii) a statement of revenue and expenditure of the department for the year;

(iii) a cash flow statement of the department for the year; and (iv) notes that form part of the accounts which shall include particulars of the extent to which the performance criteria specified in the estimate in relation to the provision of the department's output were satisfied.

(b) Controller and Accountant-General and transmitted to the Auditor-General and Minister in Respect of the financial year, the public accounts which shall comprise

- (i) a balance sheet showing the assets and liabilities of the Consolidated Fund as at the end of the year;
- (ii) a statement of revenue and expenditure of the Consolidated Fund for the year;
- (iii) a cash flow statement of the Consolidated Fund for the year; and
- (iv) notes that form part of the accounts.

(2) The accounts submitted under this section shall

- (a) be prepared in accordance with generally accepted accounting principles and in accordance with any instructions issued by the Controller and Accountant-General in consultation with the Auditor-General; and
- (b) state the basis of accounting used in their preparation and identify any significant departures and the reasons for the departures.

(3) The Controller and Accountant-General shall prescribe in Departmental Accounting Instructions, which items are to be classified as assets and liabilities of the public accounts and the departmental accounts.

(4) Without limiting this section, the Controller & Accountant-General may prescribe for inclusion in the Departmental Accounting Instructions of each department the content of information to be included in the notes required under subsection (1)(a) (iv) and 1(b)(iv).

Closure of accounts

42. (1) At the close of business of the last working day of each month or financial year, whichever is applicable, the accounts shall be balanced off.

(2) The receipts and payments that belong to a period or a financial year other than the period or financial year in question, shall be shown in the accounts and the details shall be given in the notes in accordance with sections 39 and 40.

Financial year

43. The financial year of Government shall extend from the first day of January until the thirty-first day of December in each year.

Audit of accounts

44. (1) The public accounts, accounts of departments and statutory corporations and other public institutions provided for by this Act shall be audited in accordance with the provisions of the Audit Service Act, 2000, (Act 584) and Regulations made under that Act.

(2) The internal audit of departments and statutory corporations and other public institutions provided for by this Act shall be conducted in accordance with any enactment for the time being regulating internal auditing of departments, statutory corporations and public institutions.

**PART VI— STATUTORY CORPORATIONS AND OTHER
PUBLIC INSTITUTIONS****Application of this Part**

45. (1) This Part of the Act applies to statutory corporations and other public institutions other than those set up for commercial purposes unless otherwise expressly provided in the enactment establishing the corporation or other public institution.

(2) Any reference in the following provisions of this Part to a "corporation" shall be construed as a reference to a "statutory corporation", or "other public institution" referred to in subsection (1).

Financial year of corporation

46. The financial year of a corporation shall be the same as the financial year of the Government.

Funds of a corporation

47. The funds of a corporation include

- (a) money that may be provided by Parliament for the corporation;
- (b) loans granted to the corporation; and
- (c) moneys accruing to the corporation in the exercise and performance of its functions.

Bank accounts

48. A corporation may, with the approval of the Minister maintain in its own name, one or more accounts in such bank in the country as the Minister may approve.

Special accounts with Government

49. (1) Funds of a corporation may be placed to the credit of a special account in the Consolidated Fund in the name of the corporation if the Minister and the sector Minister approve, subject to the enactment under which the corporation exists.

(2) The Minister may payout or repay to the corporation the money in the special account.

(3) Interest may be allowed and paid from the Consolidated Fund to the credit of a special account at rates determined by the Minister.

Payment over of surplus money

50. (1) A corporation shall pay to the Government such money administered by it as the sector Minister and the Minister consider to be in excess of the amount required for the purposes of the corporation.

(2) Any money paid may be applied towards the discharge of an obligation of the corporation to the Government or may be applied as state revenue.

Investments of moneys

51. (1) A corporation may invest the moneys of the corporation in such manner as the Minister may approve and in consultation with the Minister may reinvest any of its investments.

(2) Notwithstanding subsection (1), a corporation shall not invest its money in government securities.

Award of contracts

52. The Minister may make Regulations or issue instructions on the conditions upon which a corporation may undertake contractual commitments.

Reserves

53. The Minister may upon recommendation of the governing body of a corporation direct the corporation to make provision for reserves, for extensions, depreciation of assets, for uncollectable debts and for other purposes,

Books, accounts and audit

54. (1) A corporation shall keep proper books of accounts and proper records in relation to them and the books of accounts and records shall be in such form as the Auditor-General may approve.

(2) The financial statements of a corporation comprising

- (a) a balance sheet of the assets and liabilities of the corporation as at the end of the year;
- (b) a statement of revenue and expenditure of the corporation for the year;
- (c) the cash flow statement of the corporation for the year; and
- (d) notes that form part of the accounts which shall include particulars of the extent to which the performance criteria specified in the estimate in relation to the corporations outputs were satisfied,

shall be prepared within a period of three months after the end of each financial year.

(3) The financial statement shall be prepared and transmitted to the Auditor-General, the Minister and the sector Minister by the head of the corporation.

(4) The accounts submitted under this section shall

- (a) be prepared in accordance with generally accepted accounting principles and in accordance with any instructions issued by the Auditor-General; and

- (b) state the basis of accounting used in preparation and identify significant departures from the principles and the reasons for the departure.

(5) The Minister, the sector Minister or head of department shall prepare a report in the prescribed form and manner for Parliament, or the sector Minister.

(6) The report under subsection (5) shall be directed by Parliament. (7) The Auditor-General shall audit accounts of public corporations governed by this Act in accordance with the provisions of the Audit Service Act, 2000 (Act 584).

Annual report

55. (1) The board of directors of a corporation shall, as soon as possible after the expiry of each financial year but within six months after the end of the financial year, submit an annual report to the sector Minister dealing generally with the activities and operations of the corporation within that year.

(2) The annual report shall include

- (a) a copy of the audited accounts of the corporation together with the Auditor-General's report on them;
- (b) a statement of any directions given by the sector Minister to the Board within that year in accordance with this Act and the enactment under which the corporation exists; and
- (c) such other information as the sector Minister may in writing reasonably request.

(3) A copy of the annual report of the Board of Directors of a corporation shall also be sent by the Board to

- (a) the Minister for Finance;
- (b) the head of the Ghana Statistical Service;
- (c) the Governor of the Bank of Ghana; and
- (d) any other person that the Minister for Finance may authorise.

(4) The sector Minister shall, as soon as practicable and in any event within two months after receiving the annual report of the Board, cause the report to be laid before Parliament.

The Board of Directors to ensure preparation of accounts

56. The Board of Directors of a corporation shall ensure that proper accounts are prepared and submitted to the Board not later than three months after the end of the financial year of the corporation in accordance with the Audit Service Act, 2000 (Act 584).

Board of Directors responsibility for the collection and receipt of moneys due to public corporations

57. (1) The Board of Directors of each public corporation governed by this Act shall ensure the efficient management of the financial resources of the Corporation including the collection and receipt of moneys due to that corporation.

(2) If it appears to the Auditor-General from any examination, audit or inspection that a corporation has wilfully or negligently omitted to ensure the collection or receipt of moneys due to the corporation, the Minister may withdraw or suspend the emoluments of the Board of Directors whether jointly or severally upon the recommendation of the Auditor-General.

Efficiency and operational auditing

58. (1) Notwithstanding anything in this Part, the Minister may cause the efficiency and operational auditing of a corporation to be conducted.

(2) Without limiting subsection (1), the Minister may cause

- (a) an assessment and appraisal of standards and techniques of management; and
- (b) an assessment of the effectiveness of the procedures adopted and instructions issued to be made in respect of any corporation.

Minister's power of direction

59. The sector Minister may give general directions in writing to the Board on matters of policy.

PART VII — LIABILITY, OFFENCES AND PENALTIES**Responsibility of accounting officers**

60. The responsibility of the Auditor-General to examine and certify public accounts or to audit other government accounts, does not relieve an officer responsible for keeping or rendering accounts, from the duty to comply with and to ensure the compliance of

subordinate staff with the provisions of this or any other enactment or with any Regulations or directions issued.

Liability to keep public money

61. (1) Where the Controller and Accountant-General has reason to believe that any person

- (a) has received money for the Government and has not duly paid it over;
- (b) has received money for which the person is accountable to the Government and has not duly accounted for it; or
- (c) has in hand public money which has not duly been applied,

the Controller and Accountant-General may cause a notice to be served on the person or on the personal representative of the person Within the meaning of the Administration of Estates Act, 1961 (Act 63), in the case of a deceased person, which shall require the person or the personal representative of the person, within such time as may be specified by notice to duly pay over, account for, or apply the money and transmit to the Controller and Accountant-General satisfactory evidence that this has been done.

(2) Where a person fails to comply with a notice served under subsection (1) within the time stipulated, the Controller and Accountant- General shall cause to be stated an account between the person and the Government, showing the amount of the money not duly paid over, accounted for or applied, with interest at the prevailing bank rate from the date the amount became due.

(3) In proceedings for the recovery of money, a copy of the account stated by a person authorised in that behalf by the Controller and Accountant- General shall be prima facie evidence that the amount stated together with interest is due and payable to the Government.

(4) Where it appears

- (a) by the books of account kept by or in the office of a person employed in the collection or management of public moneys;
- (b) in any accounting by that person; or

(c) by written acknowledgement or confession, that the person has, in the course of employment received moneys that belong to the Government and refused or neglected to pay over the moneys to the proper persons at the proper times, an affidavit deposing to these facts made by any person who has knowledge of the matter shall in any proceedings for the recovery of the moneys be received in evidence and be *prima facie* evidence of the facts stated.

(5) Where any sum of money is lost to the Government by misconduct, neglect of duty or negligence by any person employed in the collection or receiving of any public moneys, the person is accountable for the sum, as if the person had collected and received it and it may be recovered from that person as if he collected and received it.

(6) The provisions of this section shall apply with modification to government stores or the value of the stores where appropriate as they apply to government moneys.

Offences

62. (1) Each officer or person acting in an office or employment connected with the collection, management or disbursement of public or trust moneys or with the control of government stores who

- (a) accepts or receives money or valuable consideration for the performance of official duties;
- (b) conspires with another person to defraud the Government, or makes opportunity for another person to defraud the Government;
- (c) deliberately permits the contravention of the law by another person;
- (d) wilfully makes or signs a false entry in a book or wilfully makes or signs a false certificate or return in any case in which it is a duty of the person to make an entry, certificate or return;
- (e) having knowledge or information of the contravention of financial legislation by any person, or fraud committed by any person against the Government under legislation relating to public finance fails to report the knowledge or information to the person's senior officer or any state security agency; or
- (f) demands or accepts or attempts to collect, directly or indirectly, as payments of gifts or otherwise, any sum of money, or other thing of value, for the compromise, adjustment or settlement of a charge or complaint for a contravention or alleged contravention of legislation relating to public finance,

commits an offence, and is liable on summary conviction to a fine not exceeding 5000 penalty units or to imprisonment for a term not exceeding 10 years or to both.

(2) Any person who

(a) promises, offers or gives any money or other valuable consideration to any officer or person acting in an office or employment connected with the collection, management

or disbursement of public or trust moneys or the control of government stores with intent

- (i) to influence a decision or action on any question or matter that is then pending, or may, by law, be brought before the person in an official capacity; or
 - (ii) to influence the officer or person to commit, or aid and abet in committing any fraud on the government or to connive at, take part in, or allow any opportunity for the commission of the fraud; or
- (b) accepts or receives money or valuable consideration, commits an offence, and is liable on summary conviction to a fine not exceeding three times the amount so offered or accepted, or to imprisonment for a term not exceeding 5 years or to both.

(3) Where any person is required to perform any function or duty under this Act and that person fails to perform that duty within the time required, the person shall be liable to such punishment as may be prescribed in Regulations made under this Act.

Government property

63. (1) Books, papers, accounts and documents kept or used by, or received or taken into the possession of any person, who is or has been employed in the collection or management of revenue by virtue of that employment, is property that belongs to Government.

(2) The moneys and valuable securities received or taken into the possession of an officer or a person in the cause of employment is money and valuable securities that belong to the Government.

Deduction from money due by the Government

64. (1) Where a person is indebted to the Government for a specific sum of money, the Minister in consultation with the Attorney-General may authorise the retention, by way of deduction or set-off, of the amount of the indebtedness out of any sum of money that may be due or payable by the Government to that person.

(2) Notwithstanding subsection (1), the Controller and Accountant-General or another head of department shall recover an overpayment made out of the Consolidated Fund on account of salary, wages and allowances out of a sum of money that may be due or payable by the Government to the person to whom the overpayment was made.

(3) No payment shall be made where an amount of more than 1,000 currency points is due from the Consolidated Fund to any individual or body of persons unless

there is produced to the paying officer a certificate issued by the Commissioner of Income Tax showing that tax is not due from the individual or body of persons or that satisfactory arrangements have been made for payment of any tax due by the individual or body.

(4) Currency point under subsection (3) has the meaning assigned to it under section 165(2) of the Internal Revenue Act, 2000 (Act 592).

Transfer of Government property

65. No transfer, lease or loan of property owned by the Government shall be made to any person except in accordance with the appropriate law for the time being in force for the purpose.

PART VIII — ESTABLISHMENT OF FINANCIAL ADMINISTRATION TRIBUNAL

Establishment of Tribunal

66. (1) There is established by this Act a Financial Administration Tribunal referred to in this Act as the "Tribunal".

(2) The Tribunal shall comprise,

- (a) a Justice of the High Court who shall be the chairperson;
- (b) a chartered accountant; and
- (c) a management accountant or a professional valuer.

(3) The members shall be nominated by the Chief Justice in consultation with the Judicial Council and shall be appointed by the President.

(4) The terms and conditions of the members other than the Justice of the High Court shall be as stated in their letters of appointment.

Jurisdiction of the Tribunal

67. The Tribunal has jurisdiction

- (a) to hear and determine matters that fall for determination under this Act;
- (b) to enforce recommendations of the Public Accounts Committee on the Auditor-General's reports as approved by Parliament;

- (c) to enforce contracts and bonds entered into in pursuance of this Act
- (d) to make such orders as it considers appropriate for the recovery of monies, assets or other property due to the State;
- (e) to prohibit any individual whether a public officer or not from managing public accounts or funds if the individual is unqualified professionally or has been persistently negligent in the management of public funds;
- (f) to prohibit any person from participating as a bidder in any government procurement or contract where the person has a record of defrauding the State.

Enforcement of the orders of the Tribunal

68. The Orders of the Tribunal shall be enforced in the same manner as an order of the High Court.

Compensation and reparation

69. (1) A person adversely affected by an audit report may accept liability and offer to pay compensation or make restitution.

(2) Unless there is objection to the offer of compensation or restitution from the Attorney-General, the Tribunal shall accept the offer if it considers the offer satisfactory and may make such orders as it considers appropriate.

(3) An order made under subsection (2) shall not be taken as a conviction.

(4) Where a person ordered to pay compensation or make restitution under this section fails or defaults in the payment of any money ordered by the Tribunal, the Tribunal shall

- (a) make an order for the confiscation to the state and sale of assets owned by the person sufficient to satisfy the debt and
- (b) ban the person from participation on any government contract, procurement or any transaction funded from public funds.

(5) For the purpose of identifying the assets owned by any person under subsection (4) (a), the Tribunal shall, where it is of the opinion that the assets of the person has been deliberately vested in any other person for the benefit of the first mentioned

person or that first mentioned person's family, order the tracing of the assets to satisfy the debt owed to the State.

(6) An order requiring the refund of any money to the State may include payment of interest.

Appeal

70. An appeal from an order or a decision of the Tribunal lies to the Court of Appeal and then to the Supreme Court.

Right of the Attorney-General to Order Prosecution

71. Nothing in this Part shall preclude the Attorney-General from instituting criminal prosecution even where monies lost to the state have been recovered.

PART IX — MISCELLANEOUS

Government appointee reporting obligations

72. (1) Directors of companies appointed by the Government shall submit a report on the operations of the company to the Minister and the sector Minister at the end of June and December each year.

(2) The Directors appointed by the Government in any company shall forward to the sector Minister a copy of the audited financial statement of the company within a period of one month after the publication of the audited financial statement of the company.

(3) Subject to any other provision on the removal of Directors from a Board, where the Directors fail to comply with subsection (1), the Directors shall be removed from the Board.

(4) The Minister shall determine the form and content of the report required under subsection (1).

Regulations

73. The Minister may, subject to the provisions of this Act by legislative instrument make Regulations on

- (a) the collection, management and administration of, and the accounting for public moneys and moneys held in trust for the Government;

- (b) payments and procedure for payment out of the Consolidated Fund;
- (c) loans from the Consolidated Fund;
- (d) appropriation of public money;
- (e) the maintenance of records of the property of Government;
- (f) any purpose necessary for the efficient administration of public finance subject to the provisions of any enactment; and
- (g) anything which is required or authorised to be made by Regulations under this Act.

Interpretation

74. In this Act, unless the context otherwise requires,

“accountable” means the requirement to record, report, explain and justify actions to a superior officer, to the Government, to Parliament, the Public Accounts Committee of Parliament or to the public;

“agency of Government” means a Ministry, Department, non-Profit making statutory body or any other agency of Government;

“ Auditor-General” means the person appointed as such under the Constitution of the Republic of Ghana;

“appropriation” means any moneys charged on the Consolidated Fund or any other public fund;

“Chief Director” means the Chief Director of the Ministry of Finance;

“ Appropriation Act” means an Act to apply a sum out of the Consolidated Fund to the service of a financial year;

“Consolidated Fund” means the Consolidated Fund of the Republic of Ghana;

“Controller and Accountant-General” means the person appointed by the President by or under the authority of this enactment or any officer acting on the authority of the Controller and Accountant-General;

“department” includes Ministries or other agencies of Government;

“generally accepted accounting principles” means accounting principles, practices and procedures recognized by the Institute of Chartered Accountants of Ghana as appropriate for reporting financial information relating to government, a ministry or department, fund, agency or other reporting unit being principles, practices and procedures that are consistent with this Act and any relevant Appropriation Act;

“Government” means the Government of the Republic of Ghana;

“Government Accounts” means all documents on records pertaining to the collection of revenue, the control of expenditure, the administration of trust fund, the management of government stores, and such other financial duties as may be made the responsibility of Government departments.

“head of department” has the same meaning assigned to it by or under the Civil Service Law, 1993 (P.N.D.C.L. 327) or other public institution;

“internally generated funds” means revenue generated’ from the activities of a government agency from its operations other than taxes collected by the Revenue Agencies and includes non-tax revenues;

“Minister” means the Minister responsible for Finance or any person designated to act on behalf of the Minister;

“money” means any coin, note or negotiable instrument;

“money received by or on behalf of the Government for a special purpose” includes moneys that are paid to a public officer under or pursuant to an enactment, trust, undertaking or contract and which are to be disbursed for a purpose specified in or pursuant to the enactment, trust, treaty, undertaking or contract;

“negotiable instrument” includes cheque, draft, traveller’s cheques, bill of exchange, money order, postal remittance and any other similar instrument;

“non-tax revenue” means revenue accruing to an agency of government other than revenue generated by the agency from its operations which are not taxes collected by the Revenue Agencies;

“Principal Account Holder” means the sector Minister or political head of Ministry, Department or Agency governed by this law;

“public accounts” means all documents and records pertaining to public and trust moneys received into, held in and paid from the Consolidated fund”;

“public institution” includes a corporation and “statutory corporation”;

“Principal Spending Officer” means the Chief Director, Chief Executive or the most senior Administrative Head of a Ministry, department or agency responsible for producing outputs;

“public service” includes service in any civil capacity of the Government, the emoluments attached to which are paid directly out of moneys provided by Government and service with any statutory corporation established entirely out of public funds or moneys provided by Government;

“securities” include securities of the Government or of any other country approved by the Minister and bonds, notes, deposits, certificates, debentures, treasury bills; and

“tax” includes any tax, import and export duty or toll payable to the Government, imposed or authorised to be imposed by an enactment.

Repeals, savings and modifications

75. (1) The Financial Administration Decree, 1979 (S.M.C.D. 221) is hereby repealed.

(2) Regulations, orders, rules and instructions relating to the administration of public finance, government stores and public corporations other than those set up for commercial purposes in operation at the time of the commencement of this Act and not inconsistent with this Act shall continue in operation until the regulations, orders, rules or instructions are amended, revoked or replaced by regulations or orders or other instrument under this Act.

(3) Any enactment in force at the commencement of this Act shall have effect, with such modification as may be necessary, to give effect to the provisions of this Act.

(4) The Minister may issue written instructions with respect to transitional measures related to the implementation of this Act.

Commencement

76. This Act shall come into force for the financial year commencing 1st January, 2004.

Date of *Gazette* notification: 31st October, 2003.

**Foreign Exchange Act, 2006
(Act 723)**

ARRANGEMENT OF SECTIONS

Section

Authority of Bank of Ghana and licensing

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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
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Provisions related to the conduct of foreign exchange business

15. Foreign exchange business and international payments
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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

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**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.

**Internal Audit Agency Act 2003
(Act 658)**

ARRANGEMENT OF SECTIONS

**PART I— ESTABLISHMENT AND FUNCTIONS OF THE
INTERNAL AUDIT AGENCY**

Section

1. Establishment of Internal Audit Agency
2. Object of the Agency
3. Functions of the Agency
4. Governing body of the Agency
5. Membership of the Board
6. Functions of the Board
7. Tenure of office of members of Board
8. Allowances for members
9. Meetings of the Board
10. Disclosure of interest
11. Committees of the Board
12. Director-General
13. Functions of the Director-General
14. Independence and powers of the Director-General
15. Secretariat and other staff of the Agency

PART II – INTERNAL AUDIT UNITS FOR MDAs AND MMDAs

16. Establishment of Internal Audit Units
17. Action by the Agency
18. Exhibition of professionalism and competence
19. Integrity
20. Confidentiality

PART III – FINANCIAL AND MISCELLANEOUS PROVISIONS

21. Accounts and audit
22. Funds of the Agency
23. Annual reports to the President
24. Regulations
25. Offences and penalties
26. Interpretation
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THE SIX HUNDRED AND FIFTY-EIGHTH

ACT

OF THE PARLIAMENT OF THE REPUBLIC OF GHANA
ENTITLED

THE INTERNAL AUDIT AGENCY ACT, 2003

AN ACT to establish an Internal Audit Agency as a central agency to co-ordinate, facilitate, monitor and supervise internal audit activities within Ministries, Departments and Agencies and Metropolitan, Municipal and District Assemblies in order to secure quality assurance of internal audit within these institutions of State; to provide for the Board of the Internal Audit Agency and to provide for connected purposes.

DATE OF ASSENT: 31st *December, 2003.*

BE IT ENACTED by Parliament as follows:

PART I — ESTABLISHMENT AND FUNCTIONS OF THE INTERNAL AUDIT AGENCY

Establishment of Internal Audit Agency

1. There is established by this Act an Internal Audit Agency.

Object of the Agency

2. The object of the Agency is to co-ordinate, facilitate and provide quality assurance for internal audit activities within the Ministries, Departments and Agencies and the Metropolitan, Municipal and District Assemblies.

Functions of the Agency

3. (1) The Agency shall set standards and procedures for the conduct of internal audit activities in the MDAs and MMDAs.

- (2) The Agency shall ensure that

- (a) financial, managerial and operating information reported internally and externally is accurate, reliable and timely.
- (b) the financial activities of MDAs and MMDAs are in compliance with laws, policies, plans, standards and procedures;
- (c) national resources are adequately safeguarded;

- (d) national resources are used economically, effectively and efficiently;
- (e) plans, goals and objectives of MDAs and MMDAs are achieved; and
- (f) risks are adequately managed in the MDAs and MMDAs.

(3) Without limiting subsections (1) and (2), the Agency shall

- (a) promote economy, efficiency and effectiveness in the administration of government programmes and operations;
- (b) prepare plans to be approved by the Board for the development and maintenance of an efficient internal audit for the MDAs and MMDAs;
- (c) facilitate the prevention and detection of fraud; and
- (d) provide a means for keeping the MDAs and MMDAs fully and currently informed about problems and deficiencies related to the administration of their programmes and operations and the necessity for appropriate corrective action.

(4) The Agency shall monitor, undertake inspections and evaluate the internal auditing of the MDAs and MMDAs.

Governing body of the Agency

4. The Agency shall have a governing Board known as the Internal Audit Board.

Membership of the Board

5. (1) The Board shall consist of the following members appointed by the President acting in consultation with the Council of State:

- (a) a chairperson;
- (b) the Minister responsible for Finance or a representative of the Minister;
- (c) the Minister for Local Government and Rural Development or a representative of the Minister;
- (d) the chairperson of the Public Services Commission or a representative of the chairperson;
- (e) the Director-General of the Agency appointed under section 12 of this Act;

- (f) two other members appointed from the private sector; and
- (g) two professional accountants each with not less than ten years experience in the profession nominated by the Council of the Institute of Chartered Accountants (Ghana).

(2) The President shall in appointing members of the Board have regard to the integrity, knowledge, expertise and experience of the persons and in particular their knowledge in matters relevant to the functions of the Agency.

Functions of the Board

6. The Board shall formulate policies for the Agency and shall

- (a) establish appropriate structures for the effective and efficient execution of the object of the Agency;
- (b) secure the achievement of the object of the Agency;
- (c) approve plans for the development and maintenance of an efficient internal audit for bodies and institutions to whom this Act applies; and
- (d) take reasonable and timely action on the reports submitted to it by the Director-General.

Tenure of office of members of the Board

7. Members of the Board other than ex-officio members shall hold office for a period of four years and are on the expiration of that period eligible for re-appointment except that a member shall not be appointed for more than two terms in succession.

Allowances for Members

8. Members of the Board other than the Director-General shall be paid such allowances as the President in consultation with the Minister may approve.

Meetings of the Board

9. (1) The Board shall meet at such times and places as the chairperson may determine but shall meet at least once every three months.

(2) The chairperson may at any time, and shall, on the written request of the Director-General or four other members of the Board, call a special meeting of the Board.

(3) At each meeting of the Board, the chairperson shall preside and in the absence of the chairperson, a member of the Board elected by the members present from among their number shall preside.

(4) The quorum for a meeting of the Board shall be three members including the Director-General or the person acting as Director-General.

(5) A decision at a meeting of the Board shall be that of the majority of the members present and voting and where there is equality of votes, the chairperson or the person presiding shall have a second vote.

(6) The Board may co-opt a person to act as an adviser at its meetings but a co-opted person is not entitled to vote at a meeting on a matter for decision by the Board.

(7) The validity of any proceedings of the Board shall not be affected by a vacancy in its membership or by a defect in the appointment or qualification of any of its members.

(8) Subject to this section, the Board shall regulate its own procedures.

Disclosure of interest

10. (1) A member of the Board who is directly or indirectly interested in a matter being considered or dealt with by the Board shall disclose the nature of the interest at a meeting of the Board and shall not take part in any deliberation or decision of the Board with respect to the matter.

(2) A member who fails to disclose all interest under subsection (1) is liable to be removed from the Board.

Committees of the Board

11. The Board may for the discharge of its functions appoint committees comprising members or non-members or both and may assign to a committee such functions of the Board as the Board may determine except that a committee composed exclusively of non-members may only advise the Board.

Director-General

12. (1) There shall be appointed by the President in accordance with article 195 (1) of the Constitution an officer who shall be the chief executive of the Agency and be designated the Director-General.

(2) The Director-General shall not, while holding office, occupy any other office or employment which is likely to conflict with the duties of the Director-General whether or not there is remuneration attached to it.

(3) Notwithstanding subsection (3), the Director-General may with the approval of the Board act as a member of a commission appointed by the Government, to enquire into any matter affecting accountability, management and governance.

(4) Subject to the provisions of this section, the Director-General shall be appointed on terms and conditions specified in the Director-General's letter of appointment.

Functions of the Director-General

13. (1) The Director-General shall, subject to directions of the Board on matters of policy and subject to this Act, be responsible for the day-to-day management and administration of the Agency, and may make such decisions and exercise powers that are necessary for the attainment of the object and functions of the Agency.

(2) Without limiting subsection (1), the Director-General shall

- (a) secure the execution of the policies of the Board;
- (b) make regular reports to the Board on the management and operations of the Agency;
- (c) provide the data, statistics and advice necessary for the formulation of policies for the attainment of the object of the Agency; and
- (d) perform such other duties as the Board may direct.

Independence and powers of the Director-General

14. (1) Subject to the Constitution and this Act, the Director-General, in the performance of the functions as Director-General is not subject to the direction and control of any other person or authority but a public body, organ or the head of an MDA or an MMDA may request the Director-General to carry out such specific investigations as may be considered reasonable by the Director-General.

(2) The Director-General or a person authorised by the Director-General is entitled

- (a) to be given such information and explanations as the Director-General may request in the performance of duties under this Act; and
- (b) to inspect books, records and offices in the performance of duties under this Act or any other enactment and shall be given access to the books, records and offices on demand

(3) Where there is any critical financial or economic crisis or exigency which requires immediate action and there is insufficient time to call a meeting of the Board, the Director-General may with the concurrence of the chairperson of the Board exercise the powers of the Board and take such action as may be necessary.

(4) Where any action has been taken by the Director-General under subsection (3), the Director-General shall as soon as practicable call a meeting of the Board to report the action taken for ratification or review by the Board.

Secretariat and other staff of the Agency

15. (1) There shall be a secretariat of the Agency, the head of which shall be the Director-General.

(2) There shall be appointed by the President in accordance with article 195 (1) of the Constitution such other public officers as the Agency may require for the performance of its functions.

(3) There may be transferred or seconded to the Agency such public officers as may be requested by the Director-General and approved by the Board.

(4) The President may, in accordance with article 195 (2) of the Constitution, delegate the power of appointment under this Act.

PART II – INTERNAL AUDIT UNITS FOR MDAs AND MMDAs

Establishment of internal audit units

16. (1) There shall be established in each MDA and MMDA, an internal audit unit which shall constitute a part of the MDA or MMDA.

(2) There shall be appointed for each internal audit unit, personnel required to ensure an effective and efficient internal auditing of the MDA or MMDA concerned.

(3) An internal audit unit established under subsection (1) shall in accordance with this Act and standards and procedures provided by the Agency, carry out an internal audit of its MDA or MMDA and shall submit reports on the internal audit it carries out to the Director-General of the Agency.

(4) The internal audit unit of an MDA shall submit a copy of its internal audit report to its management body and such other persons as it is required to submit the report.

Act 658

Internal Audit Agency Act, 2003

- (5) (a) The autonomous bodies of the Constitution shall be subject to the standards and procedures of the Agency and shall have internal audit units.
- (b) The internal audit units of the autonomous bodies shall not be subject to the Agency but shall be subject to the Auditor-General.
- (c) A copy of the internal audit report of an autonomous body shall be submitted to the Auditor-General.

(6) A copy of an internal audit report of an MMDA shall be submitted to its Regional Co-ordinating Council.

(7) A Regional Co-ordinating Council shall furnish the Agency with a copy of an internal audit report submitted under subsection (6).

(8) The Audit Report Implementation Committees of MDAs and MMDAs as established under section 30(1) of the Audit Service Act, 2000 (Act 584) shall be responsible for the implementation of the recommendations of the internal audit reports.

Action by the Agency

17. The Agency may upon examination of an internal audit report, take such action as it considers appropriate, including recommendation of prosecution and disciplinary action in respect of any breaches found.

Exhibition of Professionalism and Competence

18. Internal auditors operating by virtue of this Act,

- (a) shall exhibit the highest level of professionalism in the gathering, evaluation and communication of information when auditing and shall act only in areas for which they have the necessary knowledge, skills, experience and competence;
- (b) shall perform internal auditing in accordance with Generally Accepted Principles of Internal Auditing and the standard and guidelines of the Agency as established under section 3(1); and
- (c) shall in the performance of their work make a balanced assessment of all issues of relevance to the work and should not be influenced by their personal interest or the interests of other persons.

Integrity

19. Internal auditors to whom this Act applies shall

- (a) perform their work with honesty and diligence;
- (b) not knowingly be a party to any illegal activities or engage in acts that discredit the work of internal auditing or the MDA or MMDA;
- (c) make disclosures required by law and the standards and procedures as established under section 3(1);
- (d) not participate in any activity or relationship that may impair or is likely to be taken to impair unbiased assessment, including an activity or a relationship that may be in conflict with the interests of the MDA or MMDA;
- (e) not accept anything or any favour that may impair or might be taken to affect their professional judgement: and
- (f) disclose all material facts known to them, the non-disclosure of which may distort any reporting activity.

Confidentiality

20. (1) Internal auditors shall respect the value and ownership of information they receive and shall not disclose information without authority unless there is a legal or professional obligation to do so.

(2) Internal auditors shall be prudent in the use and protection of information acquired in the course of their duties.

(3) Internal auditors shall not use information for any personal gain or in any manner that would be contrary to this Act or detrimental to the legitimate and ethical objectives of the Agency, MDAs and MMDAs.

PART III - FINANCIAL AND MISCELLANEOUS PROVISIONS**Accounts and audit**

21. (1) The Agency shall keep proper books of account and other records in relation to these in a form determined by the Controller and Accountant-General and approved by the Auditor-General.

(2) The Agency shall, not later than three months after the end of the financial year, submit for audit to the Auditor-General, its books of account and records.

(3) The Auditor-General shall, not later than three months after the submission under subsection (2), audit the books of account of the Agency.

(4) The financial year of the Agency shall be the same as the financial year of the Government.

Funds of the Agency

22. The funds of the Agency are

- (a) monies provided to the Agency by Parliament for the discharge of its functions; and
- (b) monies that accrue to the Agency.

Annual report to the President

23. (1) The Board shall not later than three months after the end of each financial year submit to the President a report of the activities of the Agency in respect of the preceding financial year and shall in the report

- (a) state its findings on activities of the internal audit limits of the MDAs and the MMDAs;
- (b) provide details of its expenditure for the preceding financial year as compared with its budgeted expenditures for that year.

(2) The President shall cause the report with such comments as the President determines, to be laid before Parliament by the Minister.

Regulations

24. (1) The President may, on the advice of the Board, by legislative instrument prescribe Regulations necessary for the effective implementation of this Act.

(2) In furtherance of subsection (1) Regulations may be made in respect of

- (a) the persons or bodies to whom reports of the internal audit units shall be distributed by the Board;
- (b) the protection of internal auditors; and.

- (c) any other matter in accordance with this Act.

(3) Any Regulations made under this section may be signed by a Minister authorised by the President.

Offences and penalties

25 (1) Any person who

- (a) gives the Director-General any information or explanation which the person knows to be false or which the person has no reason to believe to be true contrary to section 14 (2) (a);
- (b) fails to produce for inspection by the Director-General or otherwise fails to give the Director-General access to any book, record or office when requested by the Director-General contrary to section 14 (2) (b);
- (c) wilfully suppresses any information or explanation required by the Director-General; or
- (d) obstructs the Director-General in any way in the performance of functions under this Act;
- (e) provides information which the person knows to be false or which the person has no reason to believe to be true to an internal auditor,

commits an offence and is liable on summary conviction to a fine not less than 1,000 penalty units or to imprisonment for a term not exceeding 5 years or to both.

(2) Any internal auditor who acts in breach of any of the provisions of sections 18, 19 or 20 shall be subject to such action as the Board shall recommend including criminal prosecution.

(3) Any member of staff or employee of the Agency who

- (a) demands or takes a bribe, gratuity, recompense or reward for the neglect, omission, commission or performance of duty under this Act;
- (b) wilfully fails to report to the Director-General any abuse or irregularity that comes to the notice of the person in the course of the performance of duties under this Act; or
- (c) makes any report to the Director-General which the person knows to be false or which the person has no reason to believe to be true commits an offence and is liable on summary conviction to a fine not less than 1,000

penalty units or to imprisonment for a term not exceeding 5 years or to both.

(4) For the purposes of subsection (1), the Director-General includes any officer acting under the instructions of the Director-General.

Interpretation

26. In this Act unless the context otherwise requires,

“ Agency” means the Internal Audit Agency established under section 1;

“Board” means the Board of the Internal Audit Agency;

“Minister” means the Minister responsible for Finance;

“MDA” means Ministries, Departments and Agencies and includes all government bodies and institutions that receive government subvention wholly or partially;

“MMDA “ means Metropolitan, Municipal and District Assemblies.

Transitional provision

27. (1) Internal audit officers and all public officers performing internal audit work in any MDA or MMDA immediately before the coming into force of this Act, shall upon the coming into force of this Act, be deemed to constitute the members of an internal audit unit of the MDA or MMDA for the purposes of this Act.

(2) Notwithstanding subsection (1), public officers performing internal audit duties in an MDA or MMDA on the date of the coming into force of this Act may be re-assigned to such internal audit units as the appointing authority may determine.

Date of Gazette notification: 31st December, 2003

**Long-Term Savings Scheme Act 2004
(Act 679)**

ARRANGEMENT OF SECTIONS

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AND LONG-TERM SAVINGS AGENCY**

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7. Power of Agency to conduct investigation and inspection
8. Governing Council of the Agency
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THE SIX HUNDRED AND SEVENTY-NINETH

ACT

OF THE PARLIAMENT OF THE REPUBLIC OF GHANA
ENTITLED

LONG-TERM SAVINGS SCHEME ACT, 2004

AN ACT to establish a Long-Term Savings Scheme; to provide the general framework for the operation and regulation of the Scheme, and to provide for related matters.

DATE OF ASSENT: *11th November; 2004.*

BE IT ENACTED by Parliament as follows:

PART I — LONG-TERM SAVINGS SCHEME AND LONG-TERM SAVINGS AGENCY

Establishment of Scheme

1. There is established by this Act a Long-Term Savings Scheme referred to in this Act as the "Scheme".

Object of the Scheme

2. The object of the Scheme is to provide for the operation of tax-incentive-based voluntary savings plans, which shall provide for anyone or more of the following:

- (a) retirement savings;
- (b) savings for home ownership and educational needs;
- (c) savings for an all purpose plan
- (d) lump-sum payment on account of physical or mental disability; and
- (e) lump-sum payment to dependants in the event of death, of a contributor to a plan.

Establishment of the Agency

3. (1) There is hereby established by this Act a Long-Term Savings Scheme Agency referred to in this Act as the "Agency."

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

(3) The Agency may for the discharge of its functions under this Act acquire, hold and dispose of movable and immovable property and may enter into contract or other transaction.

Functions of the Agency

4. The Agency shall administer and operate the Scheme and shall for that purpose

- (a) formulate and pursue policies to achieve the object of the Scheme;
- (b) in consultation with the Securities and Exchange Commission take measures to protect the interests of contributors where the solvency of any Funds Manager is in doubt;
- (c) carry out research in relation to the Scheme and protect the integrity of the Scheme against any abuses;
- (d) promote and educate the public on the Scheme;
- (e) monitor and evaluate the operations and performance of the Scheme;
- (f) receive and process applications from persons who want to operate as Funds Managers under this Act for approval;
- (g) put in place structures for the Scheme and issue guidelines and notices as required for the proper operation of the Scheme;
- (h) publish such manuals as it considers necessary for the conduct and operation of the Scheme; and
- (i) advise the Minister on all matters relating to the Scheme.

Power of the Agency to request for production of books

5. (1) The Agency may by notice in writing at any time, if it considers that there is sufficient cause to do so, give directions to a Funds Manager, a Trustee, an employer, or

any person, to produce to a person authorised by the Agency, such books or records, as may be specified in the notice.

(2) The Agency may in writing authorise a person possessed of such qualification as it considers adequate, to exercise the power to request for the production of books conferred on the Agency under this section.

(3) Where the Agency or a person authorised by the Agency requires the production of any books under this section and any person has a lien on the books, the production of the books shall not prejudice the lien.

(4) An action shall not lie against any person for complying with a direction or requirement to produce books made or given under this section.

(5) A request to produce books or records under this section extends, if the person is a body corporate, to any person who is or has been an officer of the body corporate whether that body corporate is in the course of being wound up or has been dissolved.

Powers of the Agency in relation to books required to be produced

6. (1) Where the required books are produced under section 5 (1), the person to whom they are produced

- (a) may take possession of them, make copies of them, or take extracts from them;
- (b) may require any person who was party to the compilation of the books to make a statement providing an explanation of any matters contained in the books;
- (c) may retain possession of the books for as long as the Agency considers necessary to enable the books to be inspected and copies of or extracts from the books to be made or taken by or on behalf of the Agency; and
- (d) shall permit the person who produced them, upon giving a reasonable notice and specification of the books, to have access to them.

(2) Where the books are not produced, the Agency or the authorised person may require the person who should have produced the books

- (a) to state, to the best of that persons knowledge and belief, where the books may be found;

(b) to identify the person who, to the best of that person's knowledge and belief, 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.

Power of Agency to conduct investigation and inspection

7. (1) Where the Agency has reason to suspect that a person has committed an offence under this Act or has been guilty of fraud or dishonesty in relation to dealing in Plan activities, it may conduct such investigation as it considers appropriate in accordance with this Act.

(2) The Agency may inspect the books, accounts, documents and transactions of a Funds Manager or Trustee.

(3) The Agency may appoint a person possessed of such qualification as it considers adequate, to exercise the power of the Agency under subsection (1)

(4) For the purposes of an inspection under this section, the Funds Manager or Trustee shall afford the Agency access to, and shall produce books, accounts and documents and shall give such information and provide facilities as may be required to conduct the investigation or inspection.

(5) A person appointed by the Agency under subsection (3) shall have the power to copy or take possession of the books, accounts and other documents of a Funds Manager or Trustee.

(6) A Funds Manager or Trustee, who fails, without reasonable excuse, to produce any book, account or document, information or facilities in accordance with subsection (4) commits an offence under this Act and is liable on summary conviction to a fine of not less than 1000 penalty units or imprisonment for a term of not less than 3 years or both.

Governing Council of the Agency

8. (1) The Agency shall have a governing council referred to in this Act as the "Council".

(2) The Council shall provide policy direction for the Scheme and shall ensure that the functions of the Agency are effectively and efficiently carried out.

(3) The Council comprises

- (a) a chairperson;
- (b) one representative of each of the following
 - (i) the Ministry of Finance and Economic Planning, not below the rank of director;
 - (ii) the Ministry of Manpower Development and Employment, not below the rank of director;
 - (iii) the Ghana Employers Association;
 - (iv) the Ghana Securities Industry Association;
 - (v) the Ghana Association of Bankers;
 - (vi) the Ghana Insurers Association; and
 - (vii) Organised Labour;
- (c) two other individuals representing the informal sector, one of whom shall be a woman; and
- (d) the Administrator of the Agency.

Appointment of members of the Council

9. (1) The chairperson and members of the Council shall be appointed by the President in consultation with the Council of State.

(2) The President shall in appointing the chairperson and other members of the Council under subsection (1) have regard to the integrity, expertise, experience, and knowledge of the persons in matters relevant to the functions of the Agency.

Tenure of Office of members of the Council

10. (1) The chairperson and a member of the Council other than an ex-officio member shall hold office for a period not exceeding four years and shall on the expiration of that period be eligible for re-appointment.

(2) A member of the Council other than an ex-officio member may resign from the office at any time by letter addressed to the President through the Minister.

(3) A member who is absent from four consecutive meetings of the Council without sufficient cause shall cease to be a member of the Council.

(4) The chairperson or any other member of the Council may be removed from office by the President for inability to perform the functions of office, for stated misbehaviour or for any other just cause.

(5) The chairperson of the Council shall notify the Minister of vacancies that occur in the membership of the Council within one month of the occurrence of the vacancy.

(6) Where a person is appointed to fill a vacancy that person shall hold office for the remainder of the term of the previous member and shall subject to the provisions of this Act be eligible for re-appointment.

Meetings of the Council

11. (1) The Council shall meet for the dispatch of business at times and in places that the Council may determine but shall meet at least once every three months.

(2) The chairperson shall upon the request of not less than one third of the membership of the Council convene a special meeting of the Council.

(3) The quorum at a meeting of the Council shall be seven members.

(4) The chairperson shall preside at every meeting at which the chairperson is present and in the absence of the chairperson a member of the Council elected by the members present from among their number shall preside.

(5) Matters before the Council shall be decided by a majority of the members present and voting.

(6) The person presiding at a meeting of the Council shall in the event of equality of votes have a second or casting vote.

(7) The Council may co-opt any person to act as an adviser at its meetings but a co-opted person is not entitled to vote at a meeting of the Council.

(8) The validity of the proceedings of the Council shall not be affected by a vacancy in membership or by a defect in the appointment or qualification of a member.

(9) Except as otherwise provided under this section, the Council shall determine and regulate the procedure for its meetings.

Committees of the Council

12. The Council may for the purposes of achieving the object of the Scheme appoint committees of the Council comprising members of the Council or non-members or both and may assign to them functions that the Council may determine.

Disclosure of interest

13. (1) A member of the Council who has an interest in any matter being considered or dealt with by the Council shall disclose the nature of that interest to the Council and shall not take part in any deliberation or decision of the Council with respect to the matter.

(2) A member who has an interest in a matter before the Council and who, fails to disclose that interest under subsection (1) shall be removed from the Council.

Allowances for members of the Council

14. The chairperson and other members of the Council shall be paid allowances that the Minister may determine.

Funds of the Agency

15. (1) The funds of the Agency shall include

- (a) money accruing to the Agency in the course of performance of its functions under this Act;
- (b) money accruing to the Agency from any fee imposed under this Act,
- (c) grants received from the Government by the Agency for the discharge of its functions;
- (d) loans granted to the Agency by the Government or by any other body or person; and
- (e) grants approved by the Minister to be made to the Agency by donors.

(2) Funds received by or on behalf of the Agency shall be deposited to the credit of the Agency in an account in a bank or banks approved by the Council.

Fees

16. (1) The Agency shall be entitled to fees charged on returns on Plan Funds or assets under management of the Funds Managers at a rate that shall be determined by the Agency in consultation with the Funds Managers.

(2) Every Funds Manager shall deduct the fee from the total returns on Plan Funds or assets under management of the Funds Managers and remit the deduction to the Agency at the end of every quarter.

(3) The fee remitted to the Agency under subsection (2) shall be applied by the Agency for the purposes

- (a) of the operational and other expenses of the Agency; and
- (b) other uses of benefit to the Scheme that the Agency may determine in accordance with Regulations made under this Act.

Appointment and Responsibility of the Administrator

17. (1) The President acting in accordance with the advice of the Council given in consultation with the Public Services Agency shall appoint an Administrator for the Agency.

(2) The Administrator shall

- (a) hold office on the terms and conditions specified in the letter of appointment; and
- (b) be a member of the Council.

(3) Subject to the directions of the Council the Administrator shall be responsible for the day-to-day administration of the affairs of the Agency and shall ensure the implementation of the decisions of the Council.

Appointment of other staff

18. (1) The Agency shall have a Secretary to the Council and such other staff as are necessary for the effective and efficient performance of the functions of the Agency.

(2) The President acting in accordance with the advice of the Council given in consultation with the Public Services Commission, shall appoint the officers and other members of staff who shall hold office on terms and conditions specified in their letters of appointment.

(3) Other public officers may be transferred or seconded to the Agency.

Delegation of power of appointment

19. The President may in accordance with article 195(2) of the Constitution, delegate the power of appointment of public officers under this Act.

Accounts and Audit

20. (1) The Agency shall keep proper books of account and records in relation to them and the books of account and records shall be in such form as the Auditor - General may approve.

(2) The books of account of the Agency shall be audited by the Auditor-General or an auditor appointed by the Auditor-General within six months after the end of each financial year.

(3) In addition to the annual audit, technical audits may be conducted on selective basis by the Auditor -General or by an auditor appointed by the Auditor-General.

Annual Report

21. (1) The Council shall submit to the Minister as soon as practicable and in an event not more than eight months after the end of each financial year a report dealing generally with the activities and operation of the Agency during the year to which the report relates and shall include

- (a) the audited accounts of the Agency and the Auditor-General's report on the accounts of the Agency; and
- (b) such other information as the Agency may consider necessary.

(2) The Minister shall within two months after the receipt of the annual report submit the report to Parliament with such statement, as the Minister consider necessary.

Financial Year

22. The financial year of the Agency shall be the same as the financial year of the Government.

PART II — CONTRIBUTIONS

Operation of Plans

23. (1) A plan consists of contributions by a person into a fund managed by Funds Manager on terms, conditions and rules agreed upon between the Funds Manager and the contributor, for one or more of the purposes specified in Section 2 of this Act.

(2) A person becomes a contributor if that person completes a form approved by the Agency and submits that form to a Funds Manager for the purpose, and accepts to abide by the Plan Rules.

(3) A contributor shall receive a copy of the Plan Rules on joining a Plan.

(4) The objectives of a Plan and the benefits to be derived from the Plan shall be clearly stated in the Plan Rules and any information documents issued in relation to the Plan.

(5) The Plan Rules shall set minimum contributions to a Plan, as determined by the Agency by notice published in the *Gazette*.

(6) Notwithstanding subsection (5) a Funds Manager may with the approval of the Agency accept contributions below the minimum contributions.

(7) The Plan Rules shall, subject to the provisions of this Act, set out the conditions and procedures for withdrawal of monies standing to the credit of a contributor to a plan.

Plan contributions

24. (1) Any person may, subject to section 23 (2) contribute to a Plan on that person's own behalf or on behalf of a named beneficiary.

(2) An employer may in accordance with an agreement with its employee contribute to a Plan on behalf of that employee.

(3) Any contribution made and any returns earned from investment of the contribution shall, subject to any deductions of fees in accordance with this Act and the Plan Rules, be credited to the account of the contributor.

(4) Contributions may be made to a Plan by or on behalf of a contributor after the retirement of the contributor from employment.

(5) A contribution shall not be made to a Plan on behalf of a contributor on or after the death of the contributor.

(6) Ownership of an employer's contributions on behalf of an employee shall not vest in the employee until at the end of the vesting period.

(7) Subject to subsection (6), an employer's contributions to a Plan on behalf of an employee shall be the personal property of that employee.

(8) Notwithstanding subsection (6), except for termination for proven misconduct, in the event of severance by the employer of the employment relationship with the contributor, or in the event of liquidation of the employer, an employer's contributions for its employee shall vest in the employee even if the vesting period has not expired.

(9) Subject to subsection (8) a contributor shall forfeit the total amount of the employer's contributions for that contributor if the contributor leaves the employment of the employer before the end of the vesting period.

(10) On the death of a contributor before the expiry of or after expiry of the vesting period, any contributions by the contributors portfolio shall devolve on the estate of the contributor.

(11) Subject to the provisions of this Act and Regulations made under this Act, funds standing to the credit of an employee under a provident fund sponsored by an employer or employee group, may at any time within 9 months or such longer period as the Agency may by notice specify, be transferred to a Plan as contribution, pursuant to an agreement

- (a) between the employer and the employee; or
- (b) among the employee group.

(12) The provisions of section 30 shall apply to contributions made pursuant to section 24 (11) after the coming into force of this Act.

Withdrawal of portfolio

25. Subject to sections 26, and 30 (6), (7) and (8) a contributor or a beneficiary specified by the contributor may withdraw all or part of the contributor's portfolio from a Plan

- (a) after 10 years from the date of first contribution in the case of a Group Personal Retirement Plan or an Individual Retirement Plan;
- (b) after 8 years from the date of first contribution in the case of an All Purpose Plan
- (c) after 5 years from the date of first contribution in the case of a Home Ownership Plan or an Educational Savings Plan, except that a withdrawal shall not be allowed from a Home Ownership Plan or an Educational Savings Plan for any purpose other than for home ownership or educational purpose as the case may be;
- (d) at any time following a certification by a medical Board that the contributor is incapable of any normal gainful employment by virtue of a permanent physical or mental disability; or
- (e) at any time by the beneficiaries of the estate of a deceased contributor.

Contributor leaving employment

26. (1) Subject to section 24 (7), where a contributor for any reason leaves the employment of an employer who contributes to a Plan on behalf of the contributor

- (a) before the expiry of the vesting period,
 - (i) the contributor may by notice in writing request the Fund Manager to transfer the contributor's portfolio to another Plan operated by that Funds Manager or to a Plan operated by a Funds Manager specified by the contributor, or may, subject to section 30 (6), (7) and (8) withdraw all or part of the contributor's portfolio;
 - (ii) the Funds Manager shall ensure that the total amount of employer's contributions together with any returns earned on the contributions are refunded to the employer of contributor, at the same time that the transfer or withdrawal of the contributor's portfolio is made;
 - (iii) the total amount of the employer's contributions and returns refunded under subparagraph (ii) shall be taxable as income in the hands of the employer in the year of the refund; and
 - (iv) the Funds Manager shall issue a notice of refund to the Agency and the Commissioner of the Internal Revenue Service at the same time as the refund is made to the employer's account under subparagraph (ii);
- (b) after the vesting period, the contributor may
 - (i) request the Funds Manager to transfer the contributor's Portfolio to another Plan operated by the Funds Manager;
 - (ii) request the Funds Manager to transfer the contributor's portfolio to a Plan operated by a Funds Manager specified by the contributor; or
 - (iii) subject to section 30 (6), (7) and (8) withdraw the portfolio.

(2) A Funds Manager shall not act on a contributor's request for transfer or withdrawal of the contributor's portfolio without notice in writing to that contributor's employer if that employer has contributed to the Plan on behalf of the contributor.

(3) Subject to subsection (2), a Funds Manager shall ensure that on receipt, of a notice under this section for a transfer by a contributor or an employer as the case may be, the transfer is effected in accordance with the transfer notice not later than 14 days from the date the transfer notice is received by the Funds Manager.

Right of contributor to convert Plan

27. (1) Subject to subsections (2) and (3) and the provisions of the Plan Rules, a contributor may by notice in writing to the appropriate Funds Manager convert one Plan to another Plan.

(2) For purposes of this section, a conversion under subsection (1) shall be prospective and the date of service of the notice of conversion on the Funds Manager shall be the first date of contribution to the latter Plan for purposes of determining the period of contribution to the latter Plan.

(3) Where a person converts a Plan into another Plan in accordance with subsection (1), the tax benefits applicable to the latter Plan under section 30 of this Act shall apply, with effect from the date the notice under subsection (1) is served on the appropriate Funds Manager.

Creation of encumbrances in respect of contribution

28. (1) Subject to subsection (2), a contributor may pledge or otherwise create a charge in respect of any part or all of that contributor's portfolio.

(2) Where a beneficiary of any pledge or charge created by a contributor under subsection (1) enforces the charge, the beneficiary shall be liable for any tax applicable to withdrawals under section 30.

Duty of employer in respect of Plan

29. Notwithstanding the provisions of any Plan Rules or any agreement to the contrary, an employer shall

- (a) provide the administrative and accounting facilities required to enable each employee to join a Plan of the employee's choice and contribute to that Plan;
- (b) without prejudice to subsection (a), an employer shall make appropriate payroll deductions from the monthly remuneration of an employee who wishes to contribute to a Plan and remit the contributions to the Funds Manager of the Plan within fourteen days after the end of the month of deduction;
- (c) not co-mingle payroll deductions under this Act with the employer's own funds and where an employer deducts contributions from the salary of an employee under this Act, the contributions shall be held by the employer in trust for the purposes of this Act until remitted to the appropriate Funds Manager; and
- (d) exercise in good faith any other duties conferred by the Plan Rules.

PART — TAX RELIEFS**Tax Reliefs**

30. (1) Subject to subsections (2) and (3), contributions made by an employer to a Plan on behalf of a contributor, shall for the purposes of income tax, be treated as part of the deductible income for that employer for any tax year.

(2) Contributions not exceeding in total, seventeen and one half per centum of a contributor's monthly income, made by either a contributor or the contributor's employer or both a contributor and the contributor's employer to a Group Personal Retirement Plan or to an Individual Retirement Plan, shall for the purposes of income tax, be treated as deductible income for the contributor and the contributor's employer to the extent of their respective contributions.

(3) Contributions not exceeding in total, fifteen per centum of a contributor's monthly income, made by a contributor or a contributor's employer or both a contributor and the contributor's employer to an Educational Savings Plan or to, Home Ownership Plan shall for the purposes of income tax, be treated as deductible income for the contributor and the contributor's employer to the extent of their respective contributions.

(4) Contributions not exceeding in total, ten per centum of a contributor's monthly income, made by a contributor or a contributor's employer or both a contributor and the contributor's employer for the All Purpose Plan shall for the purposes of income tax, be treated as deductible income for the contributor and the contributor's employer to the extent of their respective contributions.

(5) Investment income including capital gains, earned from the investment of Plan Funds shall for the purposes of income tax, be treated as deductible income.

(6) A withdrawal of all or part of a contributor's portfolio under a Group Personal Retirement Plan or an Individual Retirement Plan

- (a) on or after retirement shall be tax exempt;
- (b) before ten years of contributions and before retirement shall be subject to the appropriate income tax and a surcharge often per centum of the income earned on the amount withdrawn.

(7) A withdrawal from a Home-ownership Plan or Educational Savings Plan

- (a) after five years of contributions shall be tax exempt if the amount withdrawn is used for home ownership or educational purposes, as the case may be; or

- (b) before five years of contributions or for purposes other than home-ownership or education shall be subject to the appropriate income tax and a surcharge often per centum of the income earned on the amount withdrawn.

(8) A withdrawal from an All Purpose Plan

- (a) after eight years of contributions shall be tax exempt from tax; or
- (b) before eight years of contributions shall be subject to the appropriate income tax and a surcharge often per centum of the income earned on the amount withdrawn.

(9) Notwithstanding section 30 (6), (7) and (8) where a contributor withdraws from a Plan before the times specified for tax-exempt withdrawals under subsections (6) (a) and (7) (a) and (8) (a), certification by a medical Board that the contributor is incapable of any normal gainful employment by virtue of a permanent physical or mental disability, the contributor's withdrawals shall be exempt from tax.

(10) A withdrawal from a Plan at any time by the beneficiaries of the estate of a deceased contributor shall be exempt from tax.

PART IV - MANAGEMENT OF PLANS

Management of Plan Funds

31. Plan Funds shall be managed by a Funds Manager approved by the Agency under this Act.

Qualification of Funds Manager

32. A person does not qualify as a Funds Manager for the purposes of this Act unless that person is licensed by the Security and Exchange Commission as an investment adviser under the Securities Industry Law 1993 (P.N.D.C.L. 333) as amended and

- (a) is a body corporate;
- (b) is a wholly owned subsidiary of
 - (i) an insurance company;
 - (ii) a bank; or
 - (iii) a non-bank financial institution; and
- (c) has obtained approval from the Agency to manage Plan Funds under this Act.

Application for Approval of Funds Manager

33. (1) A person who wishes to operate as a Funds Manager of a Plan shall apply in writing in the prescribed form to the Agency, for approval.

(2) The Agency shall within fourteen days of receiving an application for approval and upon satisfying itself that the applicant has satisfied all preconditions including the payment of any fees required for approval, grant approval to the applicant.

(3) The Agency may grant approval subject to such conditions or restrictions as it considers appropriate and the Agency may at any time by written notice to a Funds Manager vary any condition or restriction in relation to the approval.

(4) A person granted approval to operate as a Funds Manager under this Act shall satisfy any security and investment requirements prescribed in Regulations made under this Act.

(5) Where the Agency is not satisfied with the application, the Agency may, in writing to the applicant, within fourteen days after receiving the application,

(a) request the applicant to rectify any errors in the application or to satisfy any pre-condition for the grant of approval, within twenty- one days and grant the approval upon the rectification of the error or satisfaction of the pre-conditions within the specified time; or failing which the Agency shall refuse to grant approval; or

(b) refuse to grant the approval.

(6) Where an application for approval is refused, the Agency shall state the reasons for the refusal, in the notice of the refusal to the applicant.

(7) An applicant dissatisfied with the Agency's refusal to grant approval may apply to the Security Exchange Commission for settlement of the dispute.

(8) Where a settlement is not achieved under subsection (7) the applicant may apply to the High Court for a review of the Agency's decision.

Revocation and suspension of Funds Manager's approval

34. (1) The Agency

(a) shall revoke an approval granted to a person to operate as a Funds Manager under this Act if that person ceases to satisfy any of the qualifications required under section 32; and

- (b) may revoke or suspend an approval given to a person to operate as a Funds Manager if that person is in breach of any of the duties imposed under section 35 or is in breach of any of the provisions of this Act or the Plan Rules.

(2) Where the Agency suspends or revokes an approval under subsection (1), the Agency shall within seven days after the decision to suspend or revoke the approval give notice of the decision to the Funds Manager affected by the decision.

(3) Where the Agency suspends an approval given to a person to operate as a Funds Manager, the Agency shall in the notice under subsection (2) specify the defect, omission or breach which has occasioned the suspension and request the person to remedy the defect within thirty days after the notice.

(4) If under subsection (3) the defect, omission or breach is remedied within the time specified, the Agency shall by notice in writing to that person restore its approval for that person to manage Plan Funds, otherwise the Agency shall revoke the approval granted to that person to operate as a Funds Manager.

(5) Where the Agency revokes an approval granted to a person to operate as a Funds Manager under this Act

- (a) subject to paragraph (d), the Agency shall immediately assume responsibility for the management of the Plan Funds managed by the affected Funds Manager and the depository institution holding such Plan Funds shall accord immediate recognition to the Administrator and Secretary of the Agency as the signatories of the account of the Plan Funds to replace the signatures of the Funds Manager;
- (b) the Agency shall within seven days of revocation of the approval, notify the general public through the electronic media, publication in the *Gazette* and a newspaper of wide national circulation of the revocation;
- (c) the Agency shall within seven days of revocation of an approval, issue a written notice to every contributor and employer of the contributor, where applicable, informing them of the action of the Agency and requesting them to discontinue further contributions to the Plan; and
- (d) a contributor to a Plan managed by the affected Funds Manager may by notice to the Agency request the Agency to transfer that contributor's portfolio to a Plan operated by a Funds Manager specified in the notice or may, subject to section 30 (6), (7) and (8) withdraw the portfolio.

(6) Notwithstanding subsection (5) where the revocation of the approval is in relation to

- (a) a Funds Manager ceasing to satisfy the qualifications required under section 32; or
- (b) insolvency of the Funds Manager,

the Agency shall refer the matter to the Securities and Exchange Commission for the necessary action."

(7) A person who is dissatisfied with the decision of the Agency to revoke or suspend an approval granted to that person by the Agency to operate as a Funds Manager under this Act may apply to the Securities and Exchange Commission for settlement of the dispute.

(8) Where a settlement is not achieved under subsection (7) the applicant may apply to the High Court for a review of the Agency's decision.

(9) A depository institution which refuses or fails to comply with subsection (5) (a) commits an offence and is liable on summary conviction to a fine of not less than 2000 penalty units or imprisonment for a term of not less than 5 years or both.

Duties and Prohibited Activities of a Funds Manager

35. A Funds Manager shall

- (a) manage the Plan Funds in accordance with the stated objectives of the Plan;
- (b) make investments not prohibited by the Agency;
- (c) not pledge or otherwise encumber the Plan Assets;
- (d) make investments on an arm's length basis;
- (e) ensure the solvency of the Plan Funds at all times and ensure that enough funds are available for withdrawals as and when required;
- (f) submit to each contributor at such intervals as shall be prescribed by the Agency, a periodic account of contributions and returns on contributions;
- (g) maintain adequate systems of internal controls
- (h) submit to such inspections as the Trustee appointed under section 39 may in the performance of the duties of a trustee, require;

- (i) submit to the Trustee at such intervals as shall be prescribed by the Agency, periodic reports and accounts of contributions, returns on contributions and withdrawals from the Plan Funds;
- (j) submit on a date specified by the Trustee such other reports and records as the Trustee in the performance of the duties of a trustee may require;
- (k) submit to any technical audits that the Agency may require;
- (l) submit such records and reports to the Agency as the Agency may require;
- (m) display evidence of the Agency's approval to operate as a Funds Manager in a conspicuous place on its premises and quote its approval number in any advertisement or information document in which it offers its services as a Funds Manager; and
- (n) abide by any Rules and Regulations made under this Act or directions given by the Agency and perform such other duties as may be imposed by the Plan Rules and Regulations made under this Act.

Permitted investment of Plan Fund

36. (1) The Agency shall determine an appropriate holding by Funds Managers of secure interest bearing investments of Plan funds so as to ensure the safety and liquidity of Plans.

(2) Subject to subsection (1) and the Plan Rules a contributor may specify which of the Plan Manager's products that the contributions portfolio should be invested in.

Permitted expenditure from Plan

37. A Funds Manager shall not charge any expenditures or make any deductions from the Plan Funds other than those prescribed by the Agency or authorized under this Act.

Fees of Funds Manager

38. A Funds Manager shall be paid out of gross earnings on investment of Plan funds, such fee as shall be agreed with each contributor subject to such limits as may be determined by the Agency through notices.

Appointment of Trustee for Plan

39. (1) A Funds Manager shall appoint for every Plan, a Trustee approved by the Agency.,

(2) A person shall not qualify to be appointed a Trustee under subsection (1) unless that person is an Investment Adviser, a Trustee of a Unit Trust Scheme or a Custodian of a Mutual Fund, licensed by the Securities and Exchange Commission under the Securities Industry Law 1993 (PNDCL 333) as amended, and is

- (a) a wholly-owned subsidiary of a bank or insurance company or a non-bank financial institution;
- (b) is independent of the Funds Manager;
- (c) has satisfied any security requirement prescribed by the Agency to be satisfied or to be paid; and
- (d) has paid the requisite approval fee prescribed by the Agency.

(3) A person who wishes to operate as a Trustee for a Plan shall apply in writing in the prescribed form to the Agency for approval, accompanied by a copy of a Trust Deed for the Plan prepared in a form prescribed by the Agency.

(4) The Agency shall within fourteen days of receiving an application for approval and upon satisfying itself that the applicant has satisfied all preconditions including the payment of any fees required for approval, grant approval to the applicant.

(5) The Agency may grant approval subject to such conditions or restrictions as it thinks fit, and the Agency may at any time by written notice to a Trustee vary any condition or restriction in relation to the approval.

(6) Where the Agency is not satisfied with the application, the Agency may, in writing to the applicant, within fourteen days after receiving the application

- (a) request the applicant to rectify any errors in the application or to satisfy any pre-condition for the grant of approval, within twenty- one days and grant the approval upon the rectification of the error or satisfaction of the pre-conditions within the specified time; or
- (b) refuse to grant the approval.

(7) Where an application for approval is refused, the Agency shall state the reasons for the refusal, in the notice of the refusal to the applicant:

(8) An applicant dissatisfied with the Agency's refusal to grant approval may apply to the Security Exchange Commission for settlement of the dispute.

(9) Where a settlement is not achieved under subsection (8) the applicant may apply to the High Court for a review of the Agency's decision.

Duties and Powers of a Trustee

40. (1) A Trustee of a Plan shall in addition to any other duties imposed by the Trust Deed

- (a) hold Plan Assets in its name on behalf of contributors;
- (b) where applicable, ensure that contributions are remitted to the Funds Manager in accordance with the Plan Rules and this Act;
- (c) exercise fiduciary duties conferred by the Trust Deed in good faith and in the interest of contributors;
- (d) ensure that at the expiration of the period specified for the maturity of a Plan or such earlier period as this Act permits, a contributor's portfolio is liquidated and paid to the contributor in accordance with the Plan Rules and this Act;
- (e) conduct such inspections of books and records of the Funds Manager as are necessary for the performance of the duties imposed on the Trustee by this Act and under the Plan Rules and notify the Agency of any breach of duty on the part of the Funds Manager; and
- (f) submit to the Agency on a date specified by the Agency, such records and reports in relation to the performance of the duties of a Trustee as the Agency may require.

(2) A Trustee may with the approval of the Agency request a Funds Manager to submit such periodic accounts and reports of the Plan Funds as the Trustee considers appropriate.

Suspension and Revocation of Trustee's Approval

41. (1) The Agency

- (a) shall revoke an approval granted to a person to operate as a Trustee of a Plan if that person ceases to satisfy any of the qualifications required under section 39 (2).
- (b) may revoke or suspend an approval given to a person to operate as a Trustee if that person is in breach of any of the duties imposed under section 40 or is in breach of the Plan Rules.

(2) The Agency shall, not later than seven days after making a decision to suspend or revoke a Trustee's approval, inform the Trustee in writing of the decision and the

reasons for the decision and request the Trustee to directly inform-contributors, their employers (where applicable), and the Funds Manager of the suspension or revocation.

(3) Where the approval of a Trustee is suspended, the procedures specified under subsections (3), and (4) of section 34, shall apply to the Trustee as appropriate.

(4) Where the Agency revokes an approval granted to a person to operate as a Trustee of a Plan, the Agency shall within seven days of revocation of the approval, notify the general public through the electronic media, publication in the *Gazette* and a newspaper of wide national circulation of the revocation.

(5) A person whose application for approval to act as a Trustee for a Plan is refused or whose approval is suspended or revoked by the Agency may apply to the Securities and Exchange Commission for a settlement of a dispute.

(6) Where a settlement is not achieved under subsection (5) the applicant may apply to the High Court for a review of the Agency's decision.

Fees of Trustee

42. A Trustee shall be paid a fee agreed on with the Funds Manager subject to such limits as may be determined by the Agency.

PART V — MISCELLANEOUS MATTERS

Dispute resolution

43. (1) Where a dispute arises between a contributor and a Funds Manager, or where a dispute arises between a Trustee and a Funds Manager, the dispute shall first be submitted to the Agency.

(2) A dispute arising between a contributor and an employer in relation to deductions from the contributor's salary or in relation to an employer's breach of an agreement to make contributions on behalf of the contributor shall be referred to the National Labour Agency established under section 70 (3) of the Labour Act, 2003 (Act 651).

Accounts and audit of Funds Manager and Trustee

44. (1) A Funds Manager or a Trustee shall keep proper books and records in relation to the Plan in a form that the Agency shall determine.

(2) A Funds Manager shall have an external auditor who shall audit the books and records of the Plan Funds at least once a year, and prepare an audit report, which shall include a statement

- (a) on the extent of compliance with the provisions of this Act and Regulations made under this Act;
- (b) on the extent of compliance with the Plan's investment objective and other requirements under this Act and under the Plan Rules;
- (c) on the extent of solvency of the Plan; and
- (d) on any other matter that the Agency may require under this Act or under Regulations made under this Act.

(3) A Trustee shall have an external auditor who shall audit the records of the Trustee relating to the Plan Funds at least once a year, and prepare an audit report, which shall include a statement on

- (a) the extent of compliance with the provisions of this Act and Regulations made under this Act;
- (b) the extent of compliance with the Trustee's duties under the Trust Deed and under this Act; and
- (c) any other matter that the Agency may require under this Act or under Regulations made under this Act.

(4) Without limiting the scope of subsections (2) and (3), the Agency may order such technical audits of the facilities, equipment, resources and accounts of a Funds Manager or a Trustee to be conducted, as the Agency considers appropriate.

Reports of Funds Manager or Trustee

45. (1) A person who is a Funds Manager or a Trustee shall submit an annual report to the Agency within four months after the end of each financial year, detailing its activities in relation to the Scheme in the preceding year.

(2) A report under subsection (1) shall include the audit reports referred to in section 44 (2) and (3) and a report on any other matter that the Agency may prescribe.

Financial year

46. The financial year of a Funds Manager or a Trustee shall be the same as the financial year of the Agency.

**Protection of Plan Funds on Liquidation of Employer,
Funds Manager or Trustee**

- 47.** (1) In the event of a winding up by an employer,
- (a) contributions made by that employer on behalf of a contributor before the vesting period shall not be available to a liquidator of the employer; and
 - (b) unpaid contributions of the employer as agreed with a contributor and any payroll deductions made from the contributor's salary but which have not been remitted to a Funds Manager at the time of liquidation, shall, have priority.
- (2) Where a Funds Manager is being liquidated,
- (a) that Funds Manager shall not receive under a Plan operated by that Funds Manager, any contributions from the date of the commencement of the winding up process of the Funds Manager; and
 - (b) any Plan operated by that Funds Manager may with the approval of the contributor and on the directions of the Agency be merged with a Plan operated by another Funds Manager by the transfer of the assets and liabilities of the Plan to that other Funds Manager.
- (3) Where a Trustee is being liquidated, the Funds Manager of the Plan to which the trust relates shall with the approval of the contributor and the Agency appoint another Trustee approved by the Agency.

Offences

48. (1) Any person who operates as a Funds Manager or as a Trustee for a Plan without the relevant approval as required under this Act, commits an offence and is liable on summary conviction to a fine of not less than 2000 penalty units or a term of imprisonment of not less than 10 years or to both.

(2) Any person who operates:

- (a) as a Funds Manager to a Plan; or
- (b) as a Trustee to a Plan

when the approval granted under this Act to operate as such has been revoked or suspended, commits an offence and is liable on summary conviction to a fine of not less than 1000 penalty units or imprisonment for a term of not less than 5 years or to both.

(3) An employer who makes deductions from a contributor's salary for the purpose of contribution to a Plan and who fails to pay the sums deducted to a Funds Manager within fourteen days after the end of the month in which the deduction was made, is liable to pay interest on the amount not remitted at the prevailing 91-day Treasury Bill rate for each day that the amount remained unremitted and if the amount still remained unpaid thirty days after the expiry of the initial fourteen days the employer commits an offence and is liable on summary conviction to a fine of not less than 1000 penalty units or a term of imprisonment of not less than 5 years or to both,

(4) Where a body corporate commits an offence under this Act, every director of that body corporate shall be deemed to have committed that offence unless a director proves that the offence was committed without the director's consent or connivance or that the director exercised all such due diligence to prevent the commission of the offence as the director ought to have exercised having regard to the nature of the director's functions and circumstances,

Regulations

49. (1) The Minister on the advice of the Agency may by legislative instrument make Regulations for the effective implementation of this Act.

- (2) Without prejudice to subsection (1), the Regulations may prescribe for
- (a) fees to be paid by a Funds Manager to the Agency for approval to operate as a Funds Manager of a Plan;
 - (b) fees to be paid by a Trustee to the Agency for approval to operate as a Trustee of a Plan;
 - (c) fees to be paid by a contributor to a Funds Manager and fees to be paid by a Funds Manager to a Trustee;
 - (d) security and investment requirements to be by a Funds Manager;
 - (e) the nature and types of investments that shall not be made by a Funds Manager from Plan Funds;
 - (j) the nature and type of expenditures that shall not be made by a Funds Manager from Plan Funds;
 - (g) the form of statements on contribution and returns on contributions that must be submitted to a contributor by a Funds Manager; and
 - (h) for any other matter that will generally give effect to this Act.

Interpretation

50. In this Act, unless the context otherwise requires

“Agency” means the Agency established under section 3 of this Act.

“All Purpose Savings Plan” means a Plan to which a contributor contributes personally or to which the contributor or the contributor’s employer or both the contributor and the contributor’s employer contribute, to provide savings for purposes determined by the contributor;

“Contributor” means a person who joins a Plan in accordance with section 23(2) and contributes to a Plan on his or her own behalf or on behalf of a minor or a person with disability;

“Council” means the Governing Council of the Agency established under section 8 of this Act.

“Educational Savings Plan” means a Plan to which a contributor contributes personally or to which the contributor or the contributor’s employer or both the contributor and the contributor’s employer contribute, to provide savings for educational purposes for the contributor or a named beneficiary;

“Funds Manager” means a person approved by the Agency to operate and manage a Plan and its related funds under this Act;

“Gross Earnings” means income earned on investment of Plan Funds before any deductions.

“Group Personal Retirement Plan” means a Plan to which a contributor contributes personally, or to which a contributor or the contributor’s employer or both the contributor and the contributor’s employer contribute, to provide savings for the contributor on the contributor’s retirement;

“Home-Ownership Plan” means a Plan to which a contributor contributes personally, or to which a contributor or the contributor’s employer or both the contributor and the contributor’s employer contribute, to provide savings for the housing needs of the contributor;

“Individual Retirement Plan” means a Plan to which a contributor contributes personally, to provide savings for the contributor’s own retirement;

“Minister” means the Minister responsible for Finance;

“Plan Assets” means the total amount of contributions made to a Plan and any returns earned on such contributions as variously invested in accordance with this Act, Regulations made under this Act and the Plan Rules;

“Plan Funds” means contributions to a Plan and income accruing from the investments of the contributions;

“Plan Rules” means rules made by the Plan operator and accepted as binding by the contributor, for the effective administration of Plans, and include rules relating to the objectives, benefits, duties and obligations of the relevant parties under a Plan;

“Plan” means a Savings Plan and unless otherwise specified, includes a Group Personal Retirement Plan, an Individual Retirement Plan, a Home-Ownership Plan, an Educational Savings Plan, an All Purpose Plan, and such other Plan as shall be specified by the Minister;

“Portfolio” means the total amount of contributions and any returns earned on the contributions standing to a contributor’s credit less any approved fees under this Act and under the Plan Rules and before the end of the vesting period and excludes employer contributions made on behalf of the contributor;

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

“Retirement” means the attainment of the statutory retirement age, or on voluntary retirement;

“Securities and Exchange Commission” means the Securities and Exchange Agency established under section 1 of the Securities Industry Law, 1993 (P.N.D.C.L. 333) as amended;

“Trustee” means a person appointed by a Funds Manager and approved by the Agency under this Act to hold Plan Assets on behalf of contributors to a Plan;

“Vesting period” means the period determined by the employer not exceeding five years from the first contribution by the employer on behalf of the contributor during which period the contributor remained in the employment of the employer.

Date of *Gazette* notification: 12th November, 2004

**Payment Systems Scheme Act 2003
(Act 662)**

ARRANGEMENT OF SECTIONS

PART I — ESTABLISHMENT AND SUPERVISION OF PAYMENT SYSTEMS

Section

1. Establishment and designation of payment systems by the Bank
2. Access to participation in the system of institutions approved by the Bank
3. Supervision of established and designated systems
4. Systemic risk
5. Retention of records

PART II — CUSTOMER INFORMATION AND PARTIES' OBLIGATION IN RESPECT OF A TRANSACTION

6. Need for transparency
7. Customer information prior to execution or receipt of a transfer
8. Customer information subsequent to the execution or receipt of a transfer
9. Right of parties to negotiate obligations under a transaction
10. Obligation as to transfer time
11. Obligation to make funds available upon transfer
12. Delay attributable to originator or beneficiary
13. Other rights
14. Obligation to transfer full amount
15. Obligation to refund in the event of non-execution

PART III — FINALITY AND INSOLVENCY

16. Finality
17. Irrevocability
18. Settlement
19. Netting agreements and netting rules
20. Collateral for payment and settlement of obligations

PART IV — GENERAL AND MISCELLANEOUS PROVISIONS

21. Settlement of disputes
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23. Regulations
24. Offences by body of persons
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THE SIX HUNDRED AND SIXTY-SECOND

ACT

OF THE PARLIAMENT OF THE REPUBLIC OF GHANA
ENTITLED
THE PAYMENT SYSTEMS ACT, 2003

AN ACT to provide for the establishment, operation and supervision of electronic and other payment, clearing and settlement systems; to provide for the rights and responsibilities of transacting and intermediating parties and for other related matters.

DATE OF ASSENT: *31st December; 2003.*

BE IT ENACTED by Parliament as follows:

PART I — ESTABLISHMENT AND SUPERVISION OF PAYMENT SYSTEMS

Establishment and designation of payment systems by the Bank of Ghana

1. (1) The Bank of Ghana may

- (a) establish, operate, promote and supervise payment, funds transfer, clearing and settlement systems, subject to such rules as it may publish; and
- (b) designate any other payment, funds transfer, clearing and settlement systems, operating in the country which the Bank considers to be in the public interest for the Bank to supervise under this Act.

(2) A designation under subsection (1)(b) shall be in writing and addressed to any person the Bank reasonably believes is the operator of the system.

Access to participation in the system of institutions approved by the Bank

2. (1) The Bank may give access to any system established under section 1 subsection (1) (a) to a bank, financial institution or other institution whose participation the Bank considers to be in the interest of efficient operation of the system.

(2) Where the Bank considers that participation by an institution referred to in subsection (1) in a system is no longer in the interest of efficient operation of the system, the Bank may, by notice in writing to the institution published in the *Gazette*,

withdraw accessibility of the system from the institution from the date specified in the notice.

(3) Subject to section 4, the Bank shall not withdraw access without giving the institution a reasonable opportunity to make representations to the Bank.

Supervision of established and designated systems

3. (1) The Bank may in supervising a system established or designated under section 1 subsection (1) *(b)*,

- (a)* demand information as to the operation of the system from its operators;
- (b)* inspect the premises, equipment, computer hardware, software, any communication system, books of accounts, and any other document or electronic information which the Bank may require in relation to the system;
- (c)* direct changes to be made to the terms of any rules, agreements or practices pursuant to which the system is operated efficient and in the public interest;
- (d)* direct changes to be made to the rules concerning access to the system in order to ensure that the system is operated efficiently and in the public interest; and
- (e)* exercise such other powers as may be prescribed by Regulations.

(2) The operators of the system shall comply with the Bank's directions provided under subsection (1).

(3) Information and documents obtained by the Bank, under subsections (1) and (2), shall be treated as confidential subject to such disclosure as the Bank may consider necessary in the public interest,

(4) An operator who contravenes any of the provisions in subsection (1) or (2) commits an offence and is liable on summary conviction to a fine not exceeding 500 penalty units or imprisonment for 2 years or both.

Systemic risk

4. (1) Where the Bank considers that

- (a)* there is systemic risk, namely, the risk that the failure of one or more institutions participating in a system within the meaning of section 1 to

meet their payment or settlement obligations, may result in any of the other participating institutions being unable to meet their respective payment or settlement obligation; or

- (b) a person is engaged in or about to engage in an act, omission or conduct with respect to the system, which may result in systemic risk, or is contrary to the public interest, effectiveness or security of the system,

the Bank may issue a directive in writing requiring the institution or person to

- (c) perform such acts as are necessary to remedy the situation and to cease or refrain from engaging in the act, omission or conduct; or
- (d) provide the Bank with such information and documents relating to the matters specified in the directive, within a period specified in the directive.

(2) A person who without good reason refuses or fails to comply with a directive issued under subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding 500 penalty units and the Bank may take steps under the Regulations to safeguard the system without prejudice to any criminal or civil proceedings that may be instituted against that person.

Retention of records

5. (1) Notwithstanding anything to the contrary in any legislation on record keeping, records created during the course of the operation and administration of a system established and operated or designated by the Bank under section 1 shall be retained for a minimum period of 6 years from the date of creation of the record.

(2) Records may be retained in electronic form.

PART II – CUSTOMER INFORMATION AND PARTIES' OBLIGATION IN RESPECT OF A TRANSACTION

Need for transparency

6. A system shall operate in accordance with the principles of transparency, so that users are aware of the conditions upon which transfers are effected.

Customer information prior to execution or receipt of a transfer

7. Upon request, an institution shall make available to its actual and prospective customer in a comprehensible form, information on conditions for transfer through the system, including at least

- (a) an indication of the time needed for the funds to be credited to the account of the beneficiary's institution;
- (b) an indication of the time needed for the funds credited to the account of the institution to be credited to the beneficiary's account;
- (c) details of any charges payable by the customer; and
- (d) details of any complaints and redress procedures available to the customer and means of access to them.

Customer information subsequent to the execution or receipt of a transfer

8. (1) Unless expressly agreed to the contrary, after the execution or receipt of a transfer, the institution shall supply its customer with clear information in a comprehensible form, including at least

- (a) a reference enabling the customer to identify the transaction;
- (b) the original amount of the transfer; and
- (c) the amount of charges payable by the customer.

(2) Where the originator has specified that the charges for a transfer are to be wholly or partly borne by the beneficiary, the beneficiary shall be informed accordingly by the beneficiary's institution.

Rights of parties to negotiate obligations under a transaction

9. Notwithstanding the minimum obligations stated as applicable to a transfer through a system under this Act, parties may assume greater obligations either through agreement or through the operation of the rules of the system.

Obligation as to transfer time

10. (1) The originator's institution shall execute a transfer within the time limit agreed with the originator or in the absence of an express agreement, within the standard time limit applicable to the system.

(2) Where the agreed time limit is not complied with, the originator's institution shall compensate the originator by payment of interest calculated by applying the 91-day Treasury Bill discount rate to the amount of the transfer for the period from the end of the agreed time limit to the date on which the funds are credited to the account of the beneficiary's institution.

(3) Where non-execution of a transfer by the originator's institution within the agreed time limit is attributable to an intermediary institution, that institution shall be required to reimburse the originator's institution in respect of any compensation paid to the originator by the originator's institution.

Obligation to make funds available upon transfer

11. (1) The originator's institution shall make the funds resulting from a transfer available to the beneficiary within the time limit agreed with the beneficiary or in the absence of an express agreement, within the standard time limits applicable to the system.

(2) Where the agreed time limit is not complied with, the beneficiary's institution shall compensate the beneficiary by payment of interest, calculated by applying the 91-day Treasury Bill discount rate to the amount of the transfer for the period from the end of the agreed time to the date on which the funds are credited to the beneficiary's account.

Delay attributable to originator or beneficiary

12. Compensation shall not be paid to an originator or a beneficiary under sections 9 and 10 where the originator's institution or the beneficiary's institution can establish that the delay is attributed to the originator or the beneficiary.

Other rights

13. Sections 10 and 11 shall not prejudice any other rights available to persons participating in the execution of the transfer.

Obligation to transfer full amount

14. (1) The originator's institution, any intermediary institution and the beneficiary's institution are each obliged to execute any transfer for the full amount, unless the originator specifies that the costs of the transfer are to be borne wholly or partly by the beneficiary.

(2) Subsection (1) does not limit any rights of the beneficiary's institution to charge the beneficiary for the administration of the beneficiary's account.

(3) This section is subject to the rules of the relevant system.

Obligation to refund in the event of non-execution

15. (1) Subject to subsection (4), if after a transfer has been accepted by the originator's institution the relevant amount is not credited to the account of the beneficiary's

institution, the originator's institution shall, without prejudice to any other claim which may be made, make a refund to the originator of the amount of the transfer plus interest and any charges paid by the originator for the transfer.

(2) The interest shall be calculated by applying the 91-day Treasury Bill discount rate to the amount of the transfer for the period beginning from the date of the transfer to the date of the refund.

(3) Where the transfer has been made using an intermediary institution, the institution which has accepted the transfer shall reimburse the originator's institution against its liability under subsection (1), and where that intermediary institution itself used another intermediary institution, the latter shall be reimbursed by that institution accordingly.

(4) Where the transfer was not completed because of

- (a) an error or omission in the instructions given by the originator to the originator's institution; or
- (b) non-execution of the transfer by an intermediary institution expressly chosen by the originator

the originator's institution and any other institution involved is obliged to use its best endeavours to obtain a refund of the amount of the transfer which may be subject to charges for the expenses incurred in connection with the transfer.

PART III — FINALITY AND INSOLVENCY

Finality

16. A system shall specify the principles applicable to achieve finality in its operations as provided for in this Part.

Irrevocability

17. (1) A transfer is executed at the time specified in the rules of the system.

(2) Without prejudice to any remedies that may exist to recover an equivalent amount of transfer in the case of fraud, mistake or similar vitiating factors, a transfer is irrevocable once executed.

Settlement

18. (1) Subject to the rules of the system, the discharge of settlement obligations between institutions participating in the system is effected by means of entries to accounts maintained with the Bank for settlement purpose.

(2) A settlement effected in accordance with subsection (1) is final and irrevocable.

Netting agreements and netting rules

19. (1) This section applies notwithstanding anything to the contrary in the law relating to insolvency.

(2) Where an institution that participates in a system established or designated under section 1 is wound up and placed in administration or otherwise declared insolvent by a court, any provision contained in a written netting agreement to which that institution is a party or any netting rules and practices applicable to the system are binding on the liquidator or administrator of the institution in respect of any payment or settlement obligation which

- (a) has been determined through netting prior to the issue of the winding-up or administration order; and
- (b) is to be discharged on or after the date of the winding-up or administration order or the discharge of which was overdue on the date of the winding-up or administration order.

Collateral for payment and settlement of obligations

20. Notwithstanding anything to the contrary in the law relating to insolvency, any asset of an institution that participates in a system, which, prior to the issue of an order for the winding-up or administration of that institution was provided to

- (a) the Bank; or
- (b) the operators of the system designated under section 1 subsection (1) (b),

as security in respect of the institution's payment or settlement obligations, may be utilized by the Bank or by the operators of the designated system to the extent required for the discharge of those payment or settlement obligations.

PART IV - GENERAL AND MISCELLANEOUS PROVISIONS

Settlement of disputes

21. (1) Where an institution that participates in a system considers itself wronged by a decision taken by the Bank under this Act and the matter cannot be resolved between the institution and the Bank, the matter may be referred for settlement by mediation by the parties.

(2) For the purpose of subsection (1),

- (a) the institution and the Bank shall agree on a mediator;
- (b) the mediator shall familiarise himself or herself with the position held by the institution and the Bank;
- (c) the mediator, the institution and the Bank shall discuss the dispute at a meeting attended by all of them ; and
- (d) the institution and the Bank shall agree to share the mediator's costs equally.

(3) This section does not apply to a dispute that falls within section 4.

Admissibility of evidence

22. Without prejudice to the admissibility of any evidence in a court of law, information, that relates to a transfer through a system contained in,

- (a) any document;
- (b) computer print-out, hard copy, microfilm., floppy or hard disc or any other electronic media or form, is admissible as evidence of or relating to the transfer, subject to the court's discretion as to the weight to be given to the evidence.

Regulations

23. The Bank may make Regulations

- (a) for the effective and efficient supervision of established and designated systems;
- (b) setting out disciplinary procedures for participants in the operation of a system; and
- (c) necessary to give effect to this Act.

Offences by body of persons

24. (1) Where an offence is committed under this Act or under Regulations made under or directives given under this Act by a body of persons.

- (a) in the case of a body corporate, other than a partnership, every director or an officer of that body shall be deemed to have committed that offence; and

- (b) in the case of a partnership, every partner or officer of that body shall be deemed to have committed that offence.

(2) A person shall not be convicted of an offence by virtue of subsection (1), if that person proves that the offence was committed without the knowledge or connivance of that person, and that, that person exercised all due care and diligence to prevent the commission of the offence having regard to all the circumstances.

Interpretation

25. In this Act, unless the context otherwise requires -

“access” as used in section 2, means the participation by a bank, financial institution or other institution as a participating member of the system concerned;

“administration” means a legal process by which a court upon a petition made to it that a company is likely to become insolvent or unable to pay its debts, makes an order appointing an administrator to take charge of the company’s affairs for the proper management of the company in part or in whole with the object of forestalling liquidation, if possible;

“Bank” means in the Bank of Ghana established under the Bank of Ghana Law, 1992, P.N.D.C.L. 291;

“bank” means a bank as defined in the Banking Law, 1989 (P.N.D.C.L. 225);

“beneficiary” means the final recipient of a transfer for whom the corresponding funds are made available in an account to which the recipient has access;

“designation” means a written notification under section 1 subsection (2) addressed to persons whom the Bank reasonably believes to be the operators of a system which, the Bank considers it is in the public interest to designate and supervise;

“finality” means the confirmation explicitly or implicitly, that a payment or settlement is irreversible and irrevocable;

“institution” means a bank, a department or agency of the Government or any other organisation approved by the Bank as eligible to open a settlement account with the Bank;

“intermediary institution” means an institution which is neither that of the originator nor that of the beneficiary and which participates in the execution of a transfer;

“netting” means the determination of the payment obligations between two or more institutions which participate in a system within the scope of this Act or the determination of the net settlement obligations between two or more institutions which participate in the system, and “netting provisions”, “netting agreements”; “netting rules” and “netting practices” shall be constructed accordingly;

“originator” means a person who orders the making of a transfer to a beneficiary;

“system” means a payment, funds transfer, clearing and settlement system within the meaning of section 1;

“transfer” means a transaction carried out on the initiative of an originator through an institution with a view to making available an amount of money to a beneficiary at another institution;

“transparency” means that the conditions under which transfers will be effected and will be made available to users of a system as provided for in Part II.

Transitional and saving provision

26. Any payment and settlement system in existence on the date of commencement of this Act shall continue to operate subject to the provisions of this Act.

Date of *Gazette* notification: 31st December, 2003.

**Public Procurement Act 2003
(Act 663)**

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THE SIX HUNDRED AND SIXTY- THIRD

ACT

OF THE PARLIAMENT OF THE REPUBLIC OF GHANA
ENTITLED

THE PUBLIC PROCUREMENT ACT, 2003

AN ACT to provide for public procurement, establish the Public Procurement Board; make administrative and institutional arrangements for procurement; stipulate tendering procedures and provide for purposes connected with these.

DATE OF ASSENT: *31st December: 2003*

BE IT ENACTED by Parliament as follows:

PART I — ESTABLISHMENT OF THE PUBLIC PROCUREMENT BOARD

Public Procurement Board

1. (1) There is established by this Act a body to be known as the Public Procurement Board, referred to in this Act as “the Board”.

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

(3) The Board may acquire, hold, manage or dispose of any movable or immovable property in connection with the discharge of its functions and may enter into contracts and transactions that are reasonably related to its functions.

Object of the Board

2. The object of the Board is to harmonise the processes of public procurement in the public service to secure a judicious, economic and efficient use of state resources in public procurement and ensure that public procurement is carried out in a fair, transparent and non-discriminatory manner.

Functions of the Board

3. In furtherance of its object the Board shall perform the following functions:

(a) make proposals for the formulation of policies on procurement:

- (b) ensure policy implementation and human resource development for public procurement;
- (c) develop draft rules, instructions, other regulatory documentation on public procurement and formats for public procurement documentation;
- (d) monitor and supervise public procurement and ensure compliance with statutory requirements;
- (e) have the right to obtain information concerning public procurement from contracting authorities;
- (f) establish and implement an information system relating to public procurement;
- (g) publish a monthly Public Procurement Bulletin which shall contain information germane to public procurement, including proposed procurement notices, notices of invitation to tender and contract award information;
- (h) assess the operations of the public procurement processes and submit proposals for improvement of the processes;
- (i) present annual reports to the Minister on the public procurement processes;
- (j) facilitate the training of public officials involved in public procurement at various levels;
- (k) develop, promote and support training and professional development of persons engaged in public procurement, and ensure adherence by the trained persons to ethical standards;
- (l) advise Government on issues relating to public procurement;
- (m) organise and participate in the administrative review procedures in Part VII of this Act;
- (n) plan and co-ordinate technical assistance in the field of public procurement;
- (o) maintain a register of procurement entities and members of and secretaries to tender committees of public procurement entities;

- (p) maintain a data base of suppliers, contractors and consultants and a record of prices to assist in the work of procurement entities;
- (q) investigate and debar from procurement practice under this Act, suppliers, contractors and consultants who have seriously neglected their obligations under a public procurement contract, have provided false information about their qualifications, or offered inducements of the kind referred to in section 32 of this Act;
- (r) maintain a list of firms that have been debarred from participating in public procurement and communicate the list to procurement entities on a regular basis;
- (s) hold an annual forum for consultations on public procurement and other related issues;
- (t) assist the local business community to become competitive and efficient suppliers to the public sector; and
- (u) perform such other functions as are incidental to the attainment of the objects of this Act.

Membership of the Board

4. (1) The Board comprises

- (a) a chairperson, who shall be a person competent and experienced in public procurement;
- (b) a vice-chairperson, who shall be elected by members from among their number;
- (c) four persons from the public sector made up of a representative of the Attorney General and three other persons, nominated by the Minister, one of whom is a woman and each of whom shall have experience in public procurement and be familiar with governmental and multi-lateral agency procurement procedures;
- (d) three persons from the private sector who have experience in procurement at least one of whom is a woman;
- (e) the Chief Executive of the Board.

(2) The members of the Board shall be appointed by the President acting in consultation with the Council of State.

Term of office

5. (1) A member of the Board other than the Chief Executive,
- (a) shall hold office for a term of four years and is eligible for re- appointment for another term only;
 - (b) may in writing addressed to the President through the Minister resign from office.

(2) A member may be removed from office by the President acting in consultation with the Council of State for inability to perform the functions of office, infirmity or any sufficient cause.

(3) Members shall be paid allowances determined by the Minister.

Meetings of the Board

6. (1) The Board shall meet for the despatch of business at such times and places as the Chairperson may determine but shall meet at least once every three months.

(2) 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 both, the members shall elect one of their number to preside.

(3) The quorum for a meeting of the Board shall be five including the Chief Executive

(4) The Board may co-opt any person to act as adviser at a meeting of the Board, except that a co-opted person does not have the right to vote on any matter before the Board for decision.

(5) The validity of the proceedings of the Board shall not be affected by a vacancy among its members or by a defect in the appointment or qualification of a member.

(6) Except as otherwise expressly provided; the Board shall determine the procedure for its meetings.

Committees of the Board

7. The Board may for the discharge of its functions appoint committees of the Board comprising members of the Board or non-members or both and may assign to them such functions as the Board may determine except that a committee composed entirely of non-members may only advise the Board.

Secretariat of the Board

8. (1) The Board shall have a Secretariat with such divisions and structures determined by the Board as may be necessary for the effective execution of its functions.

(2) The Board shall have an officer to be designated the Secretary who shall perform the function of keeping accurate records of proceedings and decisions of the Board and such other functions as the Chief Executive may direct.

(3) The Board may engage such consultants and advisers as it may require for the proper and efficient discharge of the functions of the Secretariat.

Chief Executive of the Board

9. (1) The Chief Executive of the Board shall be appointed in accordance with article 195 of the Constitution.

(2) The Chief Executive shall hold office on such terms and conditions as may be in the letter of appointment to office.

(3) Subject to such general directions as the Board may give, the Chief Executive is responsible for the day-to-day administration of the Secretariat of the Board and the implementation of the decisions of the Board. ,

(4) The Chief Executive may delegate functions of the office as Chief Executive to any officer of the Secretariat but shall not be relieved of the ultimate responsibility for the discharge of the delegated function.

Expenses of the Board

10. Parliament shall provide the Board with such monies as it may require to meet its expenditure. The Board may also receive monies from other sources approved by the Minister.

Accounts and audit

11. (1) The Board shall keep books of account and proper records in relation to them and the accounts books and records of the Board shall be in a form prescribed by the Controller and Accountant-General and approved by the Auditor-General.

(2) The books and accounts of the Board shall be audited annually by the Auditor-General or by an auditor appointed by the Auditor-General.

Financial year of Board

12. The financial year of the Board shall be the same as the financial year of the Government.

Annual report

13. (1) The Board shall within three months after the end of each year, submit to the Minister a written report indicating the activities and operations of the Board in respect of the preceding year.

(2) The annual report shall include a copy of the audited accounts together with the Auditor-General's report and the Minister shall as soon as practicable after receipt of the annual report submit the report to Parliament with such comment as the Minister considers necessary.

PART II — PROCUREMENT STRUCTURES**Scope of application**

14. (1) This Act applies to

- (a) the procurement of goods, works and services, financed in whole or in part from public funds except where the Minister decides that it is in the national interest to use a different procedure;
- (b) functions that pertain to procurement of goods, works and services including the description of requirements and invitation of sources, preparation, selection and award of contract and the phases of contract administration;
- (c) the disposal of public stores and equipment; and
- (d) procurement with funds or loans taken or guaranteed by the State and foreign aid funds except where the applicable loan agreement, guarantee contract or foreign agreement provides the procedure for the use of the funds.

(2) Without limiting subsection (1), this Act applies to

- (a) central management agencies;
- (b) government ministries, departments and agencies;
- (c) subvented agencies;
- (d) governance institutions;

- (e) state owned enterprises to the extent that they utilise public funds;
- (f) public universities, public schools, colleges and hospitals;
- (g) the Bank of Ghana and financial institutions such as public trusts, pension funds, insurance companies and building societies which are wholly owned by the State or in which the State has majority interest;
- (h) institutions established by Government for the general welfare of the public or community.

(3) Where the Minister decides under subsection (1)(a) that it is in the national interest to use a different procedure, the Minister shall define and publish in the *Gazette* the method of procurement to be followed in order to serve the interest of economy.

Procurement entity

15. (1) A procurement entity is responsible for procurement, subject to this Act and to such other conditions as may be laid down in the procurement regulations and administrative instructions of the Minister, issued in consultation with the Board.

(2) The head of an entity and any officer to whom responsibility is delegated are responsible and accountable for action taken and for any instructions with regard to the implementation of this Act that may be issued by the Minister acting in consultation with the Board.

(3) Procurement decisions of an entity shall be taken in a corporate manner and any internal units concerned shall contribute to the decision making process.

(4) The head of an entity is responsible to ensure that provisions of this Act are complied with; and concurrent approval by any Tender Review Board shall not absolve the head of entity from accountability for a contract that may be determined to have been procured in a manner that is inconsistent with the provisions of this Act.

Declaration of procurement entity

16. (1) The Minister may, in consultation with the Board, by notice in the *Gazette*, declare any entity or person to be a procurement entity.

(2) Subject to approval by the Board, a procurement entity may undertake procurement in accordance with established private sector or commercial practices if

- (a) the procurement entity is legally and financially autonomous and operates under commercial law;
- (b) it is beyond contention that public sector procurement procedures are not suitable, considering the strategic nature of the procurement; and
- (c) the proposed procurement method will ensure value for money, provide competition and transparency to the extent possible.

Tender Committee

17. (1) Each procurement entity shall establish a Tender Committee in the manner set out in Schedule 1.

(2) In the performance of its functions, a Tender Committee shall

- (a) ensure that at every stage of the procurement activity, procedures prescribed in this Act have been followed;
- (b) exercise sound judgment in making procurement decisions; and
- (c) refer to the appropriate Tender Review Board for approval, any procurement above its approval threshold, taking into consideration the fact that approval above the Entity Committee is a one stop only approval.

Meetings of Tender Committee

18. The Tender Committee shall meet at least once every quarter and notice of the meetings shall be given at least two weeks prior to the scheduled date of the meeting.

Tender evaluation panel

19. (1) Each procurement entity shall appoint a tender evaluation panel with the required expertise to evaluate tenders and assist the Tender Committee in its work.

(2) In the performance of its functions, a tender evaluation panel shall proceed according to the predetermined and published evaluation criteria.

Tender Review Boards

20. (1) There shall be established at each level of public procurement the following Tender Review Boards in the manner set out in Schedule 2

- (a) Central Tender Review Board;
- (b) Ministerial/Headquarters Tender Review Boards;
- (c) Regional Tender Review Boards;
- (d) District Tender Review Boards.

(2) A Tender Review Board shall perform the following functions:

- (a) in relation to the particular procurement under consideration, review the activities at each step of the procurement cycle leading to the selection of the lowest evaluated bid, best offer, by the procurement entity in order to ensure compliance with the provisions of this Act and its operating instructions and guidelines;
- (b) subject to subsection (2) (a), give concurrent approval or otherwise to enable the procurement entity continue with the procurement process;
- (c) furnish the Board with reports in a prescribed format;
- (d) participate in public procurement fora; and
- (e) review decisions of heads of entities in respect of a complaint.

(3) A Tender Review Board may engage the services of such consultants and advisers, or co-opt persons with specialized expertise as it may require for the proper and efficient discharge of its functions.

PART III – PROCUREMENT RULES

Procurement plan

21. (1) A procurement entity shall prepare a procurement plan to support its approved programme and the plan shall indicate

- (a) contract packages,
- (b) estimated cost for each package,
- (c) the procurement method, and
- (d) processing steps and times.

(2) A procurement entity shall submit to its Tender Committee not later than one month to the end of the financial year the procurement plan for the following year for approval.

(3) After budget approval and at quarterly intervals after that, each procurement entity shall submit an update of the procurement plan to the Tender Committee.

(4) The procurement entity shall send to the Tender Review Board, procurement notices for contracts and procurement plans above the thresholds stipulated in Schedule 3 for publication in the Public Procurement Bulletin.

(5) A procurement entity shall not divide a procurement order into parts or lower the value of a procurement order to avoid the application of the procedures for public procurement in this Act.

Qualification of tenderers

22. (1) A tenderer in public procurement shall

- (a) possess the necessary.
 - (i) professional and technical qualifications and competence;
 - (ii) financial resources;
 - (iii) equipment and other physical facilities;
 - (iv) managerial capability, reliability, experience in the procurement object and reputation; and
 - (v) the personnel to perform the procurement contract;
- (b) have the legal capacity to enter the contract;
- (c) be solvent, not be in receivership, bankrupt or in the process of being wound up, not have its business activities suspended and not be the subject of legal proceedings that would materially affect its capacity to enter into a contract;
- (d) have fulfilled its obligations to pay taxes and social security contributions and any paid compensation due for damage caused to property by pollution;
- (e) have directors or officers who have not in any country been

- (i) convicted of any criminal offence relating to their professional conduct or to making false statements or misrepresentations as to their qualifications to enter into a procurement contract, within a period of ten years preceding the commencement of the procurement proceedings; or
 - (ii) disqualified pursuant to administrative suspension or disbarment proceedings.
- (f) meet such other criteria as the procurement entity considers appropriate.

(2) The procurement entity may require tenderers to provide appropriate documentary evidence or other information that it considers useful to satisfy itself that the tenderers are qualified in accordance with the criteria referred to in sub (1).

(3) Any requirement established pursuant to this section stated in the tender documents or other documents for invitation of proposals shall apply equally to the tenderers.

(4) The procurement entity shall evaluate the qualifications of candidates in accordance with the criteria and procedures stated in the documents referred to in subsection (3).

(5) The procurement entity shall disqualify a tenderer who submits a document containing false information for purposes of qualification.

(6) The procurement entity may disqualify a candidate if it finds at any time that the information submitted concerning the qualifications of the candidate was materially inaccurate or materially incomplete.

Prequalification proceedings

23. (1) A procurement entity may engage in prequalification proceedings to identify tenderers who are qualified prior to the submission of tenders.

(2) Tenderers for prequalification proceedings shall meet the qualification criteria of the procurement entity and the proceedings shall be conducted pursuant to Part IV and V.

(3) A procurement entity shall supply a set of prequalification documents to each supplier or contractor that requests them; and the price that a procurement entity charges for the prequalification documents shall reflect the cost of printing and provision to suppliers or contractors.

- (4) The prequalification documents shall include
- (a) instructions to prepare and submit prequalification applications;
 - (b) a summary of the main terms and conditions required for the procurement contract to be entered into as a result of the procurement proceedings;
 - (c) any documentary evidence or other information that must be submitted by suppliers or contractors to demonstrate their qualifications;
 - (d) the manner and place for the submission of applications to prequalify and the deadline for the submission, expressed as a specific date and time which allows sufficient time for suppliers or contractors to prepare and submit their applications, taking into account the reasonable needs of the procurement entity;
 - (e) any other requirement that may be established by the procurement entity in conformity with this Act and procurement regulations relating to the preparation and submission of applications to prequalify and to the prequalification proceedings; and
 - (f) in proceedings under Part V, the information required to be specified in the invitation to tender by section 48(1)(a) to (e) and if the information required under section 48(1)(a) to (c) is already known, the information required under paragraphs (j) and (k) of section 48(1).

(5) The procurement entity shall respond to any request by a supplier or contractor for clarification of the prequalification documents if the request is made at least within ten days prior to the deadline for the submission of applications to prequalify.

(6) The response by the procurement entity shall be given within a reasonable time and in any event within a period of at least seven working days so as to enable the supplier or contractor to make a timely submission of its application to prequalify.

(7) The response to any request that might reasonably be expected to be of interest to other suppliers or contractors shall, without identifying the source of the request, be communicated to other suppliers or contractors provided with the prequalification documents by the procurement entity.

Decision on prequalification

24. (1) The procurement entity shall make a decision with respect to the qualification of each supplier or contractor submitting an application to prequalify and in reaching that decision shall apply only the criteria set out in the prequalification documents.

(2) The procurement entity shall promptly notify each supplier or contractor submitting an application to prequalify of whether or not it has been prequalified and shall make available to any member of the general public upon request, the names of the suppliers or contractors who have been prequalified.

(3) Suppliers or contractors who have been prequalified may participate further in the procurement proceedings.

(4) The procurement entity shall upon request communicate to suppliers or contractors who have not been prequalified, the grounds for disqualification but the procurement entity is not required to specify the evidence or give the reasons for its finding on the grounds.

(5) The procurement entity may require a supplier or contractor who has been prequalified to demonstrate its qualifications again in accordance with the same criteria used to prequalify the supplier or contractor.

(6) The procurement entity shall disqualify any supplier or contractor who fails to demonstrate its qualification again if requested to do so.

(7) The procurement entity shall promptly notify each supplier or contractor requested to demonstrate its qualifications again whether or not the supplier or contractor has done so to the satisfaction of the procurement entity.

Participation in procurement proceedings

25. Participation in procurement proceedings shall be on a competitive basis subject to sections 44, 45 and 46.

Form of communication

26. Communication between procurement entities and tenderers shall be in writing and communications in any other form shall be referred to and confirmed in writing.

Documentary evidence in procurement proceedings

27. The documentary evidence required in procurement proceedings shall comply with the Evidence Decree, 1975 (N.R.C.D. 323)

Record of procurement proceedings

28. (1) A procurement entity shall maintain a record of the procurement proceedings containing the following information

- (a) a brief description of the goods, works or services to be procured, or of the procurement need for which the procurement entity invited proposals or offers;
- (b) the names and addresses of suppliers or contractors that submitted tenders, proposals, offers or quotations, and the name and address of the supplier or contractor with whom the procurement contract is entered;
- (c) information relating to the qualifications, or lack of qualifications of suppliers or contractors that submitted tenders, proposals, offers or quotations;
- (d) the price, or the basis for determining the price and a summary of the other principal terms and conditions of each tender, proposal, offer or quotation and of the procurement contract if these are known to the procurement entity;
- (e) a summary of the evaluation and comparison of tenders, proposals under section 69, offers or quotations including the application of any margin of preference pursuant to section 60;
- (f) if the tenders, proposals, offers or quotations were rejected, a statement to that effect and the grounds for the rejection;
- (g) if, in procurement proceedings involving methods of procurement other than tendering, those proceedings did not result in a procurement contract, a statement to that effect and the reasons;
- (h) the information required under section 29, if a tender, proposal, offer or quotation was rejected pursuant to that provision;
- (i) a statement of the grounds and circumstances on which the procurement entity relied to justify the selection of the method of procurement used;
- (j) in the procurement of services by means of Part VI, the statement required under section 71 of the grounds and circumstances on which the procurement entity relied to justify the selection procedure used;
- (k) in procurement proceedings involving direct invitation of proposals for services in accordance with section 63(3), a statement of the grounds and circumstances on which the procurement entity relied to justify the direct invitation;
- (l) in procurement proceedings in which the procurement entity, in accordance with section 25(1), limits participation on the basis of nationality, a statement of the grounds and Circumstances relied upon by the procurement entity for the limitation

- (m) a summary of any requests for clarification of the prequalification or invitation documents, the responses received as well as a summary of any modification of the documents;
- (n) a record of any complaints received from suppliers, contractors or consultants and the responses received.

(2) Subject to section 51 (2), the portion of the record referred to in subsection (1) (a) and (b) shall, on request, be made available to any person after a tender, proposal, offer or quotation has been accepted or after procurement proceedings have been terminated without resulting in a procurement contract.

(3) Subject to section 51 (2), the portion of the record referred to in subparagraphs (c) to (g) and (m) of subsection (1) shall, on request, be made available to suppliers, contractors or consultants that submitted tenders, proposals, offers or quotations, or applied for prequalification after a tender, proposal, offer or quotation has been accepted or procurement proceedings have been terminated without resulting in a procurement contract.

(4) Disclosure of the portion of the record referred to in subsections (1) (c) to (e), and (1) (m), may be ordered at an earlier stage by a competent court; except that when ordered to do so by a competent court and subject to the conditions of the court order, the procurement entity shall not disclose

- (a) information, if its disclosure would
 - (i) be contrary to law;
 - (ii) impede law enforcement,
 - (iii) not be in the public interest;
 - (iv) prejudice legitimate commercial interests of the parties; or
 - (v) inhibit fair competition as provided under the Protection Against Unfair Competition Act, 2000 (Act 589); or
- (b) information relating to the examination, evaluation and comparison of tenders, proposals, offers or quotations and tenders, proposal, offer or quotation prices, other than the summary referred to in subsection (1) (e) of this section.

(5) the procurement entity is not liable to tenderers for damages owing solely to a failure to maintain a record of the procurement proceedings in accordance with this section.

(6) Records and documents maintained by procurement entities on procurement shall be made available for inspection by the Public Procurement Board, an investigator appointed by the Board and the Auditor-General upon request; and where donor funds have been used for the procurement, donor officials shall also upon request to the Minister have access to relevant procurement files for purposes of verification and review.

Rejection of tenders, proposals and quotations

29. (1) A procurement entity may reject tenders, proposals and quotations at any time prior to acceptance if the grounds for the rejection are specified in the tender documents or in the request for proposals or quotations.

(2) The grounds for rejection shall be communicated to the tenderer but justification for the rejection is not required and the procurement entity shall not incur liability towards the tenderer.

(3) Notice of the rejection shall be given to participating tenderers within two days from the date the procurement entity decides to discontinue with the tender process.

(4) If the decision to reject tenders is taken before the closing date, tenders received shall be returned unopened to the tenderers submitting them.

(5) The rejection of the tender, proposal, offer or quotation with reasons shall be recorded in the procurement proceedings and promptly communicated to the supplier or contractor.

Entry into force of the procurement contract

30. (1) In tender proceedings, acceptance of the tender and entry into force of the procurement contract shall be carried out in accordance with section 65 of this Act.

(2) In the other methods of procurement, the manner of entry into force of the procurement contract shall be notified to the suppliers or contractors at the time those proposals, offers or quotations are requested.

Public notice of procurement contract awards

31. (1) A procurement entity shall promptly publish notice of procurement contract awards.

(2) Regulations shall provide for the manner of publication of the notice of procurement contract awards.

Inducements from suppliers, contractors and consultants

32. A procurement entity shall reject a tender, proposal, offer or quotation if the supplier, contractor or consultant that submitted it offers, gives or agrees to give directly or indirectly, to any current or former officer or employee of the procurement entity or other governmental authority,

- (a) a gratuity in any form;
- (b) an offer of employment; or
- (c) any other thing of service or value

as an inducement with respect to anything connected with a procurement entity and procurement proceedings.

Description of goods, works or services

33. (1) Any

- (a) specifications, plans, drawings and designs that provide the technical or quality characteristics of goods, works, or services to be procured.
- (b) requirements on testings and test methods, packaging, marketing, labelling or conformity certifications; and
- (c) symbols and terminology description of services that create obstacles to participation including obstacles based on nationality

tenderers shall not be included or used in prequalification documents, invitation documents or other documents for invitation of proposals, offers or quotations.

(2) The provisions in subsection (1) shall be based on objective technical and quality characteristics of the goods, works or services to be procured and there shall be no requirement of or reference to a particular trade mark, name, patent, design, type, specific origin or producer, unless a precise or intelligible way of describing the characteristics of the goods, works or services to be procured does not exist, in which case, the words "or equivalent" shall be included.

(3) Standardised features, requirements, symbols and terminology relating to the technical and quality characteristics of the goods, works or services to be procured shall be used, where available, to formulate any specifications, plans, drawings and designs to be included in the prequalification documents, invitation documents or other documents for invitation of proposals, offers or quotations.

Language

34. The prequalification documents, invitation documents and other documents for invitation of proposals, offers or quotations shall be in English.

PARTIV — METHODS OF PROCUREMENT**Competitive tendering**

35. (1) A procurement entity shall procure goods, services or works by competitive tendering except as provided in this Part.

(2) A procurement entity shall use the quality and cost-based method of selection in Part VI when selecting consultants unless the procurement entity determines that

- (a) it is feasible to formulate detailed specifications and tendering proceedings or other methods of procurement which are more appropriate, taking into account the nature of the services to be procured; or
- (b) it is more appropriate to use a method of selection referred to in Part VI if the conditions for the use of that method are satisfied.

(3) If the procurement entity uses the method of procurement other than competitive tendering, it shall include in the record required a statement of the grounds and circumstances on which it relied to justify the use of that method.

Two-stage tendering

36. (1) A procurement entity shall engage in procurement by two-stage tendering

- (a) where it is not feasible for the procurement entity to formulate detailed specifications for the goods or works or, in the case of services, to identify their characteristics and where it seeks tenders, proposals or offers on various means of meeting its needs in order to obtain the most satisfactory solution to its procurement needs; or where the character of the goods or works are subject to rapid technological advances;
- (b) where the procurement entity seeks to enter into a contract for research, experiment, study or development, except where the contract includes the production of goods in sufficient quantities to establish their commercial viability or to recover research and development costs.

Procedures for two-stage tendering

37. (1) The provisions of Part V shall apply to two-stage tendering proceedings except to the extent that those provisions vary from this section.

(2) The invitation documents

- (a) shall call upon suppliers or contractors to submit, in the first stage of two-stage tendering proceedings, initial tenders which contain their proposals without a tender price;
- (b) may solicit proposals that relate to technical, quality or other characteristics of the goods, works or services as well as contractual terms and conditions of supply and may stipulate the professional and technical competence and qualifications of the suppliers or contractors.

(3) The procurement entity may, in the first stage, engage in negotiations with any supplier or contractor whose tender has not been rejected under section 29,32 or 62(6) with respect to any aspect of its tender.

(4) In the second stage of the two tender proceedings the procurement entity

- (a) shall invite suppliers or contractors whose tenders have not been rejected to submit final tenders with prices on a single set of specifications;
- (b) may in formulating the specifications, delete or modify any aspect of the technical or quality characteristics of the goods, works or services to be procured together with any criterion originally set out in those documents, evaluate and compare tenders and ascertain the successful tender;
- (c) may add new characteristics or criteria that conform with this Act;
- (d) shall communicate to suppliers or contractors in the invitation to submit final tenders, any deletion, modification or addition;
- (e) may permit a supplier or contractor who does not wish to submit a final tender to withdraw from the tendering proceedings without the supplier or contractor forfeiting any tender security that the supplier or contractor may have been required to provide.

(5) The final tenders shall be evaluated and compared in order to ascertain the successful tender as defined in section 59 (3)(b).

Restricted tendering

38. A procurement entity may for reasons of economy and efficiency and subject to the approval of the Board engage in procurement by means of restricted tendering

- (a) if goods, works or services are available only from a limited number of suppliers or contractors; or
- (b) if the time and cost required to examine and evaluate a large number of tenders is disproportionate to the value of the goods, works or services to be procured.

Procedure for restricted tendering

39. (1) Where a procurement entity engages in restricted tendering on the grounds referred to in section 38(a), it shall

- (a) invite tenders from the suppliers and contractors who can provide the goods, works or services;
- (b) select in a non-discriminatory manner, a number of suppliers or contractors to ensure effective competition.

(2) Where the procurement entity engages in restricted tendering, it shall cause a notice of the selective-tendering award to be published in the Public Procurement Bulletin.

(3) The provisions of Part V of this Act; except section 47 shall apply to selective tendering proceedings, except to the extent that those provisions are varied in this section.

Single-source procurement

40. (1) A procurement entity may engage in single-source procurement under section 41 with the approval of the Board,

- (a) where goods, works or services are only available from a particular supplier or contractor, or if a particular supplier or contractor has exclusive rights in respect of the goods, works or services, and no reasonable alternative or substitute exists;
- (b) where there is an urgent need for the goods, works or services and engaging in tender proceedings or any other method of procurement is impractical due to unforeseeable circumstances giving rise to the urgency which is not the result of dilatory conduct on the part of the procurement entity;

- (c) where owing to a catastrophic event, there is an urgent need for the goods, works or technical services, making it impractical to use other methods of procurement because of the time involved in using those methods;
- (d) where a procurement entity which has procured goods, equipment, technology or services from a supplier or contractor determines that
 - (i) additional supplies need to be procured from that supplier or contractor because of standardisation;
 - (ii) there is a need for compatibility with existing goods, equipment, technology or services, taking into account the effectiveness of the original procurement in meeting the needs of the procurement entity;
 - (iii) the limited size of the proposed procurement in relation to the original procurement provides justification;
- (e) where the procurement entity seeks to enter into a contract with the supplier or contractor for research, experiment, study or development, except where the contract includes the production of goods in quantities to establish commercial viability or recover research and development costs; or
- (f) where the procurement entity applies this Act for procurement that concerns national security, and determines that single-source procurement is the most appropriate method of procurement.

(2) A procurement entity may engage in single-source procurement with the approval of the Board after public notice and time for comment where procurement from a particular supplier or contractor is necessary in order to promote a policy specified in section 59(4) (c), (d) or 69(2)(c)(i), and procurement from another supplier or contractor cannot promote that policy.

Procedure for single-source procurement

41. The procurement entity may procure the goods, works or technical services by inviting a proposal or price quotation from a single supplier or contractor under section 40.

Request for quotations

42. A procurement entity may engage in procurement by requesting quotations in accordance with section 43,

- (a) for readily available goods or technical services that are not specially produced or provided to the particular specifications of the procurement entity; and
- (b) for goods where there is an established market if the estimated value of the procurement contract is less than the amount in Schedule 3.

Procedure for request for quotation

43. (1) The procurement entity shall request quotations from as many suppliers or contractors as practicable, but from at least three different sources.

(2) Each supplier or contractor from whom a quotation is requested shall be informed whether any elements, apart from the charges for the goods or services themselves, such as transportation and insurance charges, customs duties and taxes, are to be included in the price.

(3) Each supplier or contractor shall only give one price quotation and shall not change its quotation;

(4) No negotiations shall take place between the procurement entity and a supplier or contractor with respect to a quotation submitted by the supplier or contractor, prior to evaluation of bids.

PART V — TENDERING PROCEDURES*Sub-Part I — Invitation of Tenders and Applications to Prequalify***National competitive tendering**

44. (1) In procurement proceedings in which the procurement entity decides that only domestic suppliers or contractors may submit tenders, the procurement entity shall employ national competitive tendering procedures.

(2) The procurement entity is not required to employ the procedures set out in sections 47 and 48 of this Act if the estimated contract amount is lower than the value threshold specified in Schedule 3.

(3) The procurement entity may stipulate in the tender documents that tenderers must quote only in the local currency and payments must be made wholly in the local currency.

International competitive tendering

45. (1) International competitive tendering shall be used whenever open competitive tendering is used and effective competition cannot be obtained unless foreign firms are invited to tender.

(2) Open international tendering shall be in accordance with Part IV and Part V of this Act and the following shall also apply:

- (a) the invitation to tender and tender documents must be in English, subject to sections 34 and 52;
- (b) the invitation to tender shall be placed in a newspaper with adequate circulation to attract foreign competition as provided under section 47;
- (c) at least six weeks shall be allowed for submission of tenders in order to allow sufficient time for the invitation to reach candidates and to enable them to prepare and submit the tenders as provided in section 53;
- (d) technical specifications shall, to the extent compatible with national requirements, be based on international standards or standards widely used in international trade and in particular shall conform to the provisions of sections 33 and 50(3);
- (e) tenderers are permitted to express their tenders, as well as any security documents to be presented by them, in freely convertible currency and stated in the tender documents, subject to section 50(3) and section 55(2)(c); and
- (f) general and special conditions of contract as stated in the tender documents.

Other international procedures

46. Part IV and Part V shall apply with such modification as may be necessary whenever effective competition cannot be obtained unless foreign firms are invited to participate in procedures apart from open competitive international tendering such as selective tendering or invitation for proposals.

Procedures for inviting tenders or applications to prequalify

47. (1) A procurement entity shall invite tenders or, where applicable, applications to prequalify by causing an invitation to tender or an invitation to prequalify, to be published in the Procurement Bulletin.

(2) The invitation to tender or invitation to prequalify shall also be published in at least two newspapers of wide national circulation.

(3) The invitation may also be published in a newspaper of wide international circulation, in a relevant trade publication or technical or professional journal of wide international circulation.

Contents of invitation to tender and invitation to prequalify

48. (1) The invitation to tender shall contain the following information:

- (a) the name and address of the procurement entity;
- (b) the nature, quantity and place of delivery of the goods to be supplied, the country of origin, the nature and location of the works to be effected or the nature of the technical services and the location where they are to be provided;
- (c) the desired or required time for the supply of the goods or for the completion of the works, or the timetable for the provision of the services;
- (d) the criteria and procedures to be used to evaluate the qualifications of suppliers or contractors, in conformity with section 23;
- (e) a declaration, which may not be subsequently altered that suppliers or contractors may participate in the procurement proceedings regardless of nationality, or a declaration that participation is limited on the basis of nationality under section 25;
- (f) the means of obtaining the invitation documents and the place from where they may be obtained;
- (g) the price, if any, charged by the procurement entity for the invitation documents;
- (h) the currency and means of payment for the invitation documents;
- (i) the language in which the invitation documents are available;
- (j) the place and deadline for the submission of tenders;
- (k) the place, date and time for the opening of bids; and
- (l) any other information considered relevant.

(2) An invitation to prequalify shall contain the information referred to in subsection (1)(a) to (e), (g), (h) and, if the information required under those paragraphs is already known, contain the information required under subsection (1) (j), as well as the following information.

- (a) the means to obtain the pre-qualification documents and the place from where they can be obtained;
- (h) the price charged by the procurement entity for the pre-qualification documents;
- (c) the currency and terms of payment for the pre-qualification documents;
- (d) the language in which the pre-qualification documents are available;
- (e) the place and deadline for the submission of applications to prequalify and the time allowed for the preparation of pre-qualification applications shall not be less than four weeks.

Provision of tender documents

49. (1) The procurement entity shall provide the tender documents to suppliers or contractors in accordance with the procedures and requirements specified in the invitation to tender.

(2) If pre-qualification proceedings have taken place, the procurement entity shall provide a set of tender documents to each supplier or contractor that has been prequalified and that pays the price charged for those documents.

(3) The price that the procurement entity may charge for the tender documents shall reflect the cost of printing them and providing them to suppliers or contractors.

Contents of tender documents and use of standard tender documents

50. (1) Procurement entities shall use the appropriate standard tender documents stipulated in Schedule 4 with such minimum changes acceptable to the Board.

(2) Changes shall be introduced only through tender or contract data sheets, or through special conditions of contract and not by introducing changes in the standard tender documents.

- (3) The invitation documents shall include,
 - (a) instructions for preparing tenders;

- (b) the criteria and procedures, in conformity with the provisions of section 22, for the evaluation of the qualifications of suppliers or contractors;
- (c) the requirements on additional documentary evidence or other information that is to be submitted by suppliers or contractors to demonstrate their qualifications;
- (d) the nature and required technical and quality characteristics, in relation to the goods, works or technical services to be procured under section 33 including, but not limited to,
 - (i) technical specifications, plans, drawings and designs,
 - (ii) the quantity of the goods;
 - (iii) any incidental services to be performed;
 - (iv) the location where the works is to be effected or the services are to be provided; and
 - (v) the desired or required time, if any when the goods are to be delivered, the construction is to be effected or the services are to be provided;
- (e) the criteria to be used by the procurement entity to determine the successful tender, including any margin of preference and any criteria other than price to be used under section 59(4)(b)(c) or (d) and the factors apart from price to be used to determine the lowest evaluated bid, shall, to the extent practicable, be expressed in monetary terms, or given a relative weight in the evaluation provisions in the tender documents;
- (f) the terms and conditions of the procurement contract and the contract form to be signed by the parties;
- (g) a statement that the characteristics of the goods, works or services, contractual terms and conditions or other requirements set out in the invitation documents are permitted, and a description of the manner in which alternative tenders are to be evaluated and compared;
- (h) a description of the portion or portions for which tenders may be submitted where suppliers or contractors are permitted to submit tenders for only a portion of the goods, works or services to be procured;

- (i) the manner in which the tender price is to be formulated and expressed, including a statement whether the price covers elements apart from the goods, works or services, such as applicable transportation and insurance charges, customs duties and taxes;
- (j) the currency or currencies in which the tender price is to be formulated and expressed;
- (k) the language in conformity with section 52, in which tenders are to be prepared;
- (l) any requirements of
 - (i) the procurement entity connected with the issue, nature, form, amount and other principal terms and conditions of tender security to be provided by suppliers or contractors submitting tenders; and
 - (ii) security for the performance of the procurement contract to be provided by a supplier or contractor that enters into the procurement contract, including securities such as labour and materials bonds;
- (m) a statement that a supplier or contractor can modify or withdraw its tender prior to the deadline for the submission of tenders without forfeiting its tender security;
- (n) the manner, place and deadline for the submission of tenders;
- (o) the means by which suppliers or contractors may seek clarification of the invitation documents and a statement whether the procurement entity intends to convene a meeting of suppliers or contractors;
- (p) the period of time during which tenders will be in effect;
- (q) the place, date and time for the opening of tenders;
- (r) the procedures to be followed for opening and examining tenders;
- (s) the currency that will be used to evaluate and compare tenders under section 58 and either the exchange rate that will be used for the conversion of tenders into that currency or a statement that the rate published by a specified financial institution prevailing on a specified date will be used;
- (t) references to this Act, the procurement regulations and other Acts and regulations relevant to the procurement proceedings, but the omission of the reference shall not constitute grounds for review under Part VII or give rise to liability on the part of the procurement entity;

- (u) the name, functional title and address of one or more officers or employees of the procurement entity who are authorised to communicate directly with and to receive communications directly from a supplier or contractor in connection with the procurement proceedings, without the intervention of an intermediary;
- (v) any commitments to be made by the supplier or contractor outside the procurement contract, such as commitments relating to counter-trade or to the transfer of technology;
- (w) a statement of the right to seek review of an unlawful act or decision of, or procedure followed by the procurement entity in relation to the procurement proceedings;
- (x) if the procurement entity reserves the right to reject tenders, a statement to that effect;
- (y) any formalities that will be required once tender has been accepted, for a procurement contract to enter into force, including, where applicable, the execution of a written procurement contract and approval by the Government and the estimated period of time following the despatch of the notice of acceptance that will be required to obtain the approval; and
- (z) any other requirements established by the procurement entity under this Act and Regulations relating to the preparation and submission of tenders and to other aspects of the procurement proceedings.

Clarifications and modifications of tender documents

51. (1) A supplier or contractor may request promptly clarification of the tender documents from the procurement entity.

(2) The procurement entity shall respond to a request by a supplier or contractor within a reasonable time before the deadline for the submission of tenders to enable the supplier or contractor make a timely submission of its tender and shall without disclosing the source of the request communicate the clarification to the suppliers or contractors provided with the invitation documents.

(3) The procurement entity may modify the invitation documents by issuing an addendum prior to the deadline for submission of tenders.

(4) The addendum shall be communicated promptly to the suppliers or contractors provided with the invitation documents by the procurement entity and shall be binding on those suppliers or contractors.

(5) The procurement entity may convene a meeting of suppliers and contractors to clarify and modify tender documents and shall prepare minutes of any previous meeting concerned with clarification of the invitation documents without identifying the sources of the requests.

(6) The minutes shall be given promptly to the suppliers and contractors provided with the invitation documents by the procurement entity to enable them take the minutes into account in the preparation of their tenders.

Sub-Part II — Submission of Tenders

Language of tenders

52. (1) Tenders shall be formulated and submitted in English.

(2) Supporting documents and printed literature furnished by the tenderer may be in another language if they are accompanied by an accurate translation of the relevant passages in English.

(3) Where there is a translation, the translation shall be used to interpret the tender.

Submission of tenders

53. (1) The procurement entity shall,

- (a) fix the place for, and a specific date and time as the deadline for the submission of tenders; and
- (b) allow tenderers at least six weeks to prepare their tenders for international competitive tendering.

(2) the time for preparation of tenders under national competitive tendering procedures shall not exceed four weeks.

(3) If a procurement entity issues clarification or modification documents or if a meeting of tenderers is held, the procurement entity shall prior to the expiry of the deadline for the submission of tenders extend the deadline to give the suppliers and contractors reasonable time to take the clarification or modification, or the minutes of the meeting into account in their tenders.

(4) The procurement entity may, prior to the expiry of deadline for the submission of tenders, extend the deadline.

(5) the procurement entity shall, at least ten days before the expiry of the deadline, give notice of an extension of the deadline by fax, e-mail or any other expedited written

means of communication to each supplier or contractor to whom the procurement entity provided the tender documents or to any new prospective tenderers.

(6) A tender shall be in writing, signed and be submitted in a sealed envelope.

(7) A tender may alternatively be submitted in any other form specified in the tender documents that provides a record of the contents of the tender and a similar degree of authenticity, security and confidentiality.

(8) The procurement entity shall provide the tenderer with a receipt showing the date and time when its tender was received.

(9) A tender received by the procurement entity after the deadline for the submission of tenders shall not be opened and shall be returned to the supplier or contractor which submitted it.

Period of validity of tenders; modification and withdrawal of tenders

54. (1) The period of validity for a tender shall be the period specified in the tender documents.

(2) A procurement entity may request suppliers or contractors to extend the period of validity for an additional specified period of time.

(3) A supplier or contractor may refuse the request without forfeiting its tender security and the effectiveness of its tender will terminate upon the expiry of the unextended period of effectiveness.

(4) A supplier or contractor that agrees to an extension of the period of effectiveness of its tenders shall extend or procure an extension of the period of tender securities provided by it or provide new tender securities to cover the extended period of effectiveness of its tender.

(5) A supplier or contractor whose tender security is not extended or that has not provided a new tender security is considered to have refused the request to extend the period of effectiveness of its tender.

(6) A supplier or contractor may modify or withdraw its tender prior to the deadline for the submission of tenders without forfeiting its tender security unless otherwise stipulated in the tender documents.

(7) the modification or notice of withdrawal is effective if it is received by the procurement entity before the deadline for the submission of tenders.

Tender securities

55. (1) The procurement entity shall specify the principal terms and conditions of the required tender security in the invitation documents,

(2) When the procurement entity requires suppliers or contactors submitting tenders to provide tender security.

- (a) the requirement shall apply to each supplier or contractor;
- (b) the invitation documents shall stipulate that the issuer and confirmer of the tender security are acceptable to the procurement entity;
- (c) notwithstanding paragraph (b), a tender security shall not be rejected by the procurement entity on the grounds that the tender security was not issued by an issuer in the country, if the tender security and the issuer otherwise conform to requirements in the invitation documents;
- (d) a supplier or contractor may request the procurement entity to confirm the acceptability of a proposed issuer or a proposed confirmer of a tender security before submitting a tender and the procurement entity shall respond promptly to the request;
- (e) confirmation of the acceptability of a proposed issuer or of a proposed confirmer does not preclude the procurement entity from rejecting the tender security on the ground that the issuer or confirmer has become insolvent or is otherwise not creditworthy.

(3) Any requirement on tender security that refers directly or indirectly to conduct by the supplier or contractor submitting the tender may only relate to

- (a) withdrawal or modification of the tender after the deadline for submission of tenders, or before the deadline if stipulated in the invitation documents;
- (b) failure to sign the procurement contract if required by the procurement entity to do so;
- (c) failure to provide a required security for the performance of the contract after the tender has been accepted or to comply with any other condition precedent to signing the procurement contract specified in the tender documents.

(4) The procurement entity shall not make a claim to the amount of the tender security and shall promptly return or procure the return of the tender security document after whichever of the following occurs first

- (a) the expiry of the tender security;
- (b) the entry into force of a procurement contract and the provision of security for the performance of the contract if the security is required by the invitation documents;
- (c) the termination of the tendering proceedings without the entry into force of a procurement contract; or
- (d) the withdrawal of the tender prior to the deadline for the submission of tenders.

Sub-Part III — Evaluation and Comparison of Tenders

Opening of tenders

56. (1) Tenders shall be opened

- (a) at the time specified in the tender documents as the deadline for the submission of tenders or at the deadline specified in any extension of the deadline; and
- (b) at the place and in accordance with the procedures specified in the tender documents.

(2) The time for opening of the tenders shall be the same as the deadline for receipt of tenders or promptly after that deadline.

(3) A supplier or contractor who has submitted a tender or a representative of that supplier or contractor, shall be permitted by the procurement entity to be present at the opening of tenders.

(4) The name and address of each supplier or contractor whose tender is opened and the tender price shall be announced to those present at the opening of tenders and communicated on request to a supplier or contractor who has submitted a tender but is not present or represented at the opening of the tenders.

(5) The tender price shall be recorded immediately in the record of tendering proceedings.

Examination of tenders

57. (1) The procurement entity may ask a supplier or a contractor for clarification of its tender in order to assist in the examination, valuation and comparison of tenders.

(2) No change in a matter of substance in the tender, including changes in price and changes aimed at making an unresponsive tender responsive, shall be sought, offered or permitted.

(3) Notwithstanding subsection (2), the procurement entity shall correct purely arithmetical errors that are discovered during the examination of tenders.

(4) the procurement entity shall give prompt notice of the correction to the supplier or contractor that submitted the tender.

Responsiveness of tenders

58. (1) A procurement entity shall regard a tender as responsive if it conforms to the requirements set out in the tender invitation documents.

(2) The procurement entity may, however, regard a tender as responsive if it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set out in the invitation documents or if it contains errors or oversights that are capable of being corrected without touching on the substance of the tender.

(3) the deviations shall be quantified, to the extent possible, and shall be taken into account in the evaluation and comparison of tenders.

(4) A procurement entity shall not accept a tender

- (a) if the supplier or contractor that submitted the tender is not qualified;
- (b) if the tenderer that submitted the tender does not accept a correction of an arithmetical error made under subsection (1)(b);
- (c) if the tender is not responsive;
- (d) in the circumstances referred to in section 32 with respect to inducement from a tenderer.

Evaluation of tenders

59. (1) The procurement entity shall evaluate and compare the tenders that have been accepted in order to ascertain the successful tender in accordance with the procedures and criteria set out in the invitation documents.

(2) No criterion shall be used that has not been set out in the invitation documents.

(3) The successful tender shall be:

- (a) the tender with the lowest evaluated tender price; and
 - (b) the lowest evaluated tender ascertained on the basis of criteria specified in the invitation documents which shall be
 - (i) objective and quantifiable; and
 - (ii) given relative weight in the evaluation procedure or expressed in monetary terms where practicable if the procurement entity has so stipulated in the invitation documents.
- (4) To determine the lowest evaluated tender, the procurement entity shall consider
- (a) the tender price, subject to any margin of preference applied under section 60(2);
 - (b) the cost of operating, maintaining and repairing the goods or works, the time for delivery of the goods, completion of works or provisions of the services, the functional characteristics of the goods or works, the terms of payment and of guarantees in respect of the goods, works or services;
 - (c) the effect the acceptance of the tender will have on
 - (i) the balance of payments position and foreign exchange reserves of the country;
 - (ii) the counter-trade arrangements offered by suppliers or contractors;
 - (iii) the extent of local content, including manufacturer, labour and materials, in goods, works or services being offered by suppliers or contractors;
 - (iv) the economic-development potential offered by tenders, including domestic investment or other business activity;
 - (v) the encouragement of employment, the reservation of certain production for domestic suppliers;
 - (vi) the transfer of technology;
 - (vii) the development of managerial, scientific and operational skills; and
 - (d) national security considerations.

Margin of preference

60. (1) A procurement entity may grant a margin of preference for the benefit of tenders for work by domestic contractors or for the benefit of tenders for domestically produced goods or for the benefit of domestic suppliers of services.

(2) the margin of preference shall be calculated in accordance with the procurement regulations and reflected in the record of the procurement proceedings;

(3) The margin of preference shall be authorised by the Board and be subject to approval by the Board.

Multiple currency tender prices

61. When tender prices are expressed in two or more currencies, the tender prices of the total number of tenders shall be converted to the same currency according to the rate specified in the invitation documents for the evaluation and comparison tenders.

Repeat tender qualifications

62. (1) The procurement entity may require the supplier or contractor which is the successful tenderer, to demonstrate its qualifications again, whether or not it has engaged in pre-qualification proceedings in accordance with criteria and procedures that conform to section 23 on pre-qualification proceedings.

(2) The criteria and procedures to be used for the further demonstration shall be set out in the tender documents.

(3) Where pre-qualification proceedings have been used, the criteria for further demonstration shall be the same as those used in the pre-qualification proceedings.

(4) If tenderers have not been pre-qualified, the entity shall determine whether the selected tenderer has the capacity to perform the contract effectively.

(5) The criteria to be met shall be specified in the tender documents and if the selected tender is rejected, the procurement entity shall make a similar determination of the next ranked best evaluated tender.

(6) If the supplier or contractor submitting the successful tender is requested to demonstrate its qualifications again but fails to do so, the procurement entity shall reject that tender and shall select a successful tenderer. in accordance with section 59(4) from among the remaining tenders, subject to the right of the procurement entity to reject the remaining tenders.

Non-disclosure of tender evaluation details

63. Information relating to the examination, clarification, evaluation and comparison of tenders shall not be disclosed to suppliers or contractors or to any other person not involved officially in the examination, evaluation or comparison of tenders or in the decision on which tender should be accepted except as provided in section 28 on the record of procurement proceedings.

Prohibition of negotiations with suppliers or contractors

64. (1) Subject to the exception in this section, no negotiations shall take place between the procurement entity and a supplier or contractor with respect to a tender submitted by the supplier or contractor.

(2) If the lowest evaluated responsive tender exceeds the budget for the contract by a substantial margin, the procurement entity shall investigate the causes for the excessive cost and may

- (a) consider requesting new tenders; or
- (b) subject to approval by the relevant Tender Review Board and guidelines issued by that Board, negotiate a contract with the lowest evaluated tenderer to try to obtain a satisfactory contract.

Acceptance of tender and entry into force of procurement contract

65. (1) A tender that has been ascertained to be the successful tender in accordance with this Act shall be accepted and notice of acceptance of the tender shall be given within 30 days of the acceptance of the tender to the supplier or contractor submitting the tender.

(2) Where the tender documents require the supplier or contractor whose tender has been accepted to sign a written procurement contract conforming to the tender, the procurement entity and the supplier or contractor shall sign the procurement contract within 30 days after the notice referred to in subsection (1) is despatched to the supplier or contractor.

(3) Where a written procurement contract is required to be signed, the contract shall enter into force on the commencement date indicated on the contract.

(4) Between the time when the notice is despatched to the supplier or contractor and the entry into force of the procurement contract, neither the procurement entity nor the supplier or contractor shall take any action that interferes with the entry into force of the procurement contract or with its performance.

(5) Except as provided in subsection (2), a procurement contract in accordance with the terms and conditions of the accepted tender enters into force when the notice is despatched to the supplier or contractor that submitted the tender, if it is despatched while the tender is in force.

(6) The notice is despatched when it is properly addressed or otherwise directed and transmitted to the supplier or contractor or conveyed to an appropriate authority for transmission to the supplier or contractor in a manner authorised in section 26.

(7) If the supplier or contractor whose tender has been accepted fails to sign a written procurement contract within 30 working days of receipt of the notice of acceptance or fails to provide the required security for the performance of the contract, the procurement entity shall select a successful tender in accordance with section 59(3) from among the remaining tenders that are in force, subject to the right of the procurement entity to reject the remaining tenders.

(8) The notice provided for in subsection (1) shall be given to the supplier or contractor that submitted the successful tender.

(9) A procurement entity shall give notice of the procurement contract in writing to unsuccessful suppliers and contractors and the notice shall

- (a) specify the name and address of the successful supplier or contractor who has entered into the contract and the contract price;
- (b) be given after the commencement of the procurement contract and may include the provision by the supplier or contractor of security for the performance of the contract;
- (c) for contracts above the threshold in Schedule 3, be published in the Procurement Bulletin which shall disclose the names of firms or individuals awarded contracts, the start and completion dates, as well as the value of the contracts.

PART VI — METHODS AND PROCEDURES TO PROCURE CONSULTANTS

Notice of invitation of expressions of interest and preparation of shortlists

66. (1) A procurement entity shall invite consulting services by causing a notice seeking expression of interest in submitting a proposal to be published in the Public Procurement Bulletin for consultancy contracts above the threshold in Schedule 3.

(2) The notice shall, (a) contain the name and address of the procurement entity and a brief description of the services to be procured; and

- (b) be published in English and in a newspaper of wide circulation or in a relevant trade or professional publication of wide circulation except where participation is limited solely to national consultants under section 44 (1) or where the procurement entity decides that only national consultants may submit proposals.

(3) Where direct invitation is necessary for economic and efficiency reasons, the procurement entity with the approval of the Board may apply the provisions of subsection (1) and (2) where

- (a) the services to be procured are available only from a limited number of consultants, if it invites expressions of interest from all these consultants;
- (b) the time and cost required to examine and evaluate a large number of expressions of interest would be disproportionate to the value of the services to be performed, if it invites proposals from enough consultants to ensure effective competition; or
- (c) direct invitation is the only means to ensure confidentiality or is required in the national interest, if it invites enough proposals from consultants for effective competition.

Shortlisted candidates

67. (1) The procurement entity is responsible for the preparation of a shortlist of consultants to be considered to participation in the selection process.

(2) The shortlist may comprise only national consultants but shall comprise at least three and not more than six consultants.

(3) The procurement entity shall provide the invitation for proposals to the shortlist of consultants selected on the basis of quality.

(4) The procurement entity shall provide the invitation for proposals to the most qualified or single sourced consultant selected on the basis of the consultant's qualifications.

Content of requests for proposals for consultancy services

68. (1) The procurement entity shall use the standard invitation for proposals stipulated in Schedule 4 and any requirements for a specific assignment shall be introduced through information to consultants, data sheets or contract data sheets and not by introducing changes in the standard tender documents.

(2) The invitation for proposals shall include (a) the name and address of the procurement entity;

- (b) the language or languages in which proposals are to be prepared;
- (c) the manner, place and deadline for the submission of proposals;
- (d) a statement to the effect that the procurement entity reserves the right to reject proposals;
- (e) the criteria and procedures related to the evaluation of the qualifications of the consultants and those related to additional qualifications under section 24(5);
- (f) the requirements on documentary evidence or other information that shall be submitted by suppliers or contractors to demonstrate their qualifications;
- (g) the nature and required characteristics of the services to be procured including the location where the services are to be provided and the time when the services are to be provided;
- (h) whether the procurement entity is seeking proposals on various possible ways of meeting its needs;
- (i) the currency in which the proposal price is to be expressed;
- (j) the manner in which the proposal price is to be expressed, including a statement on whether the price cover elements apart from the cost of services, such as reimbursement for transportation, lodging, insurance, use of equipment, duties or taxes;
- (k) the procedure selected under section 71 (1) to ascertain the successful proposal;
- (l) the criteria to be used to determine the successful proposal, including any margin of preference to be used under section 57 and the relative weight of the criteria;
- (m) the currency that will be used to evaluate and compare proposals and either the exchange rate that will be used for the conversion of proposal prices into that currency or a statement that the rate published by a specified financial institution prevailing on a specified date will be used;

- (n) a statement on alternatives to the characteristics of the consultancy services, contractual terms and conditions or other requirements set out in the invitation for proposals if permitted and a description of the manner in which the alternative proposals are to be evaluated and compared;
- (o) the name, functional title and address of one or more officers or employees of the procurement entity who are authorised to communicate directly with and to receive communications directly from consultants in connection with the procurement proceedings, without the intervention of an intermediary;
- (p) the means by which consultants may seek clarification on the invitation for proposals and a statement whether the procurement entity intends to convene a meeting of consultants; and
- (q) the terms and conditions of the consultancy contract as known to the procurement entity and the contract form to be signed by the parties.

Criteria for the evaluation of proposals

69. (1) The procurement entity shall establish criteria to evaluate the proposals and determine the relative weight to be accorded to each criterion and the manner in which they are to be applied in the evaluation of proposals.

(2) The consultants shall be notified of the criteria in the invitation for proposals and the criteria may deal with the following:

- (a) the qualifications, experience, reputation, reliability and professional and managerial competence of the consultant and the personnel to be involved in providing the services;
- (b) the effectiveness of the proposals submitted by the consultants in meeting the needs of the procurement entity as specified in section 68(2)(g);
- (c) the proposal price, including any ancillary or related costs; and
 - (i) the effect that the acceptance of a proposal will have on the balance of payments position and foreign exchange reserves of the country;
 - (ii) the extent of participation by nationals;
 - (iii) the economic development potential offered by the proposal, including domestic investment or other business activity;

- (iv) the encouragement of employment;
 - (v) the transfer of technology;
 - (vi) the development of managerial, scientific and operational skills;
 - (vii) the counter-trade arrangements offered by consultants; and
- (d) national security considerations.

(3) A procurement entity may grant additional points for participation by nationals who are key staff in foreign and national firms, and these points shall be calculated in accordance with the procurement regulations and reflected in the record of the procurement proceedings subject to approval by the Board.

Clarification and modification of invitation for proposals

70. (1) A consultant may request clarification of the invitation for proposals from the procurement entity and where such a request is made the procurement entity shall

- (a) respond to the request within 7 working days of the request being made if the request is received by the procurement entity within 14 working days prior to the deadline for the submission of proposals; and
- (b) where the request is made later than 14 days prior to the deadline for the submission of proposals, respond promptly and early enough to enable the consultant make a timely submission of its proposal and shall, without identifying the source of the invitation, communicate the clarification to the other consultants to whom the procurement entity has provided the invitation for proposals.

(2) A procurement entity may, whether on its initiative or as a result of a request for clarification by a consultant, modify the request for proposals by issuing an addendum at any time prior to the deadline for the submission of proposals.

(3) The addendum shall be communicated promptly before the deadline for the submission of proposals to the shortlisted consultants to whom the procurement entity has provided the request for proposals and shall be binding on those consultants.

(4) If the procurement entity convenes a meeting of consultants, it shall prepare minutes of the meeting containing the request submitted at the meeting for clarification of the request for proposal and its responses to those requests, without identifying the sources of the requests.

(5) The minutes shall be provided promptly before the deadline for the submission of proposals to the consultants participating in the selection proceedings to enable them take the minutes into account in preparing their proposals.

Choice of selection procedure

71. (1) The procurement entity shall use the selection procedure provided for in section 75(6)(a), 75(6)(b) or 76 that has been notified to consultants in the invitation for proposals.

(2) The procurement entity shall include in the record required under section 28, a statement of the grounds and circumstances on which it relied to justify the use of a selection procedure under subsection (1).

(3) This Part does not prevent a procurement entity from resorting to an impartial panel of external experts in the selection procedure.

Conditions for use of other methods of selection of consultants

72. (1) A procurement entity may select consultants by quality-based selection for the following types of assignments:

- (a) complex or highly specialised assignments, where
 - (i) it is difficult to define precise terms of reference and the required input from the consultants;
 - (ii) the client expects the consultants to demonstrate innovation in their proposals;
- (b) assignments that have a high downstream impact where the objective is to have the best experts; and
- (c) assignments that can be carried out in substantially different ways where proposals will not be comparable.

(2) A procurement entity may use selection under a fixed budget approved by the Board where the assignment is simple and can be precisely defined.

(3) A procurement entity may use least-cost selection procedures for small value assignments subject to the value threshold in Schedule 3 where the assignment is of a standard or routine nature and well-established practices and standards exist.

(4) A procurement entity may use selection based on Consultants' qualifications for very small value assignments subject to the value threshold in Schedule 3 where the need to prepare and evaluate competitive proposals is not justified.

(5) The procurement entity may select consultants inviting proposals from a single consultant where there is

- (a) only one eligible consultant;
- (b) an emergency as specified in section 40(1)(b) and (c); or (c) a follow-up assignment.

Receipt of proposals

73. (1) The procurement entity shall allow enough time for the consultants to prepare their proposals.

(2) The time allowed shall depend on the nature of the assignment but shall not be less than four weeks.

(3) To safeguard the integrity of the process, the technical and financial proposals shall be submitted in separate sealed envelopes.

(4) After the closing time for the submission of proposals, the appropriate committee of the procurement entity shall open the technical proposals immediately after the deadline for the submission of proposals.

(5) The financial proposals shall remain sealed until they are opened publicly under section 56.

Evaluation of proposals

74. (1) The evaluation of the proposals shall be carried out in two stages: first the quality, and then the cost.

(2) Evaluators of technical proposals should not have access to the financial proposals until the technical evaluation, including any Tender Board Reviews is concluded.

(3) The evaluation shall be carried out in conformity with the provisions in the invitation for proposals.

Selection procedure where price is a factor

75. (1) Where the procurement entity uses the procedure in this section, it shall establish a threshold on the quality and technical aspects of the proposals in accordance with the criteria established under section 69 apart from those set out in the request for proposals and shall rate each proposal in accordance with that criteria and the relative weight and manner of application of those criteria set out in the invitation for proposals.

(2) The procurement entity shall notify the consultants whose proposals did not meet the minimum qualifying mark or were non responsive to the invitation for proposals and terms of reference after the evaluation of quality is completed within a period of 14 days after the decision has been taken by the procurement entity.

(3) The name of the consultant, the quality scores and the proposed prices shall be read aloud and recorded when the financial proposals are opened.

(4) The procurement entity shall prepare the minutes of public opening of financial proposals, which shall be part of the evaluation report and shall retain this record.

(5) The procurement entity shall compare the prices of the proposals that have attained a rating at or above the threshold.

(6) The successful proposals shall be

- (a) the proposals with the best combined evaluation in terms of the criteria established under section 69 apart from price in the case of quality and cost-based selection;
- (b) the proposals with the lowest price in the case of least-cost selection; or
- (c) the consultants that submitted the highest ranked technical proposals within the budget;

(7) The consultants with the winning proposals shall be invited for negotiations, which shall focus mainly on the technical proposals.

(8) Proposed unit rates for staff-months and reimbursables shall not be negotiated unless there are exceptional reasons.

Selection procedure where price is not a factor

76. (1) Where the procurement entity uses the quality-based selection, selection based on consultant's qualifications or single-source selection, it shall engage in negotiations with consultants in accordance with this section.

(2) The procurement entity shall

- (a) establish a threshold in accordance with section 75(1);
- (b) invite for negotiations on the price of its proposal, the consultant that has attained the best rating in accordance with section 75(1);

- (c) inform the consultants that attained ratings above the threshold that they may be considered for negotiation if the negotiations with the consultant with the best rating do not result in a procurement contract; and
- (d) inform the consultant with the best rating, that it is terminating the negotiations if it becomes apparent to the procurement entity that the negotiations with that consultant invited under subsection (2)(b), will not result in a procurement contract.

(3) The procurement entity shall, if negotiations with the consultant with the best rating fails, invite the consultant that obtained the second best rating, and if the negotiations with that consultant do not result in a procurement contract, the procurement entity shall invite the other consultants for negotiations on the basis of their rating until it arrives at a contract or rejects the remaining proposals.

Confidentiality

77. (1) The procurement entity shall treat proposals and any negotiations on selection procedure as confidential and avoid the disclosure of their contents to competing consultants.

(2) A party to the negotiations shall not reveal to any other person any technical, price or other information relating to the negotiations without the consent of the other party.

PART VII — REVIEW

Right to review

78. (1) Any supplier, contractor or consultant that claims to have suffered, or that may suffer loss or injury due to a breach of a duty imposed on the procurement entity by this Act, may seek review in accordance with this Part.

(2) Notwithstanding subsection (1), the following shall not be subject to the review

- (a) the selection of a method of procurement under sections 35 to 43;
- (b) the choice of a selection procedure under section 75(6)(a), 75(6)(b) or section 76;
- (c) the limitation of procurement proceedings in accordance with section 44; and
- (d) a decision by the procurement entity under section 29 to reject tenders, proposals, offers or quotation.

Review by procurement entity

79. (1) A complaint shall, in the first instance, be submitted in writing to the head of the procurement entity if the procurement contract has not already entered into force.

(2) The head of the procurement entity shall not entertain a complaint unless it was submitted within twenty days after the supplier, contractor or consultant submitting it became aware of the circumstances giving rise to the complaint or when that supplier, contractor, or consultant should have become aware of those circumstances, whichever is earlier.

(3) The head of the procurement entity may entertain a complaint or continue to entertain a complaint after the procurement contract has entered into force notwithstanding subsection (1).

(4) A procurement entity shall attempt to resolve a complaint by mutual agreement of the supplier or contractor and the procurement entity.

(5) The head of the procurement entity shall, within twenty-one days after the submission of the complaint, issue a written decision.

(6) The decision shall

- (a) state the reasons for the decision; and
- (b) if the complaint is upheld in whole or in part, indicate the corrective measures that are to be taken.

(7) If the head of the procurement entity does not issue a decision by the time specified in subsection (5), the supplier, contractor, or consultant, submitting the complaint is entitled to institute proceedings for administrative review under section 80.

(8) After the institution of the proceedings, the competence of the head of the procuring entity to entertain the complaint ceases.

Administrative review

80. (1) A supplier, contractor or consultant entitled to seek review may submit a complaint to the Board,

- (a) within twenty-one days after

- (i) the supplier, contractor or consultant became aware of the circumstances giving rise to the complaint; or
 - (ii) the time when the supplier, contractor or consultant ought to have become aware of those circumstances, if the complaint cannot be submitted under section 79 because of the entry into force of the procurement contract;
- (b) if the head of the procurement entity does not entertain the complaint because the procurement contract has entered into force, and the complaint is submitted within twenty-one days after the issuance of the decision not to entertain the complaint;
- (c) under section 79(7) if the complaint is submitted within twenty-one days after the expiry of the period referred to in section 79(5); or
- (d) if the supplier, contractor, or consultant claims to be adversely affected by a decision of the head of the procurement entity under section 79, and the complaint is submitted within twenty days after the issue of the decision.
- (2) Upon receipt of a complaint, the Board shall give notice of the complaint promptly to the procurement entity.
- (3) The Board may,
- (a) declare the legal rules or principles that govern the subject-matter of the complaint;
 - (b) order that the provisions of this Act be complied with;
 - (c) require the procurement entity that has acted or proceeded in an illegal manner, or that has reached an illegal decision, to act or to proceed in a legal manner or to reach a legal decision;
 - (d) annul in whole or in part an illegal act or decision of the procurement entity, other than any act or decision bringing the procurement contract into force;
 - (e) revise an illegal decision by the procurement entity or substitute its own decision for the decision, other than any decision bringing the procurement contract into force;
 - (f) require the payment of compensation for reasonable costs incurred by the supplier or contractor who submitted the complaint, in connection

with the procurement proceedings as a result of an illegal decision of, or procedure followed by the procurement entity;

- (g) order that the procurement proceedings be terminated;
- (h) dismiss the complaint and require the payment of compensation for reasonable costs incurred by the Procurement Entity or the Board.

(4) The Board shall, within twenty-one days of starting a review, issue a written decision concerning the complaint, stating the reasons for the decision.

(5) Correspondence pertaining to any complaint shall be copied to the Board.

Certain rules applicable to review proceedings

81. (1) The head of the procurement entity or the Board shall notify the suppliers, contractors, or consultants participating in procurement proceedings about the submission of a complaint and of its substance within 14 working days after the submission of the complaint for review.

(2) A supplier or contractor or any government authority whose interests are or could be affected by the review proceedings is entitled to participate in the review proceedings.

(3) A supplier, contractor, or consultant who fails to participate in the review proceedings is barred from subsequently making the same type of claim.

(4) A copy of the decision of the head of the procurement entity or of the Board shall be furnished within five days after the issue of the decision to the supplier, contractor, or consultant submitting the complaint to the procurement entity and to any other supplier, contractor or government authority that has participated in the review proceedings.

(5) After the decision has been taken, the complaint and the decision shall be promptly made available for inspection by the general public, but no information shall be disclosed if its disclosure would be contrary to law, would impede law enforcement, would not be in the public interest, would prejudice legitimate commercial interests of the parties or would inhibit fair competition.

Suspension of procurement proceedings

82. (1) Where review proceedings are initiated, the procurement proceedings may be suspended for 7 days if the complaint

- (a) is not frivolous;
- (b) contains a declaration which demonstrates that the supplier, contractor or consultant will suffer irreparable damage if the suspension is not granted; and
- (c) is likely to succeed and the grant of the suspension will not cause disproportionate harm to the procurement entity or to other suppliers, contractors, or consultants.

(2) When the procurement contract enters into force, upon the submission of a complaint under section 79, performance of the procurement contract shall be suspended for seven days, if the complaint meets the requirements set out in subsection (1).

(3) The head of the procurement entity and the Board under subsection (2) may extend the suspension in order to preserve the rights of the supplier, contractor, or consultant who is a party to the review pending the disposition of the review proceedings, but the total period of suspension shall not exceed thirty days.

(4) The suspension provided for by this section shall not apply if the procurement entity certifies that urgent public interest considerations requires the procurement to proceed.

(5) The certification shall state the grounds for the finding that urgent considerations exist and shall be made a part of the record of the procurement proceedings, and it is conclusive with respect to administrative review.

(6) Any decision by the procurement entity under this section and the grounds and circumstances shall be made part of the record of the procurement proceedings.

PART VIII — DISPOSAL OF STORES, PLANT AND EQUIPMENT

Authority to dispose

83. (1) The head of a procurement entity shall convene a Board of Survey comprising representatives of departments with unserviceable, obsolete or surplus stores, plant and equipment which shall report on the items and subject to a technical report on them, recommend the best method of disposal after the officer in charge has completed a Board of Survey form.

(2) The Board of Survey's recommendations shall be approved by the head of the procurement entity and the items shall be disposed of as approved.

(3) Where items become unserviceable for reasons other than fair wear and tear, such as through accident or expiry, a set procedure established by the Board for handling losses shall be followed before the items are boarded and disposed of.

Disposal procedures

84. Disposal of obsolete and surplus items shall be by

- (a) transfer to government departments or other public entities, with or without financial adjustment;
- (b) sale by public tender to the highest tenderer, subject to reserve price;
- (c) sale by public auction, subject to a reserve price; or
- (d) destruction, dumping, or burying as appropriate.

PART IX — MISCELLANEOUS PROVISIONS**Instructions and guidelines for disposal of unserviceable stores**

85. (1) The Minister shall make further regulations on the disposal of unserviceable stores and obsolete equipment.

(2) The Board shall issue detailed instructions and policy guidelines relating to the disposal of unserviceable stores and equipment.

Code of conduct

86. The Board shall compile and publish a code of conduct with the approval of the Minister which shall apply to every official of a procurement entity, the Board, members of Tender Review Boards, as well as suppliers, contractors and consultants.

Modifications

87. (1) Except in cases of extreme urgency, where there will be an aggregate increase in the original amount of the contract by more than 10 per cent of the original price, a procurement entity shall inform the appropriate Tender Review Boards in the case of a contract subject to review by the Tender Review Board of any proposed extension, modification or variation order with reasons.

(2) In the case of contracts which are not originally subject to review by a Tender Review Board, any proposed modification of contract which will make the revised contract price exceed the procurement method threshold or the threshold of the procurement entity shall be cleared with the appropriate Tender Review Board.

Request for information by the Board

88. Every procurement entity shall provide the Board with such information as the Board may require in writing; regarding procurement engaged in by the procurement entity.

Investigation by the Board

89. (1) The Board may appoint a person to conduct an investigation into any matter related to the conduct of procurement proceedings by a procurement entity, or the conclusion or operation of a procurement contract if it considers that an investigation is necessary or desirable to prevent, or detect a contravention of this Act.

(2) An investigator may, subject to subsection (3),

- (a) at any time during normal office hours, without previous notice, enter the premises of the procurement entity tenderer, supplier, contractor, or consultant concerned with the procurement proceedings under investigation;
- (b) require an officer, employee or agent of the procurement entity or tenderer, supplier, contractor, or consultant to produce any books, records, accounts or documents;
- (c) search premises for any books, records, accounts or documents;
- (d) examine and make extracts from and copies of books, records, accounts or documents of the procurement entity, tenderer, supplier, contractor or consultant;
- (e) remove books, records, accounts or documents of the procurement entity, tenderer, supplier, contractor or consultant for as long as may be necessary to examine them or make extracts from or copies of them, but the investigator shall give a detailed receipt for the books, records, accounts or documents removed;
- (f) require an officer, employee or agent of the procurement entity or tenderer, supplier, or contractor or consultant,
 - (i) to explain an entry in the books, records, accounts or documents.
 - (ii) to provide the investigator with information concerning the management or activities of the procurement entity or tenderers as may be reasonably required.

(3) The powers of entry and search conferred by subsection (2) (a) and (c) of this section shall not be exercised except with the consent of the procurement entity or tenderer, supplier, contractor, or consultant concerned or of the person in charge of the premises unless there are reasonable grounds to believe that it is necessary to exercise those powers for the prevention, investigation or detection of an offence or to obtain evidence relating to an offence.

(4) Any person who, without just cause, hinders or obstructs an investigator in the exercise of a function under this section commits an offence and is liable on summary conviction to a fine not exceeding 500 penalty units or a term of imprisonment not exceeding two years or to both.

Procedures on completion of investigation

90. (1) An investigator shall

- (a) forward a copy of the investigation report to the Board; and
- (b) send a summary of the findings and recommendations to the procurement entity and to any tenderer, supplier, contractor or consultant whose conduct was the subject of the investigation.

(2) The Board shall, if satisfied that there has been a contravention of this Act or any other law in relation to procurement proceedings or procurement contracts, take action to rectify the contravention which action shall include

- (a) annulment of the procurement proceedings;
- (b) cancellation of the procurement contract;
- (c) ratification of anything done in relation to the proceedings; or
- (d) a declaration consistent with any relevant provisions of this Act.

(3) The Board shall afford a person adequate opportunity to make representations in a matter, before taking any action in terms of subsection (2) which may adversely affect the rights or property of that person.

Statutory audits

91. (1) The Auditor-General shall conduct annual audits of the procurement activities of entities and shall furnish copies of reports on the audits to the Board upon request from the Board.

(2) The Auditor-General shall also carry out specific audits into the procurement activities of entities and compliance by contractors, suppliers and consultants with the procurement requirements in this Act and regulations made under this Act at the request of the Board.

(3) The statutory audit of procurement activities may be relied upon by the Board to institute measures to improve the procurement system.

Offences relating to procurement

92. (1) Any person who contravenes any provision of this Act commits an offence and where no penalty has been provided for the offence, the person is liable on summary conviction to a fine not exceeding 1000 penalty units or a term of imprisonment not exceeding five years or to both.

(2) The following shall also constitute offences under this Act:

- (a) entering or attempting to enter into a collusive agreement, whether enforceable or not, with any other supplier or contractor where the prices quoted in their respective tenders, proposals or quotations are or would be higher than would have been the case had there not been collusion between the persons concerned;
- (b) directly or indirectly influencing in any manner or attempting to influence in any manner the procurement process to obtain an unfair advantage in the award of a procurement contract;
- (c) altering any procurement document with intent to influence the outcome of a tender proceeding and this includes but is not limited to
 - (i) forged arithmetical correction;
 - (ii) insertion of documents such as bid security or tax clearance certificate which were not submitted at bid opening; and
- (d) request for clarification in a manner not permitted under this Act.

Corrupt Practices

93. (1) Entities and participants in a procurement process shall, in undertaking procurement activities, abide by the provisions of article 284 of the Constitution.

(2) An act amounts to a corrupt practice if so construed within the meaning of corruption as defined in the Criminal Code, 1960 (Act 29).

Review of threshold levels

94. The threshold levels specified in Schedule 3 shall be reviewed by the Board and presented by the Minister for the approval of Parliament.

Public access to legal texts

95. The Chief Executive of the Board shall ensure that administrative rulings and directives of general application under this Act are promptly made available to the public.

International obligations

96. Notwithstanding the extent of the application of this Act to procurement, procurement with international obligations arising from any grant or concessionary loan to the government shall be in accordance with the terms of the grant or loan.

Regulations

97. (1) The Minister, in consultation with the Board, may make regulations by legislative instrument to give effect to the purposes of this Act.

(2) In furtherance of subsection (1), the Minister may make regulations

- (a) on the preparation and submission of tenders;
- (b) to provide for the manner of publication of the notice of procurement contract awards;
- (c) on the margin of preference in the evaluation of tenders;
- (d) on the preparation and submission of applications to prequalify for a tender;
- (e) on procurement proceedings on the basis of nationality;
- (f) on the procurement process where one entity or a specially appointed agent is to procure items on behalf of another entity;
- (g) on the disposal of unserviceable stores and obsolete equipment;
- (h) to amend the schedules to this Act; and
- (i) on any other matter connected with public procurement.

(3) Notwithstanding anything to the contrary in any enactment, a person who contravenes any regulation made under this Act is liable on summary conviction to a fine not exceeding 1000 penalty units or imprisonment for a term not exceeding five years or to both.

Interpretation

98. In this Act unless the context otherwise requires,

“ Board” means the Public Procurement Board established under section 1 of this Act;

“Catastrophic event” means a disaster of a national proportion;

“central management agencies” means the Public Services Commission, Office of the President and Office of the Head of Civil Service;

“CEO” means chief executive officer;

“confirmer” in relation to security means a person who or a bank which confirms letters of credit or bills;

“consultancy services” means services which are of an intellectual and advisory nature provided by firms or individuals using their professional skills to study, design and organise specific projects, advise clients, conduct training or transfer knowledge;

“consultant” means a person, natural or corporate, dealing in the provision of services including consultancy services;

“currency” includes monetary unit of account; “entity” means procurement entity;

“a domestic supplier” means a citizen who is a supplier or a corporate body with a majority shareholding owned by citizens which is a supplier;

“goods” means objects of every kind and description including raw materials, products and equipment and objects in solid, liquid or gaseous form, and electricity, as well as services incidental to the supply of the goods if the value of those incidental services does not exceed that of the goods themselves;

“governance institutions” includes Regional Co-ordinating Councils, District Assemblies, Metropolitan and Municipal Assemblies;

“head of entity” means in relation to

- (i) the central management agencies and Ministries, the sector Minister;
- (ii) subvented agencies, the Director-General, Executive Director, Secretary or Chief Executive;
- (iii) the Regional Co-ordinating Councils, the Regional Minister;
- (iv) the District Assemblies, the District Chief Executive;
- (v) State Owned Enterprises, the sector Minister;

“key staff” means important professional staff but excludes support staff;

“Least Cost Selection (LCS)” means a competitive method where quality and cost are taken into account but the firm offering the least cost is considered;

“local content” means a product originating from Ghana;

“Minister” means the Minister responsible for Finance;

“national interest” means a condition where the nation attaches high value, returns, benefit and consideration to the matter in question;

“national security” means a condition where security-takes priority over economic consideration and efficiency;

“one stop only” means .in relation to the operating threshold the procurement entity seeks, concurrent approval for a contract award from one tender review board only.

“performance security” means a security guaranteeing the performance of a contract;

“procurement contract” means a contract between the procuring entity and a supplier, contractor or consultant resulting from procurement proceedings;

“procurement entity” means any entity conducting public procurement under this Act;

“procurement unit” means the person or unit in the procurement entity that is dedicated to providing technical procurement services for the tender committee;

“professional body” means a body comprising members of a profession which is registered under the Professional Bodies Registration Decree, 1973 (N.R.C.D.143) or under any other enactment;

“public funds” include the Consolidated Fund, the Contingency Fund and such other public funds as may be established by Parliament;

“Quality Cost Based Selection (QCBS)” means a competitive method of combining quality and cost of services in the selection of a firm taking into consideration

- (a) the relative weight to be given to quality and the cost to be determined in each case depending on the nature of the assignment,
- (b) the total score to be obtained by weighing the quality and the cost score and adding them together, where the weight assigned to the quality and price is determined by the relative importance of quality in the assignment;

“security” means an amount to secure the fulfillment of any obligation of a contractor, supplier or consultant, which may take the form of a financial deposit, a surety bond, or an irrevocable letter of credit;

“selection procedure where price is not a factor” means selection which is made on technical quality only and where price is negotiated later; “service” means the furnishing of labour, time, or effort not involving the delivery of a specific end product other than reports, which are merely incidental to the required performance; and includes consulting, professional and technical services but does not include employment agreements or collective bargaining agreements;

“subvented agency” means an agency set up by Government to provide public service and financed from public funds allocated by Parliament in the annual appropriation;

“supplier or contractor” means any potential party or the party to a procurement contract with the procuring entity;

“technical services” means services which are tendered and contracted on the basis of performance of a measurable physical output such as drilling, mapping, aerial photography, surveys, seismic investigations, maintenance of facilities or plant and similar operations;

“Tender Committee” means the body within entity with responsibility for planning, processing, and generally taking procurement decisions and ensuring compliance with the public’ procurement law, among others;

“tenderer” means a person who puts in a bid in a procurement contract;

“tender security” means security provided to the procurement entity to secure the fulfillment of an obligation under this Act and includes arrangements such as bank guarantees, surety bonds, stand-by letters of credit, cheques on which a bank is primarily liable, cash deposits and bills of exchange;

“works” means work associated with the construction, reconstruction, demolition, repair or renovation of a building or structure or surface and includes site preparation, excavation, erection, assembly, installation of plant, fixing of equipment and laying out of materials, decoration and finishing, and any incidental activity under a procurement contract.

Repeal and savings

99. (1) The following enactments are hereby revoked or repealed as appropriate:

- (a) the District Tender Board Regulations, 1995 (L.I. 1606);
- (b) the Ghana National Procurement Agency Decree, 1976 (S.M.C.D. 55);
and
- (c) the Ghana Supply Commission Law, 1990 (P.N.D.C.L. 245).

(2) Notwithstanding the revocation and repeal of the enactments stated in subsection (1), any contracts, orders, decisions or anything made or done by a body which, until the coming into force of this Act, was charged with the performance of any of the functions under this Act shall, be valid and continue to be in force as if it was made or done under this Act.

(3) Where in the view of the Board the continued validity of an act under subsection (2) is inconsistent with this Act, the Board may take the appropriate decision to rectify the inconsistency to the extent consistent with this Act.

(4) Notwithstanding the coming into force of this Act, Tender Boards, and Committees which immediately before the coming into force of this Act performed the functions of Award Authorities as envisaged under this Act shall continue in existence until they are reconstituted or otherwise replaced under this Act.

SCHEDULE 1**(Section 17)****ENTITY TENDER COMMITTEES**

1. **Tender Committee for Central Management Agency/Ministry/
Subvented Agency**
- (1) **Chairperson** A Minister, Chief Executive Officer or Head of Agency to be appointed by the President
- (2) **Members**
- (a) head of finance or head of accounts division;
 - (b) a representative of the Ministry of Justice not below Chief State Attorney;
 - (c) three other heads of division or department one of whom represents a user department or division.
 - (d) two members of Parliament from the region, one appointed by the Minister and the other chosen by the Regional Caucus of Members of Parliament.
- (3) **Secretary** The officer heading the procurement unit or department
- (4) **Quorum** The quorum of the Tender Committee shall be five members, including the chairperson and members shall not delegate their responsibility to any other person.
- (5) **Voting** Decisions shall be made by simple majority and the chairperson shall have a casting vote.
- (6) **Functions** The Committee shall
- (a) review procurement plans in order to ensure that they support the objectives and operations of the entity;
 - (b) confirm the range of acceptable costs of items to be procured and match these with the available funds in the entity's approved budget,

- (c) review the schedules of procurement and specifications and also ensure that the procurement procedures to be followed are in strict conformity with the provisions of this Act, its operating regulations and guidelines;
- (d) ensure that the necessary concurrent approval is secured from the relevant Tender Review Board, in terms of the applicable threshold in Schedule 3 of this Act, prior to the award of the contract;
- (e) facilitate contract administration and ensure compliance with all reporting requirements under this Act; and
- (f) ensure that stores and equipment are disposed of in compliance with this Act.

2. Tender Committee for Regional Co-ordinating Council

- (1) **Chairperson** The Regional Minister
- (2) **Members**
 - (a) the Director of Finance; and
 - (b) a representative of the Ministry of Justice not below Senior State Attorney;
 - (c) four heads of Departments, one of whom represents the user department/agency.
- (3) **Member Secretary** The Regional Co-ordinating Director
- (4) **Quorum** The quorum of the Tender Committee shall be four members, including the chairperson and members shall not delegate their responsibility to any other person
- (5) **Voting** Decisions shall be made by simple majority and the chairperson shall have a casting vote.
- (6) **Functions** The Committee shall

- (a) review procurement plans in order to ensure that they support the policies and programmes of the Regional Administration or District, Metropolitan or Municipal Assembly;
- (b) confirm the range of acceptable costs of items to be procured and match these with the available funds in the approved budget of the Regional Administration or District, Metropolitan or Municipal Assembly;
- (c) review the schedules of procurement and specifications and also ensure that the procurement procedures to be followed are in strict conformity with the provisions of this Act, its operating regulations and guidelines;
- (d) ensure that the necessary concurrent approval is secured from the relevant Tender Review Board, in terms of the applicable threshold in Schedule 3 of this Act, prior to the award of the contract;
- (e) facilitate contract administration and ensure compliance with all reporting requirements under this Act; and
- (f) ensure that stores and equipment are disposed of in compliance with this Act.

3. Metropolitan/Municipal/District Tender Committee

- (1) **Chairperson** The Metropolitan, Municipal or District Chief Executive
- (2) **Members**
 - (a) the Director of Finance;
 - (b) a lawyer appointed by the Metropolitan, Municipal or District Assembly;
 - (c) one Member of Parliament; and
 - (d) three heads of Departments one of whom represents the user department or agency.

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- (3) **Member Secretary** Co-ordinating Director
- (4) **Quorum** The quorum of the Tender Committee shall be four members, including the chairperson and members shall not delegate their responsibility to any other person.
- (5) **Voting** Decisions shall be made by simple majority and the chairperson shall have a casting vote.
- (6) **Functions** The Committee shall
- (a) review procurement plans in order to ensure that they support the policies and programmes of the Assembly;
 - (b) confirm the range of acceptable costs of items to be procured and match these with the available funds in the approved budget of the Assembly;
 - (c) review the schedules of procurement and specifications and also ensure that the procurement procedures to be followed are in strict conformity with the provisions of this Act, its operating regulations and guidelines;
 - (d) ensure that the necessary approval is secured from the relevant Tender Review Board, in terms of the applicable threshold in Schedule 3 of this Act, prior to the award of the contract;
 - (e) facilitate contract administration and ensure compliance with all reporting requirements under this Act;
 - (f) ensure that stores and equipment are disposed of in compliance with this Act.

4. State Enterprises Tender Committee

- (1) **Chairperson** The sector Minister or Chairman of the Board
- (2) **Members**
- (a) the Chief Executive;

- (b) the Financial Controller;
 - (c) the head of Technical Services;
 - (d) representative of the Ministry of Justice not below Senior State Attorney;
 - (e) two members of the Board; and
 - (f) three heads of Departments appointed by the Minister.
- (3) **Secretary** the head of procurement
- (4) **Quorum** Five
- (5) **Voting** Decisions shall be by simple majority and the chairperson shall have a casting vote.
- (6) **Functions** The Committee shall
- (a) review procurement plans in order to ensure that they support the objectives and operations of the Entity;
 - (b) confirm the range of acceptable costs of items to be procured and match these with the available funds in the entity's approved budget;
 - (c) review the schedules of procurement and specifications and also ensure that the procurement procedures to be followed are in strict conformity with the provisions of this Act, its operating regulations and guidelines;
 - (d) ensure that the necessary concurrent approval is secured from the relevant Tender Review Board, in terms of the applicable threshold in Schedule 3 of this Act, prior to the award of the contract.
 - (e) facilitate contract administration and ensure compliance with all reporting requirements under this Act; and
 - (l) ensure that stores and equipment are disposed of in compliance with this Act.

5. Tertiary Institutions Tender Committee

- (1) **Chairperson** Chairperson of Council
- (2) **Members**
- (a) the Registrar;
 - (b) the Finance Officer;
 - (c) a lawyer appointed by the Council;
 - (d) one member nominated by the Development Committee;
 - (e) one member appointed by the Ministry of Education;
 - (f) one member appointed by the National Council on Tertiary Education (NCTE);
 - (g) one representative of the students' Representative Council (SRC); and
 - (h) one representative from an association of university teachers.
- (3) **Secretary** the Senior Assistant Registrar with responsibility for the General Services schedule
- (4) **Quorum** Five
- (5) **Voting** Decisions shall be by simple majority and the chairperson shall have a casting vote.
- (6) **Functions** The Committee shall
- (a) review procurement plans in order to ensure that they support the objectives and operations of the Institution, Faculty, Department or Entity;
 - (b) confirm the range of acceptable costs of items to be procured and match these with the available funds in the approved budget;
 - (c) review the schedules of procurement and specifications and also ensure that the procurement

procedures to be followed are in strict conformity with the provisions of this Act, its operating regulations and guidelines;

- (d) ensure that the necessary concurrent approval is secured from the relevant Tender Review Board, in terms of the applicable threshold in Schedule 3 of this Act, prior to the award of the contract;
- (e) facilitate contract administration and ensure compliance with all reporting requirements under this Act; and
- (f) ensure that stores and equipment are disposed of in compliance with this Act.

6. College/School Tender Committee

- (1) **Chairperson** Chairman of Board of Governors
- (2) **Members**
 - (a) Principal, Headmaster or Headmistress;
 - (b) the Bursar or Finance officer;
 - (c) two members of the governing board;
 - (d) a lawyer appointed by the governing board;
 - (e) two heads of department one being the beneficiary department.
- (3) **Secretary** Secretary to the governing board
- (4) **Quorum** Five
- (5) **Voting** Decisions shall be by simple majority and the chairperson shall have a casting vote.
- (6) **Functions** The Committee shall
 - (a) review procurement plans in order to ensure that they support the objectives and operations of the Institution or Entity;

- (b) confirm the range of acceptable costs of items to be procured and match these with the available funds in the approved budget;
- (c) review the schedules of procurement and specifications and also ensure that the procurement procedures to be followed are in strict conformity with the provisions of this Act, its operating regulations and guidelines;
- (d) ensure that the necessary concurrent approval is secured from the relevant Tender Review Board, in terms of the applicable threshold in Schedule 3 of this Act, prior to the award of the contract;
- (e) facilitate contract administration and ensure compliance with all reporting requirements under this Act; and
- (f) ensure that stores and equipment are disposed of in compliance with this Act.

7. **Hospital/Health Institution Tender Committee**

- (1) **Chairperson** Minister for Health
- (2) **Members:**
 - (a) the Director of Health Services;
 - (c) a lawyer appointed by the governing board;
 - (d) two heads of clinical departments including the beneficiary department;
 - (e) the head of Finance;
 - (f) the Chief Director of the Ministry of Health;
 - (g) the Matron;
 - (h) two heads of Department including clinical heads
- (3) **Secretary** the head of procurement or officer with responsibility for procurement.
- (4) **Quorum** Five

- (5) **Voting** Decisions shall be by simple majority and the chairperson shall have a casting vote.
- (6) **Functions** The Committee shall
- (a) review procurement plans in order to ensure that they support the objectives and operations of the Institution or Entity;
 - (b) confirm the range of acceptable costs of items to be procured and match these with the available funds in the approved budget;
 - (c) review the schedules of procurement and specifications and also ensure that the procurement procedures to be followed are in strict conformity with the provisions of this Act, its operating regulations and guidelines;
 - (d) ensure that the necessary concurrent approval is secured from the relevant Tender Review Board, in terms of the applicable threshold in Schedule 3 of this Act, prior to the award of the contract;
 - (e) facilitate contract administration and ensure compliance with all reporting requirements under this Act; and
 - (f) ensure that stores and equipment are disposed of in compliance with this Act.

8. Bank of Ghana or Financial Institutions Tender Committee

- (1) **Chairperson** the Governor or CEO
- (2) **Members**
- (a) two members of the Board;
 - (b) The First Deputy Governor;
 - (c) a Deputy Minister for Finance;
 - (d) a representative of the Chief of Staff;
 - (e) the Head of Finance; and
 - (f) a representative of the beneficiary department.

Act 663

Public Procurement Act, 2003

- (3) **Secretary** the secretary to the Bank
- (4) **Quorum** Five
- (5) **Voting** Decisions shall be by simple majority should voting become necessary and the chairperson shall have a casting vote.
- (6) **Functions** The Committee shall
 - (a) review procurement plans in order to ensure that they support the objectives and operations of the Institution or Entity;
 - (b) confirm the range of acceptable costs of items to be procured and match these with the available funds in the approved budget;
 - (c) review the schedules of procurement and specifications and also ensure that the procurement procedures to be followed are in strict conformity with the provisions of this Act, its operating regulations and guidelines;
 - (d) ensure that the necessary concurrent approval is secured from the relevant Tender Review Board, in terms of the applicable threshold in Schedule 3 of this Act, prior to the award of the contract;
 - (e) facilitate contract administration and ensure compliance with all reporting requirements under this Act; and
 - (f) ensure that stores and equipment of the Bank are disposed of in compliance with this Act.

SCHEDULE 2**(Section 20)****COMPOSITION OF TENDER REVIEW AUTHORITIES****1. CENTRAL TENDER REVIEW BOARD**

- | | | |
|-----|--------------------|---|
| (1) | Membership | Nine |
| (2) | Chairperson | An eminent person appointed by the President on the advice of the Minister for Finance |
| (3) | Members | <p>(a) two public sector persons conversant with procurement principles" and procedures appointed by the Minister;</p> <p>(b) three professionals appointed by the Institute of Engineers, Institute of Chartered Accountants and Institute of Surveyors;</p> <p>(c) the Attorney-General or the representative of the Attorney-General;</p> <p>(d) the Director General, National Development Planning Commission; and</p> <p>(e) the Chief Director, Ministry of Finance.</p> |
| (4) | Secretary | A Director in the Ministry of Finance appointed by the Minister. |

2. MINISTRY TENDER REVIEW BOARD

(in the national capital only)

- | | | |
|-----|--------------------|--|
| (1) | Membership | Five |
| (2) | Chairperson | The chairman of a Service Council or a public sector person with considerable experience in procurement, business management or engineering, appointed by the Minister |
| (3) | Members | (a) three heads of departments or agencies within the Ministry appointed by the Sector Minister" |

- (b) two persons with experience in procurement from the private sector with engineering, legal, accounting or business background appointed by the Sector Minister;
- (c) the Chief Director of the Ministry;
- (d) the Director of Finance and Administration of the Ministry; and
- (e) the head of Logistics and Supplies or the head of the procurement unit.

3. REGIONAL TENDER REVIEW BOARD

- (1) **Membership** Five
- (2) **Chairperson:** An eminent private or public sector person with procurement, business management or engineering background resident in the Region appointed by the Regional Co-ordinating Council.
- (3) **Members:**
 - (a) one public sector person resident in the Region with experience in procurement appointed by the Regional Co-ordinating Council
 - (b) one private sector person with experience in procurement or business resident in the Region appointed by the Minister of Local Government and Rural Development;
 - (c) the Regional Co-ordinating Director;
 - (d) the Regional Directors of
 - (i) Ghana Highways Authority;
 - (ii) Ghana Education Service;
 - (iii) Ministry of Food and Agriculture; and
 - (iv) Ministry of Health; and
 - (e) a representative of the Ministry of Justice in the Region.

- (4) **Secretary:** the Regional Director of Planning

4. DISTRICT TENDER REVIEW BOARD

- (1) **Membership:** Five
- (2) **Chairperson:** A public sector person resident in the district with procurement, business management or engineering background appointed by the District Assembly.
- (3) **Members:**
- (a) the chairperson, Works Committee of the District Assembly;
 - (b) the chairperson, Finance Committee of the District Assembly; and
 - (c) one private sector procurement specialist appointed by the District Assembly.
 - (d) the District Directors of
 - (i) Urban Roads/Feeder Roads;
 - (ii) Ghana Education Service;
 - (iii) Health Services; and
 - (iv) Ministry of Food and Agriculture;
 - (e) the representative of the Attorney-General's Office in the district.
- (4) **Secretary:** the Director of Planning.

SCHEDULE 3**(Section 21, Section 42, Section 44, Section 66)****1. Thresholds for Procurement Methods**

Procurement Method/Advertisement	Contract Value Threshold
(1) Pre-qualification <i>(a)</i> Goods <i>(b)</i> Works <i>(c)</i> Technical Services	Above GHC 35 billion Above GHC 70billion (not more than 10% of cost of works)
(2) International Competitive Tender <i>(a)</i> Goods <i>(b)</i> Works <i>(c)</i> Technical Services	Above GHC 15.0 billion Above GHC 20.0 billion Above GHC 2.0 billion
(3) National Competitive Tender <i>(a)</i> Goods <i>(b)</i> Works <i>(c)</i> Technical Services	More than GHC 200 million up to GHC 2.0 billion More than GHC 500 million up to GHC 15 billion More than GHC 200 million up to GHC 2.0 billion
(4) Restricted Tendering	Subject to Approval by PB
(5) Price Quotation <i>(a)</i> Goods <i>(b)</i> Works <i>(c)</i> Technical Services	Up to GHC 200million Up to GHC 500 million Up to GHC 200million
(6) Single Source Procurement and Selection	Subject to Approval by PB
(7) Advertisements for Expressions of Interest for Consulting Services in local newspapers	Above GHC 700 million
(8) Least-Cost Selection	Up to GHC 700 million
(9) Selection based on Consultant's Qualifications	Up to GHC 350m
(10) Single Source-Selection	Subject to Approval by PB

2. (B1) Decentralised Procuring Entities -Thresholds for Review/ Approval Authority (Amounts in GHC)

Authority	Goods	Works	Technical Services	Consulting Services
(1) Head of Entity	Up to 50m	Up to 100m	Up to 50m	Up to GHC 50m
(2) Entity Tender Committee	>50m-250m	>100m-500m	>50m-250m	>50m-100m
(3) District Tender Review Board	>250m-1.0b	>500m-2.0b	>250m-1.0b	>100m-500m
(4) Ministerial and Regional Tender Review Board	> 1.0b-8.0b	>2.0b-15.0b	> 1.0b-8.0b	>500m-3.5b
(5) Central Tender Review Board	Above 8.0b	Above 15.0b	Above 8.0b	Above 3.5b

3. (B1) Other Procuring Entities -Thresholds for Review/Approval Authority (Amounts in GHC)

Authority	Goods	Works	Technical Services	Consulting Services
(1) Head of Entity	Up to 50m	Up to 100m	Up to 50m	Up to 50m
(2) Entity Tender Committee	> 50m-1.0b	>100m-2.0b	>50m-1.0b	>50m-500m
(3) Ministerial and Regional Tender Review Board	> 1.0b-8.0b	>2.0b-15.0b	> 1.0b-8.0b	>500m-3.5b
(4) Central Tender Review Board	Above 8.0b	Above 15.0b	Above 8.0b	Above 3.5b

SCHEDULE 4

(Section 50, Section 68)

**STANDARD TENDER DOCUMENTS AND STANDARD
REQUEST FOR PROPOSALS**

1. Standard Tender Document for Procurement of Works
2. Standard Tender Document for Procurement of Works (Smaller contracts)
3. Standard Tender Document for Roads- Major
4. Standard Tender Document for Roads-Minor
5. Standard Tender Document for Procurement of Goods
6. Standard Tender Document for Procurement of Health Goods
7. Standard Tender Document for Procurement of Text Books
8. Standard Tender Document for Procurement of IT Systems
9. Standard Request for Proposals for Selection of Consultants
10. Standard Document for Prequalification of Suppliers, Consultants and Contractors
11. Standard Document for request for Expression of Interest
12. Sample Format Request for Quotations
13. Disposal of Stores (Goods and Equipment)
14. Board of Survey Form/ Disposal Certificate /Destruction Certificate
15. Standard Tender Evaluation Format and Reporting Format for Goods, Works and Selection of Consultants
16. Standard and Sample Contracts for Consultants Services
 - Complex Time Based Assignments
 - Lump-sum remuneration
 - Small Assignments Time Based Payments
 - Lump Sum payments.

Date of Gazette notification: 31st December, 2003.

**Venture Capital Trust Fund Act 2004
(Act 680)**

ARRANGEMENT OF SECTIONS

Sections

PART I — ESTABLISHMENT OF THE VENTURE CAPITAL TRUST FUND

1. Establishment of the Trust Fund
2. Object of the Trust Fund
3. Sources of Money for the Trust Fund
4. Bank Account for the Trust Fund
5. Categories of Accounts of the Trust Fund

PART II — THE BOARD AND MANAGEMENT OF THE TRUST FUND

6. The Board of the Fund
7. Functions of the Board
8. Tenure of office of members
9. Vacancies on the Board
10. Meetings of the Board
11. Committees of the Board
12. Disclosure of Interest
13. Allowances for members of the Board
14. Disbursement from the Trust Fund
15. Application for Funding
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17. Management of Equity and Credit Accounts
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PART III — ADMINISTRATIVE AND FINANCIAL PROVISIONS

22. Administrator and functions
23. Appointment of other staff
24. Accounts and audit
25. Annual Report
26. Financial Year
27. Regulations
28. Interpretation
29. Amendments

THE SIX HUNDRED AND EIGHTIETH

ACT

OF THE PARLIAMENT OF THE REPUBLIC OF GHANA
ENTITLED

VENTURE CAPITAL TRUST FUND ACT, 2004

AN ACT to provide for the establishment of a Fund to be known as the Venture Capital Trust Fund to provide financial resources for the development and promotion of venture capital financing for Small and Medium Enterprises (SMEs) in specified sectors of the Ghanaian economy; the management of the Fund and to provide for related matters.

DATE OF ASSENT: *17th November 2004*

BE IT ENACTED by Parliament as follows:

PART I — ESTABLISHMENT OF THE VENTURE CAPITAL TRUST FUND

Establishment of the Trust Fund

1. There is established by this Act a Venture Capital Trust Fund referred to in this Act as the "Trust Fund".

Object of the Trust Fund

2. (1) The object of the Trust Fund is to provide financial resources for the development and promotion of venture capital financing for Small and Medium Enterprises (SMEs) in priority sectors of the economy as shall be specified from time to time,

(2) For the purpose of achieving the object of the Trust Fund, monies from the Trust Fund shall be applied to such relevant activities as the Board of the Fund may determine including in particular,

- (a) the provision of credit and equity financing to eligible venture capital financing companies to support Small and Medium Enterprises which qualify for equity and quasi-equity financing;
- (b) the provision of monies to support other activities and programs for the promotion of venture capital financing, as the Board may determine, in consultation with the Minister.

Sources of Money for the Trust Fund

3. The sources of money for the Trust Fund are

- (a) an amount of money equivalent to twenty-five percent of the proceeds of the National Reconstruction Levy with effect from the 2003 financial year;
- (b) such other monies as the Minister with the approval of Parliament may determine;
- (c) fees and other monies earned by the Trust Fund in pursuance of its functions under this Act;
- (d) money that accrues to the Trust Fund from investment made by the Board;
- (e) grants, donations, gifts, and other voluntary contributions to the Trust Fund; and
- (f) other moneys or property that may in any manner become lawfully payable and vested in the Board for the Trust Fund.

Bank Account for the Trust Fund

4. (1) Monies of the Trust Fund shall vest in the Board and shall be paid into bank accounts that shall be opened by the Board with the approval of the Accountant-General.

- (2) The Minister of Finance shall within thirty days of receipt of notification of payment of the proceeds of the National Reconstruction Levy revenue, pay directly from the Consolidated Fund into the bank accounts opened under subsection (1) the proportion of the National Reconstruction Levy revenue that is required to be paid into the Fund under section 3(a).

Categories of Accounts of the Trust Fund

5. (1) The monies in the Trust Fund shall be divided into such categories of accounts as the Board may determine.

(2) There shall be assigned to each category of Account such proportion of the Trust Fund as the Board shall in consultation with the Minister determine.

PART II — THE BOARD AND MANAGEMENT OF THE TRUST FUND**The Board of the Fund**

6. (1) There is established by this Act a Board of Trustees for the Trust Fund comprising

- (a) a chairperson;
- (b) one representative of the Ministry of Finance and Economic Planning not below the rank of director;
- (c) one representative of the Ministry of Private Sector Development not below the rank of director;
- (d) the Administrator of the Trust Fund under section 22;
- (e) one representative of the Ghana Securities Industry Association;
- (f) one representative of the Ghana Association of Bankers;
- (g) one representative of the Ghana Insurers Association; and
- (h) two other individuals, one each from the formal and informal sectors of the economy one of whom is a woman.

(2) The chairperson and members of the Board of Trustees shall be appointed by the President acting in consultation with the Council of State.

(3) The President shall in appointing a member of the Board under subsection (1) have regard to the person's integrity, knowledge, expertise and experience in matters relevant to the functions of the Board.

(4) The Board shall be a body corporate with perpetual succession and shall have a common seal and may sue and be sued in its corporate name.

(5) The Board may

- (a) enter into contracts;
- (b) acquire, purchase and hold movable and immovable property; and (c) convey, assign and transfer any movable and immovable property or any interest in property vested in it.

Functions of the Board

7. (1) The Board is responsible for the management of the Trust Fund and shall for that purpose

- (a) pursue policies to achieve the object of the Trust Fund;
- (b) collect or arrange to be collected, monies lawfully due to the Trust Fund through procedures to be determined by the Minister;
- (c) monitor and evaluate the operations and performance of venture capital financing companies in respect of monies received from the Trust Fund;
- (d) ensure accountability of the Trust Fund by defining appropriate procedures for its management;
- (e) disburse monies from the Trust Fund;
- (f) invest some of the monies of the Trust Fund in such safe securities as it considers financially beneficial to the Trust Fund;
- (g) receive and process applications for funds from venture capital financing companies;
- (h) put in place structures and guidelines that will ensure that venture capital finance companies live up to their responsibilities stated in the agreement between the venture capital financing companies and the SMEs they fund;
- (i) in consultation with the Minister, formulate policies to determine among other things
 - (i) the terms under which any monies from the Trust Fund will be allocated to eligible venture capital financing companies under this Act;
 - (ii) the maximum amount of money that may be granted by the Trust Fund to an applicant; and
 - (iii) the sectors of the economy in which the monies from the Trust Fund may be invested;
- (j) publish such manuals or guidelines as it considers necessary to regulate the conduct and operations of venture capital financing companies in relation to monies from the Trust Fund;

- (k) approve the broad terms and conditions of agreements to be entered into between venture capital financing companies and SMEs in relation to disbursements made from monies from the Trust Fund; and
- (l) perform such other functions as are incidental to the achievement of the object of the Trust Fund.

(2) The Minister may give general directives in writing to the Board on matters of policy.

Tenure of office of Members

8. (1) The chairperson and any member of the Board other than the Chief Executive of the Trust Fund shall hold office for a period of four years and is on the expiration of that period eligible for re-appointment.

(2) A member of the Board other than an *ex-officio* member may at any time by letter addressed to the President through the Minister resign from office.

(3) A member who is absent from four consecutive meetings of the Board without sufficient cause shall cease to be a member of the Board.

(4) The chairperson or any other member of the Board may be removed from office by the President for

- (a) inability to perform the functions of the office;
- (b) for stated misbehaviour; or
- (c) for any other just cause.

Vacancies on the Board

9. (1) The chairperson of the Board shall notify the Minister of vacancies that occur in the membership of the Board within one month of the occurrence of the vacancy.

(2) The President on being notified of a vacancy shall request the appropriate body to nominate another person for appointment.

(3) Where the vacant position is that of the chairperson, the Minister shall notify the President who shall in consultation with the Council of State appoint a new chairperson.

(4) Where a person is appointed to fill a vacancy, that person shall hold office for the remainder of the term of the previous member and shall subject to the provisions of this Act be eligible for re-appointment.

Meetings of the Board

10. (1) The Board shall meet for the despatch of business at times and in places that the Board may determine but shall meet at least once every three months.

(2) The chairperson shall upon the request of not less than one third of the membership of the Board convene an extraordinary meeting of the Board.

(3) The quorum at a meeting of the Board shall be five members.

(4) The chairperson shall preside at every meeting at which the chairperson is present and where the chairperson is absent, 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.

(6) The person presiding at a meeting of the Board shall in the event of equality of votes have a second or casting vote.

(7) The Board may co-opt any person to act as an adviser at its meetings but no co-opted person is entitled to vote at the meeting.

(8) The validity of the proceedings of the Board shall not be affected by a vacancy among its members or by a defect in the appointment or qualification of a member.

(9) Except as otherwise provided under this section the Board shall determine and regulate the procedure for its meetings.

Committees of the Board

11. The Board may for purposes of achieving the object of the Trust Fund appoint committees of the Board comprising members of the Board or non-members or both and may assign to them such functions as the Board may determine except that a committee composed entirely of non-members shall only advise the Board.

Disclosure of interest

12. (1) A member of the Board who has an interest in any matter being considered or dealt with by the Board shall disclose the nature of that interest at a meeting of the Board and shall not take part in any deliberation or decision of the Board with respect to the matter.

(2) A member who has an interest in a matter before the Board but who fails to disclose that interest under subsection (1) shall be removed from the Board.

Allowances for members of the Board

13. The chairperson and other members of the Board shall be paid allowances that the Minister may determine.

Disbursement from the Trust Fund

14. The monies of the Trust Fund shall be disbursed by the Board in proportions and to eligible venture capital financing companies as the Board may determine.

Application for Funding

15. (1) Any venture capital financing company that satisfies the conditions specified in section 16 may apply to the Trust Fund for funding.

(2) An application for funding from the Trust Fund shall be in such form as the Minister may on the advice of the Board prescribe.

(3) The application shall be accompanied with such non-refundable processing fee as the Board shall determine.

(4) Upon the receipt of an application, the Board may conduct such investigations on the applicant and may request the applicant to submit such documents as it considers necessary for the determination of the application.

(5) The Board shall within twenty-eight days after the receipt of an application

(a) grant the application if

(i) the funds of the Trust Fund are not exhausted;

(ii) it is satisfied that the applicant has fulfilled all the conditions listed under section 16; and

- (iii) the applicant has fulfilled any other conditions required for the grant of an application prescribed under this Act;
- (b) refuse to grant the application where it determines the applicant to be ineligible.

(6) Where the Board grants an application, it shall inform the applicant in writing of the monies allocated to the applicant and subject to subsection (5) specify any terms and conditions upon which the grant has been made.

(7) Where an applicant is granted credit facilities by the Board, the applicant shall bear the full credit risk of the facility.

(8) An applicant dissatisfied with a decision of the Board in respect of an application may petition the Commission on Human Rights and Administrative Justice for a review of the decision.

Eligibility for Funding

16. A venture capital financing company qualifies to apply for funding from the Trust Fund if that venture capital financing company

- (a) is incorporated in Ghana as a limited liability company under the Companies Code, 1963 (Act 179);
- (b) has a name that includes "Venture Capital", or any similar abbreviation;
- (c) has as its sole authorized business, the business of assisting the development of small businesses by making equity and quasi-equity investments and providing business and managerial expertise to small businesses in which it has made or proposes to make an eligible investment;
- (d) is managed by an investment adviser licensed by the Securities and Exchange Commission who is in good standing;
- (e) has met the minimum equity capital requirements prescribed by regulations made under this Act;
- (f) has in place adequate governance, internal control, and monitoring procedures for selection of investment projects and for monitoring and management of these projects;
- (g) undertakes to enter into an agreement on broad terms and conditions approved by the Board with any SME it provides funding for; and
- (h) meets other conditions prescribed by the Board.

Management of Equity and Credit Accounts

17. (1) A venture capital financing company which has received monies from the Trust Fund shall apply the monies to provide equity or credit financing or equity and credit financing to qualifying Small and Medium Enterprises in accordance with policy guidelines provided by the Board.

(2) A venture capital financing company shall enter into a written agreement with any SME to which it provides funding.

Tax incentives

18. A venture capital financing company shall enjoy such tax incentives as shall be provided in the Internal Revenue Act, 2000 (Act 529) as amended.

Reporting by Venture Capital Financing Companies

19. The Minister shall on the advice of the Board prescribe the form of reports to be submitted by venture capital financing companies allocated funding from the Trust Fund and the intervals at which the reports are to be submitted.

Administrative Expenses of the Trust Fund

20. The administrative and other expenses of the Trust Fund shall be paid out of monies approved by Parliament for the purpose.

Tax Exemption

21. The Trust Fund is exempt from payment of any form of tax.

PART III – ADMINISTRATIVE AND FINANCIAL PROVISIONS**Administrator and Functions**

22. (1) There shall be appointed by the President in accordance with the advice of the Board given in consultation with the Public Services Commission an Administrator of the Trust Fund.

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

(3) The Administrator shall be a member of the Board.

(4) The Administrator shall be responsible for the day-to-day administration of the affairs of the Board and shall ensure the implementation of the decisions of the Board.

Appointment of other Staff

23. (1) The President acting in accordance with the advice of the Board given in consultation with the Public Services Commission shall appoint other officers or employees necessary for the effective performance of the functions of the Board.

(2) The President may delegate the power of appointment under subsection (1) in accordance with article 195(2) of the Constitution.

(3) The Board may on the recommendations of the Administrator engage the services of such experts and consultants as the Board may determine.

Accounts and Audit

24. (1) The board shall keep proper books of account and records in such form as the Auditor-General may approve.

(2) The books of account kept for the Fund by the Board shall be audited by the Auditor-General or by an auditor appointed by the Auditor-General within six months after the end of each financial year.

(3) In addition to the annual audit, technical audits may be conducted on selective basis by the Auditor-General or by an auditor appointed by the Auditor-General.

Annual Report

25. (1) The Board shall submit to the Minister as soon as is practicable and in any event not more than eight months after the end of each financial year, a report on the activities and operation of the Trust Fund during the year to which the report relates and shall include

- (a) the audited accounts of the Trust Fund and the Auditor-General's report on the accounts of the Trust Fund; and
- (b) any other information as the Board may consider necessary;

(2) The Minister shall within two months after the receipt of the Annual Report submit the report to Parliament with such statement as the Minister considers necessary.

Financial Year

26. The financial year of the Trust Fund shall be the same as the financial year of the Government.

Regulations

27. The Minister on the advice of the Board may by legislative instrument make regulations for the effective implementation of this Act and in particular prescribe

- (a) the form for application for funds from the Trust Fund;
- (b) other conditions for qualification of an applicant;
- (c) further conditions for the grant of an application for funds from the Trust Fund;
- (d) matters to be contained in policy guidelines and manuals issued by the Board;
- (e) equity capital requirement for venture capital financing companies; and
- (f) the form of reports to be submitted by venture capital financing companies.

Interpretation

28. In this Act unless the context otherwise requires

“Board” means the Board established for the Trust Fund under section 6 of this Act;

“Minister” means the Minister responsible for Finance;

“Small and Medium enterprises” means an industry, project, undertaking or economic activity which employs not more than 100 persons and whose total asset base, excluding land and building, does not exceed the cedi equivalent of \$1 million in value;

“Trust Fund” means the Venture Capital Trust Fund established under section 1.

“Venture capital financing company” means a company incorporated under the Companies Code 1963 (Act 179) that has as its sole authorized business, the business of assisting in the development of Small and Medium Enterprises by making investments equity and quasi-equity investments and providing business and managerial expertise to small businesses in which it has made or proposes to make an eligible investment.

Amendments

29. The Financial Institutions (Non-Banking) Law, 1993 (P.N.D.C.L. 328) is hereby amended by the deletion of paragraph 6 on Venture Capital Funding Companies from the Schedule.

APPENDIX

**Financial Administration Regulations
2004 (L.I. 1802)**

ARRANGEMENTS OF REGULATIONS

Regulation

PART I - CONTROL AND MANAGEMENT OF PUBLIC FUNDS

1. Financial responsibilities of public officers
2. Financial duties of a head of department
3. Accounting manual
4. Departmental accounting instructions
5. Delegation of financial duties by heads of departments
6. Conformity with law and financial regulations
7. Duty to report unsatisfactory application of regulations
8. Financial discipline

PART II - PUBLIC FUNDS

9. Public funds
10. Classification of receipts
11. Custodial responsibility of the Controller and Accountant-General
12. Responsibilities of person entrusted with custodial duty
13. Custodial role of heads of departments
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In exercise of the powers conferred on the Minister responsible for Finance by sections 2 & 73 of the Financial Administration Act, 2003, Act 654, these Regulations are made this 4th day of June, 2004

PART I – GENERAL RULES FOR THE MANAGEMENT OF PUBLIC FUNDS**Financial Responsibilities of public officers**

1. (1) Any public officer who responsible

(a) for the conduct of financial business on behalf of the Government of Ghana,

(b) the receipt, custody and disbursement of public and trust moneys, or

(c) for the custody, care and use of public stores

shall keep proper records of all transactions and shall produce records of the transactions for inspection when called upon to do so by the Minister, Auditor-General, the Controller and Accountant-General or any officers authorised by them;

(2) A public officer who fails to keep or produce any records under subregulation (1) is in breach of financial discipline as defined in Regulation 8(1).

(3) Where a public officer is proceeding on transfer, leave or is for any other reason being relieved of the duties under sub-regulation (1), the officer shall hand over the financial and accounting records to the person taking over from the officer.

(4) The obligation of a public officer to keep proper records of transactions and to produce the records for inspection under subregulation (1) shall not be complete until that officer has properly handed over the financial accounting records kept by that officer to the officer who takes over that duty under subregulation (3).

(5) An officer handing over financial and accounting duties to a relieving officer shall prepare and sign a statement in triplicate showing

(a) details of all accounting records and documents kept;

(b) details of all keys, cash and bank balances, public stores and equipment on hand;

(c) details of all pending financial business, including outstanding audit queries;

(d) details of financial and accounting duties assigned to subordinate staff;

- (e) details in respect of particular classes of business as required by regulations or Departmental Accounting Instructions.

(6) A Public officer who fails to prepare the handing over statement under subregulation (4) is in a breach of financial discipline as defined in Regulation 8(1).

(7) If an officer is prevented by death, disability or by any other reason from preparing a handing-over statement, the officer's immediate superior, together with the relieving or any other officer, shall draw up a statement as required by sub-regulation (3), and the statement shall note any irregularities found and shall also record the circumstances in which the take-over became necessary.

(8) The officer taking over shall check that the details in the handing-over statement are complete and correct, that records have been properly entered and are up-to-date, and verify all balances.

(9) The officer required to prepare a handing-over statement under subregulation (6) shall note any discrepancy or observation on all copies of the handing-over statement and when both parties are satisfied that the handing-over statement is in order, the completion of hand-over shall be signified by the signature of the relieving officer.

(10) Each officer shall retain one copy of the statement and one copy shall be retained on the office file.

Financial duties of a head of department

2. The head of government department shall

- (a) manage and operate the department's accounting systems, so as to ensure the accountability of all officers transacting such business and facilitate the efficient discharge of such business;
- (b) ensure that the department's accounting system has been approved by the Controller and Accountant-General in consultation with the Auditor-General;
- (c) secure the efficient and effective use of appropriations under departmental control within the ambit of government policy and in compliance with any enactment, regulations or instructions issued under the authority of any enactment;
- (d) secure the due and proper collection of government revenue collectable by the department within the terms of any enactment or of instructions issued or approved by the Controller and Accountant-General;

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- (e) requisition, commit, order, receive and make payments for goods and services within the funds appropriated to the department and in accordance with these Regulations and any other enactment;
- (f) receive and order the disbursement of any trust moneys for which the head of department has been appointed as administering authority by or under any enactment or agreement;
- (g) manage and reconcile the bank accounts authorised for the department by the Controller and Accountant General;
- (h) preserve in good order and secure the economical use of all equipment and stores used by the department;
- (i) transact any other financial business for which the head of department is made responsible, by or under any enactment in accordance with the requirement of the enactment or instructions issued or approved by the Minister;
- (j) prepare monthly departmental accounts in a form prescribed by the Controller and Accountant-General's Department, within the time period set by the Controller and Accountant-General in the Accounting Manual and submit these to the Minister, the Auditor-General and the Controller and Accountant-General's Department.
- (k) prepare, sign and submit within three months after the end of the year, to the Minister, the Auditor-General and the Controller and Accountant-General's Department, annual departmental accounts in the form prescribed by the Controller and Accountant-General's Department in consultation with the Auditor-General;
- (l) answer questions raised by the Auditor General in respect of the financial transactions and accounts of the Department;
- (m) appear before the Public Accounts Committee to give explanations required by the Committee in respect of annual departmental accounts; and
- (n) compile and maintain assets register of the department, as determined by the Controller and Accountant-General.

Accounting manual

3. The Controller and Accountant-General shall prepare an accounting manual from which Departmental Accounting Instructions shall be derived.

Departmental Accounting Instructions

4. (1) A head of department shall with the approval of the Controller and Accountant-General given in consultation with the Auditor-General Departmental issue Accounting Instructions to regulate the financial business of the department, indicating the duties to be performed by specified officers, the accounts to be kept and returns to be submitted, and such other instructions as may be required for the proper conduct of the financial business of the department.

(2) The Departmental Accounting Instructions shall contain relevant procedures for the keeping of accounts, preparation and format of financial statements, Departmental Chart of Accounts, Departmental Accounting System - whether manual or mechanised, and all administrative issues relating to the keeping and preparation of government accounts.

(3) The instructions under sub-regulation (2) shall conform to any enactment, or any particular direction concerning accounts issued by the Controller and Accountant-General.

Delegation of financial duties by head of department

5. (1) Unless a delegation is expressly prohibited or restricted by an enactment or in instructions, head of department may delegate authority for the performance of any of the functions of the head to a subordinate officer who, having regard to the requirements of the assigned functions, is competent and capable.

(2) A head of department may provide for the delegation of the duties of the head of department in the Departmental Accounting Instructions.

(3) Delegation of authority to undertake duties under this regulation does not diminish the accountability of the head of department as provided for in regulation 2.

(4) A head of department who delegates a power of appointment or discipline under the Financial Administration Act, 2003 (Act 654) shall inform the Controller and Accountant-General and the Auditor-General of the delegation.

Conformity with law and financial regulations

6. Public officers shall conduct government financial business according to the laws of Ghana and any instructions given in accordance with these Regulations.

Duty to report unsatisfactory application of regulations

7. An officer conducting financial business shall bring to the notice of the appropriate authority any case where application of the law or financial instructions leads to results that may be contrary to public interest.

Financial discipline

8. (1) Instructions or directives contained in these Regulations or in Departmental Accounting Instructions for which no variation is permissible, in any circumstances whatsoever, shall be deemed to include a provision that any contravention will amount to a breach of financial discipline.

PART II — PUBLIC FUNDS**Public Funds**

9. In accordance with section 5(1) of the Financial Administration Act 2003, Act 654, the Public Funds of Ghana consist of the consolidated Fund, Contingency Fund and such other funds as may be established by or under an Act of Parliament.

Classification of receipts

10. Receipts into the Consolidated Fund shall be broadly classified as follows:

(a) Public Moneys which include

- (i) Revenue -Tax and Non- Tax Revenue and Grants;
- (ii) Other Receipts -The product of borrowing, repayment of government loans and advances, sale of government securities, sale of government equity investments, sale of other government assets, refunds to the government; and

(b) Trust Moneys which are Deposits, Special and Trust Funds.

Custodial responsibility of the Controller and Accountant-General

11. (1) The Controller and Accountant-General, as the Chief Accounting Officer of Government, is responsible for the custody of Public and Trust Moneys payable into the Consolidated Fund and other Funds.

(2) Any public officer performing the duties of the Controller and Accountant-General under sub-regulation (1) shall be deemed to be acting under the delegated authority of the Controller and Accountant-General.

Responsibilities of person entrusted with custodial duty

12. A person entrusted with custodial duties for Public and Trust Moneys shall protect Public and Trust Moneys against unlawful diversion from their proper purposes and against accidental loss, and locate such moneys so as to facilitate the efficient and economical discharge of public financial business.

Custodial role of head of department

- 13.** A head of department shall undertake custodial duties from the time when
- (a) moneys are paid to a collector to the time when the moneys are lodged into the Consolidated Fund;
 - (b) appropriations are lodged into the bank accounts of departments until the time when the funds have been fully utilised for the purposes for which they were appropriated; and
 - (c) an imprest or advance has been issued to a departmental officer until the time it has been duly retired in accordance with the relevant part of these Regulations.

Opening of bank accounts of Public Funds

14. (1) The Controller and Accountant-General shall establish bank accounts of the Public Funds at the Bank of Ghana and its agents in and outside Ghana for the purpose of conducting financial business of Government and the bank accounts shall be designated in currencies as may be determined by the Controller and Accountant-General in consultation with the Minister.

(2) All bank accounts opened by the Controller and Accountant-General and designated as Consolidated Fund Account at the Bank of Ghana or its agents shall form part of the Consolidated Fund.

(3) Balances of allocation from the Consolidated Fund in the Operational Bank Account of the departments shall form part of the Consolidated Fund.

Payments into Public Funds account

15. (1) Any public officer or revenue collector who collects or receives public and trust moneys shall issue official receipts for them and pay them into the relevant Public Fund Bank Account within twenty four hours of receipt except in exceptional circumstances to be identified by the Minister.

(2) In an exceptional case under sub-regulation (1), the Controller and Accountant General shall issue a directive to that effect under the authority of the Minister.

(3) Moneys collected or received under sub-regulations (1) and (2) shall be deemed to have been paid into the Consolidated Fund as soon as Controller and Accountant-General receipt has been issued by Controller and Accountant-General Department office.

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(4) A receipt in a format approved by the Controller and Accountant-General Department in the Departmental Accounting Instructions shall be issued for all revenues deposited on receipt of the deposit pay-in slip or bank advice.

(5) Until pay-in-slips in respect of lodgements are presented for the issue of a Controller and Accountant-General receipt, the lodgements shall be credited to a deposit account by the Controller and Accountant-General.

(6) Pay-in-slips in respect of lodgements shall be presented for issue of the Controller and Accountant General receipts within forty-eight hours.

Non- Tax Revenue and Internally Generated Funds

16. For the purpose of these Regulations,

- (a) Non-Tax Revenue includes fines, penalties, forfeitures, fees and charges, rent on government lands and buildings, interest on government investments, dividends and all other revenue generated from the activities of departments;
- (b) Internally Generated Funds are Non-Tax Revenue that are generated through the activities of the departments.

Collection and lodgement of Non-Tax Revenue

17. A head of department shall

- (a) ensure that all Non-Tax Revenue is efficiently collected;
- (b) ensure that all Non-Tax Revenue is immediately lodged in the designated Consolidated Fund Transit bank accounts except in the case of Internally Generated Funds retained under an enactment; and
- (c) monitor and ensure that all Non-Tax Revenue lodged into the transit bank accounts is promptly transferred into the Consolidated Fund bank account.

Lodgement of retained Internally Generated Funds

18. A department that has legislative approval to retain all or a portion of Internally Generated Funds collected, must first lodge the retained internally Generated Funds in gross into the Department's Operational Bank Account designated by the Controller and Accountant-General before disbursements are made.

Accounting and disclosure of Non-Tax Revenue

19. (1) A head of department shall fully disclose all Non-Tax Revenue collected, lodged or retained as part of the monthly report to the Minister required under regulation 2(j), with copies to the Controller and Accountant-General and Auditor-General.

(2) A disclosure under sub-regulation (1) shall cover

- (a) the department's collection points in the regions and districts by type of Non-Tax Revenue;
- (b) the extent to which the department revenue target for the month has been achieved and measures that need to be taken to address any shortfall;
- (c) expenditure incurred out of retained Non-Tax Revenue including Internally Generated Funds classified according to the Budget Classification;
- (d) Non-Tax Revenue including Internally Generated Funds due but not collected;
- (e) any Non-Tax Revenue including Internally Generated Funds leakages and measures to address them; and
- (f) certification confirming reconciliation of lodgements with collections.

Review of rates, fees and charges

20. A head of department responsible for collecting various types of fees and charges shall review annually the administrative efficiency of collection, the accuracy of past estimates and the relevance of rates, fees and charges to current economic conditions and submit proposals through the appropriate Sector Minister to Parliament for approval.

Non-Submission of reports

21. Failure to comply with the Regulations on Collections, Accounting and Disclosures in respect of Non-Tax Revenue including Internally Generated Funds is a breach of financial discipline as defined in regulation 8(1).

Payments to be made gross into Public Funds

22. (1) All public moneys collected shall be paid in gross into the Public Funds Accounts and no disbursement shall be made from the moneys collected except as provided by an enactment.

(2) A person who makes payment from moneys collected in contravention of sub-regulation (1) is in breach of financial discipline as defined in regulation 8(1).

Responsibility for collection of Public Funds

23. Except as otherwise provided in any other enactment, the collection of public and trust moneys shall be the responsibility of the head of department, who shall appoint supervising collectors for each area where collection is required.

Ceremonial receipts

24. (1) Where any moneys are paid to Government as part of a public or official ceremony, the moneys shall be paid within 48 hours into the appropriate Public Fund Account in compliance with these Regulations.

(2) A public officer shall not accept a symbolic cheque if that cheque is not supported with an actual cheque.

(3) A public officer who contravenes sub-regulations (1) or (2) is in breach of financial discipline under regulation 8 (1).

Information on official receipting arrangement

25. A head of department shall by notice or such other means as that head considers necessary, inform the public that a pre-numbered official receipt shall be obtained for all moneys paid to a public official authorised to receive such monies by the department and that the public is entitled to refuse payment if no such receipt is offered.

Hours of collection

26. Official collecting offices shall

- (a) establish official hours of collection which shall be such as to facilitate service to the public and safe custody of public funds;
- (b) prominently display notices on their premises specifying the collecting hours; and
- (c) provide services throughout the official hours.

Notice of liability to pay revenue

27. (1) A notice to a member of the public stating revenue due from that member shall be on a serially pre-numbered form to be specified in Departmental Accounting Instructions and the form shall be controlled as value book in accordance with these Regulations.

(2) The form under sub-regulation (1) shall contain details that enable the person receiving the form to check the amount properly due and shall also inform the person

- (a) of where, and at what times, payment may be made;
- (b) of what means of payment is acceptable; and
- (c) about the precautions to be observed where postal remittances are used.

Issue of original receipt

28. (1) A collector who is satisfied that money tendered is in order, shall issue an original receipt to the payer, and shall deal with the duplicate and triplicate copies as required by Departmental Accounting Instructions.

(2) Temporary receipts or receipts other than in the authorized form shall not be used for collections.

(3) A person who issues a temporary receipt or an unauthorized form for collections is in breach of financial discipline as defined in Regulation 8(1).

Acceptance of legal tender

29. Any instrument, which under any enactment is the legal tender of Ghana may be used in making payment for any amount due to the Government.

Cheques payable to the Government of Ghana

30. (1) Cheques in respect of payments to Government shall be made payable to the "Government of Ghana" and be crossed.

(2) Where a cheque in respect of payment to Government

- (a) is incorrectly issued in the name or the post of a particular officer, the cheque shall immediately upon receipt be endorsed by the officer with the statement- "Pay to the Government of Ghana";
- (b) is uncrossed, the cheque shall immediately upon receipt be crossed by the officer who receives it.

(3) An officer who fails to comply with subregulation (2) is in breach of financial discipline as defined in regulation 8(1).

Monetary instruments requiring approval

31. A cheque received on behalf of the Government of Ghana and drawn on a bank account outside Ghana, or any bill of exchange other than a cheque or any promissory note, shall not be accepted without the prior approval of the Controller and Accountant-General.

Responsibility for paying by monetary instruments other than cash

32. (1) A head of department shall recover the value of any dishonoured monetary instrument from the person who issued the instrument.

(2) Notwithstanding sub-regulation (1), the Government may take such action as it considers necessary to recover the value of any monetary instrument that is dishonoured.

Controller and Accountant-General department inspection

33. (1) The Controller and Accountant-General's Department may carry out inspections that it considers necessary to ensure the integrity of the internal control system operating in a department.

(2) A head of department shall give full access to the Controller and Accountant-General to all documentation, systems, stores, officials, safes and other relevant information that are necessary for an inspection under subregulation (1).

Authority for refund.

34. Refunds may be authorized

- (a) in respect of revenue correctly collected in accordance with law and subsequently reclaimed under conditions prescribed by law by the authority prescribed in the appropriate enactment;
- (b) in respect of revenue which result from erroneous collection where the erroneous collection took place in
 - (i) the current year, the head of department may authorise a payment from the Consolidated Fund in accordance with the Financial Administration Act, 2003 (Act 654 chargeable to the revenue item concerned; and
 - (ii) a previous year, details of the necessary refund shall be supplied to the Controller and Accountant-General who may authorize a refund chargeable to an account so designated in the Departmental Accounting Instructions.

Receipts of Trust Moneys to be lodged in the Consolidated Fund

35. All trust moneys received shall be lodged into the Consolidated Fund or other appropriate Public Funds, and all disbursements from such moneys shall be considered as payments from the Consolidated Fund or other appropriate Public Fund and shall be in accordance with the provisions of the Financial Administration Act, 2003 (Act 654).

Collections outside Ghana

36. These Regulations shall apply to collections made in government departments located outside Ghana, subject to such variations as may be approved in writing by the Minister.

Disbursements of Public Funds

37. (1) Disbursement by the Controller and Accountant-General to a department shall be made directly from the Consolidated Fund into a bank account in the name of the department.

(2) The bank account of a department under sub-regulation (1) shall be used solely in the furtherance of the authorized business of that department.

(3) The responsibility of the Controller and Accountant-General in respect of the bank account under sub-regulation (1) relates only to the legality of the payment.

(4) Payments from the Consolidated Fund shall be classified and lawfully made by the Controller and Accountant-General as follows

<u>Class of Payment</u>	<u>Legal Authority</u>
(a) Public Moneys	
(i) Expenditure	Annual and supplementary estimates approved by sections 14 and 25 of the Financial Administration Act, 2003
(ii) Redemption of Debt	Loans Act, 1970 Act 335); and Article 181-182 of the Constitution.
(iii) Government Advances	Section 22 of the Financial Administration Act 2003. (Act 654) and regulations made under that Act,
(iv) Government Loans	Various authorities including instruments made under the Statutory Corporations Act, 1964 (Act 232) and section 23 of the Financial Administration Act 2003 (Act 654).
(v) Purchase of Securities	Section 21 of the Financial Administration Act 2003 (Act 654).

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| (vi) | Government Equity Investments | Various authorities, including instruments made under the Statutory Corporations Act, 1964 (Act 232) and section 24 of the Financial Administration Act, 2003 (Act 654). |
|
 | | |
| (b) | Trust Moneys | |
| (i) | Deposits | Article 176 (1)(b) of the Constitution and specific enactments pertaining to particular kinds of deposits; |
| (ii) | Special and Trust Funds | Section 8 of the Financial Administration Act, 2003 (Act 654) and any enactment or agreement pertaining to special and trust funds. |
|
 | | |
| (c) | Statutory Expenditure | Article 178(1)(a) of the Constitution and as provided for under various enactments (e.g. District Assemblies Common Fund, Pensions, Ghana Education Trust Fund). |

Activities to be prioritised

38. (1) A head of department shall prioritise the department's activities and ensure that related expenditures are within the budget ceilings or such other ceilings as determined by the Minister.

(2) A head of department shall report any insufficiency of funds which is likely to result in serious curtailment of services to the Principal Accounts Holder for direction.

(3) A report under sub-regulation (2) shall be made in good time and not after funds have been exhausted.

Responsibility in respect of payments

39. (1) A head of department shall ensure that moneys are utilised in a manner that secures both optimum value for money and the intention of Parliament.

(2) The head of the accounts section of a department shall control the disbursements of funds and ensure that

- (a) the officer ordering disbursement is authorised to do so;

- (b) orders are made within the powers of and the funds available to the officer ordering disbursements;
- (c) transactions are properly authenticated to show that amounts are due and payable; and
- (d) any order for disbursements that does not meet these requirements is rejected.

Payments to other public institutions

40. (1) Other public institutions as defined in section 45(1) of Act 654 and government agencies, which receive financial support from government shall have agreements covering the payment of such support and shall provide for the

- (a) appointment of a government nominee in the governing body;
- (b) prior approval by the Government of financial and accounting arrangements of the institution concerned;
- (c) submission of the annual estimates to the Minister for review and submission to Parliament for approval;
- (d) audit of accounts by the Auditor-General or an auditor appointed by and reporting to the Auditor-General; and
- (e) issue of directions by the Government on matters affecting the financial policy to be adopted by the institution concerned.

(2) The requirement for receipt of financial support shall be subject to the condition that the institution assisted shall render audited annual statements of accounts to the Minister with a copy to the Controller and Accountant-General.

(3) The provisions of section 50(1) and (2) of the Financial Administration Act, 2003 (Act 654) shall apply to all other public institutions.

(4) Where financial support is given by Government to public institutions, quarterly returns on expenditure shall be forwarded to the Minister and the Controller and Accountant General in such form as may be determined by the Controller and Accountant-General in consultation with the Minister.

(5) The returns shall be submitted not later than the fifteenth day following the end of the quarter and shall be certified by the public institution to be in accordance with policy directives and agreements under which the financial support was provided.

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(6) Except for virements as allowed by regulation 171 a variation shall not be made in budgeted expenditure approved under the financial support provided to any public institution without the prior approval of the Minister.

(7) Unutilised balances held by public institutions at the end of the year shall be reported in accordance with regulations 41.

Balance of Appropriation

41. (1) A head of department shall submit statement of undischarged commitments, ten working days after the end of the financial year to the Minister, with copies to the Controller and Accountant-General.

(2) A head of department shall furnish the Minister with a schedule of undischarged commitments which may be properly carried forward together with unexpended balances of the previous year's appropriation that are available to finance their discharge.

(3) The Minister, upon receiving the schedule under sub-regulation (1), may issue a warrant referred to in these Regulations as a Revote Warrant to the head of department with copies to the Controller and Accountant-General to provide for the discharge of the commitments.

(4) A head of department shall include moneys specified in the Revote Warrant in the first supplementary estimates of the new financial year to be presented to Parliament for approval.

Foreign payments

42. (1) Payments outside Ghana shall be made only under the specific authority of the Controller and Accountant-General with prior approval of the Minister in accordance with the approved estimates.

(2) Modalities for payments outside Ghana require the prior approval of the Minister and shall be included in the Accounting Manual issued by the Controller and Accountant-General.

(3) Any variations to the modalities in sub-regulation (2) require the prior approval of the Minister.

Payees

43. A payment shall be made only to the person or persons named on the payment voucher or to their representatives duly authorized in writing to receive the payment.

Restriction on public officers

44. A public officer shall not on behalf of a department receive any payment from a member of the public except as provided in the Departmental Accounting Instruction, and failure to comply with this regulation is a breach of financial discipline as defined in regulation 8(1).

Recovery of overpayments

45. If any expenditure is made in excess of the amounts actually due, the overpayment shall be recovered immediately and paid into the account from which it was originally paid and the officer concerned shall report the circumstances immediately to the head of department or the appropriate authority.

Payment procedures in times of emergency,

46. Payments out of the Consolidated Fund in times of emergency shall be made in accordance with the following:

- (a) an application shall first be made to the sector Minister by the department concerned;
- (b) the sector Minister shall as soon as practicable, on receipt of the application, provide comments on it and forward it to the Minister;
- (c) on receipt of the application together with the comments, the Minister may, within a reasonable time having regard to the circumstances, approve of the necessary adjustments to the application;
- (d) the decision of the Minister shall be communicated to
 - (i) the department through the sector Minister and
 - (ii) the Controller and Accountant-General as soon as the decision is made and the Controller and Accountant-General shall act accordingly; and
- (e) the Minister shall within 3 working days of making the decision, cause a copy of the application together with the comments and the Minister's decision, to be delivered to Parliament.

Bank accounts for departments

47. (1) On opening a bank account for a department, the Controller and Accountant-General, shall communicate to the bank the conditions under which the account will be operated, which shall include

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- (a) prohibition of overdraft on the bank account;
- (b) names and specimen signatures of officers authorised to sign cheques on the bank account; and
- (c) a requirement for the Bank to provide the head of department with a bank statement.

(2) The Controller and Accountant-General shall maintain a register of all Government bank accounts including the details of officers authorised to operate these accounts.

(3) Any public officer who opens or operates any Bank Account for a department, which is not authorised by the Controller and Accountant-General is in breach of financial discipline as defined in regulation 8(1).

(4) Any bank that opens an account for any department without the authority of the Controller and Accountant-General is in breach of these Regulations and liable to sanctions by the Bank of Ghana.

Level of cash holdings

48. (1) A head of department shall ensure that cash holdings are kept to the absolute minimum, consistent with the efficient discharge of public financial business by

- (a) promptly lodging collections in bank account(s) established for the purposes of receiving moneys into the Consolidated Fund or other Public Funds; and
- (b) using bank accounts for holding cash balances; and
- (c) making payment by cheques wherever possible.

(2) A head of department shall ensure, as far as it is consistent with the convenience of the public and the control of transactions, that collections or payments are made by cheque, bank transfer or direct payment to bank accounts.

Authorised cash balances

49. (1) Departmental Accounting Instructions shall specify officers, designated by posts, who may hold cash and their authorised cash balances which are the maximum amounts that may be held by them during periods when their offices are closed for business.

(2) For the purpose of these Regulations, an uncrossed cheque shall be deemed to be cash.

Determination of authorised cash balances

50. The authorised cash balance for any office shall be determined according to

- (a) the needs of public business;
- (b) the availability of banking facilities in relation to the working hours of the office;
- (c) the availability of safe accommodation and seniority of key-holders; and
- (d) the general security of the building in which the safe is located.

Excess cash

51. (1) Any officer who finds that the overnight cash balance is likely to exceed the authorised cash balance outside banking hours, must arrange to transfer the excess to a reserve cash safe with a higher authorised cash balance or to a vault or strong room.
(2) Departmental Accounting Instructions shall specify the location of the accommodation and arrangements to be made for reception of cash.

Failure to secure excess cash

52. Failure to lodge excess cash in secure overnight custody is a breach of financial discipline as defined in regulation 8(1).

Private use of balances prohibited

53. (1) Official cash balances shall not be used for any private purpose including the encashment of cheques.

(2) The application of official cash balances for any purpose other than those provided for in these Regulations is a breach of financial discipline as defined in regulation 8(1).

Access of the Auditor-General

54. The Auditor-General or any officer representing the Auditor-General shall have access to any copy of Cash Security Instructions in the presence of the officer responsible for its custody, but notes of its content shall not be taken and the contents shall not otherwise be communicated to any unauthorised person.

Right of access

55. The Controller and Accountant-General and Auditor-General, and their representatives, have the right to ask for and to receive from a bank, statements of any bank account of a department and other information relating to transactions in the account.

PART III — DEPOSITS AND OTHER TRUST MONEYS**Trust Moneys**

56. (1) Trust moneys are moneys received into, or held in the Consolidated Fund and administered by public officers on behalf of a member of the public or any private or public agency in accordance with the terms of any enactment, agreement or trust deed, and include receipts and disbursements.

(2) Except as expressly provided for in any enactment, agreement or trust deeds, the receipt, custody and disbursement of trust moneys shall be subject to these Regulations as though they were public moneys.

Loss of Trust Moneys

57. (1) Except as provided for in these Regulations, any loss of trust moneys shall be replaced from the Consolidated Fund, and the person to whom the moneys belong shall not suffer from the loss.

(2) Investigation shall be conducted into the circumstances leading to the loss of any trust moneys in accordance with regulation 236 (Investigation of every case of loss).

Responsibility for management of Trust Moneys

58. In cases where the enactment, agreement or trust deed governing trust moneys does not specify the administering authority, other than generally as the Government of Ghana, the Minister shall designate a head of department who shall be the administering authority.

Deposit

59. For the purposes of these Regulations a deposit is a sum of money required by an enactment or agreement to be paid into the Consolidated Fund as security for the doing of any act or thing and to be held or disposed of in a manner as may be laid down in an enactment or agreement, or as may be required by these regulations.

Authority for the collection of deposits

60. (1) If the head of any department considers that the public financial business of the department requires the collection of deposits, the head of department shall submit a proposed scheme to the Minister for approval, with a copy to the Controller and Accountant-General.

(2) Rules and information relating to the operation of a deposit scheme shall be incorporated in the Departmental Accounting Instructions.

Reserve liability

61. In conveying the approval of the Government for a deposit scheme, the Minister shall direct the means by which the scheme shall be established or otherwise made known to the public, and shall direct the Controller and Accountant-General as to the proportion of the deposit balance which should be held in the form of cash to meet the government's liability to repay it.

Opening a deposit account

62. When the need arises for a head of department to receive, hold and dispose of deposits, the head shall apply to the Controller and Accountant-General for authority to open a deposit account.

Designation of the deposit account

63. (1) The Controller and Accountant-General shall

- (a) give authority for the operation of a deposit account;
- (b) specify the account number and title; and
- (c) send the authority for the operation of the account to the head of department with a copy to the Auditor-General.

(2) The account number and title shall be quoted on all receipts, payment or journal vouchers relating to the deposit account.

Responsibility of the deposit holder

64. A head of department shall be responsible for the proper collection and disposal of deposits in accordance with these Regulations, and for maintaining accounts of transactions in accordance with regulation 1.

Deposits to be paid into the Consolidated Fund

65. All deposits shall be collected and lodged in gross into the Consolidated Fund subject to the provisions of the Financial Administration Act 2003 (Act 654).

Unauthorised deposits

66. (1) A deposit holder shall not demand or accept any deposit, other than deposits authorised under these Regulations.

(2) The acceptance of an unauthorised deposit is a breach of financial discipline as defined by regulation 8(1).

Time-expired deposits

67. (1) Unless the rules relating to a class of deposits expressly provide otherwise, a head of department shall not authorise repayment on a deposit that has been held for more than two years.

(2) Where a head of department refuses to authorise repayment on a deposit under subregulation (1), the head of department shall inform the depositor of the refusal and claim for the repayment of the deposit shall then be made to the Controller and Accountant-General.

Repayment

68. (1) A repayment shall be effected by payment voucher authorised by the deposit holder and presented to the Controller and Accountant-General.

(2) The voucher shall quote both the original receipt on which the deposit was collected and the Controller and Accountant-General Department's receipt on which it was paid into the Consolidated Fund.

Methods of repayment

69. Deposits may be repaid in two ways,

- (a) by transfer of all or part of the deposit to revenue in settlement for sums due to Government from the depositor or
- (b) by repayment of all or part of the deposit to the depositor or to a third party as may be laid down in rules governing a particular deposit.

Entitlement to repayment

70. A repayment shall not be made to a depositor until the head of department is satisfied that

- (a) the circumstances in which the deposit was required to provide security has ceased to have effect; and
- (b) all sums due to government have been duly collected or charged to the deposit by Journal Entry.

Presentation of original deposit receipt

71. (1) Where repayment in full is made to the depositor, the payee shall be identified by the surrender of the original deposit receipt, which will be endorsed as "Repaid" and attached to the payment voucher.

(2) In the case of part-payments, details of the payment voucher number and amount paid shall be endorsed on the deposit receipt, which shall then be returned to the depositor.

(3) Endorsement of the deposit receipt shall be noted on the payment voucher by the head of department or an officer appointed by the head.

Other identification of payee

72. Where the original deposit receipt has been lost, or the payment is due to be made to a third party, the head of department is responsible for seeing to it that payment is made to the person entitled to receive it and the means used for identification shall be noted on the voucher.

No interest payable

73. Interest shall not be payable on ordinary deposits except as may be negotiated with the Minister in line with section 8(2) of Financial Administration Act 2003, Act 654.

Closure of deposit account

74. When deposits are held for two years, or such other period as may be provided for in the approved scheme, without claim for repayment being made, the head of department shall seek the authority of the Controller and Accountant-General to close the deposit account by transfer to revenue in accordance these Regulations.

Subsequent claims

75. Subject to regulation 76 the closure of a deposit account shall not debar a depositor from claiming refund and such a claim shall be made to Controller and Accountant-General.

Limitation of claim period

76. A claim for refund of deposit shall not be accepted after the lapse of a period of six years from the time of original deposit.

Special Fund

77. (1) A Special Fund is a fund established under section 8 of the Financial Administration Act, 2003, (Act 654) from moneys received by or on behalf of the Government and paid out to the department responsible for the special purpose.

(2) A Special Fund shall be established by an enactment or other legal instrument approved by the Government, which shall specify the purposes of the Fund, the administering authority, amounts receivable and payable, and any special rules necessary for the transaction of business.

Disbursements of Special Funds

78. All disbursements out of a Special Fund shall be made by authorisation of the administering authority of the Special Fund, quoting the rules governing the operation of the Fund and any rule pertaining to the particular transaction.

Accounting for Special Funds

79. A head of department responsible for administering a Special Fund shall keep accounts of all transactions in accordance with procedures laid down in Departmental Accounting Instructions.

Annual accounts of Special Fund

80. (1) A head of department responsible for administering a Special Fund shall prepare an annual report and financial statements of transactions in relation to the Special Fund which shall be separately certified by the Auditor-General.

(2) Unless the rules relating to the Special Fund require separate publication, the annual reports and financial statements of the Fund shall be included in the departmental annual statement of account prepared in accordance with section 41 of the Financial Administration Act, 2003, (Act 654).

Trust Fund

81. (1) A Trust Fund is a Fund derived from a donation or bequest from a private person or group of persons for a public objective and for which the Government of Ghana is nominated to act as trustee.

(2) The terms of the Trust shall be laid down in a Trust Deed.

Acceptance of a Trust

82. The acceptance of a trust by the Government shall be sought through the Minister who shall issue the formal acceptance and remit a copy of the Trust Deed to:

- (a) the administering authority;
- (b) the Controller and Accountant-General; and
- (c) the Auditor-General.

Additional rules

83. Any rules required to give effect to the terms of the Trust shall be laid down in the Departmental Accounting Instructions of the administering authority.

Trust Fund investments

84. (1) The principal sum created by a Trust shall be invested in securities in accordance with the Financial Administration Act, 2003, (Act 654).

(2) The interest derived from the securities, and any profit or loss on sales of securities shall accrue to the Trust Fund.

No Charge for administration

85. A charge shall not be raised by the government for the administration of a Trust Fund and a fee or payment shall not be made to any public officer for work done on behalf of a Trust Fund.

Annual accounts of Trust Fund

86. (1) A head of department responsible for administering a Trust Fund shall prepare an annual report and financial statements of its transactions, which shall be separately certified by the Auditor-General.

(2) Unless the rules relating to the Trust Fund require separate publication, the annual reports and financial statements shall be included in the departmental annual report prepared in accordance with section 41 of the Financial Administration Act 2003, (Act 654).

Report to donors and their successors of Trust Fund

87. A copy of the annual report and financial statements shall be sent to the donors of the Trust, or to their heirs or successors.

Sinking Fund

88. A Sinking Fund is a Special Fund created for the redemption of a loan, acquisition of an asset or any other related purpose by means of an annual contribution so calculated that when accumulated at compound interest over the life of the loan or the asset, the sum available shall be sufficient to redeem the loan or acquire the asset.

Authority for creation of a Sinking Fund

89. (1) The creation of a Sinking Fund may be authorised by Parliament in accordance with section 17 (3) of the Loans Act, 1970 (Act 335) or under any other enactment and this authority shall be conveyed to the Bank of Ghana and the Controller and Accountant-General by letter which shall also specify the annual contribution and the rate of interest which is to be compounded.

(2) A Sinking Fund once established cannot be abolished without the authority of Parliament.

Administering authority for Sinking Funds

90. The Controller and Accountant-General shall be the administering authority for all Sinking Funds thus established, and shall cause the approved contribution to be paid annually into the Fund.

Fund to be invested

91. Annual contributions to a Sinking Fund shall be invested and all interest received in respect of such investments shall be credited to the Fund.

Payment from a Sinking Fund

92. (1) A payment shall not be made from a Sinking Fund unless the Fund is required for redemption of the relevant loan or the acquisition of the asset.

(2) Where a Fund is required under sub-regulation (1) for the redemption of a loan or the acquisition of an asset, the Controller and Accountant-General shall arrange for the sale of investments and transfer of moneys in consultation with the Bank of Ghana.

Closing adjustment

93. Any surplus or deficiency in the Fund after realisation of the investments shall be adjusted by payment to or from the Consolidated Fund or other Public Funds as the case may be.

**PART IV – ADVANCES, LOANS AND EQUITY INVESTMENTS
FROM THE CONSOLIDATED FUND****Financial assets of the Consolidated Fund**

94. Moneys paid from the Consolidated Fund for a public purpose that

- (a) requires the eventual repayment of the money into the consolidated Fund; and
- (b) results in the acquisition of any equity interest in any institutions, shall not be charged to expenditure, but shall be advanced or lent from the Consolidated Fund and shall form a financial asset of the Consolidated Fund.

Need for proper authority

95. (1) Moneys shall not be advanced or lent from the Consolidated Fund without the approval of Parliament.

(2) Advancing or lending moneys from the Consolidated Fund or from moneys due to that Fund, contrary to sub-regulation (1) is a breach of financial discipline as defined in regulation 8(1).

Categories of public financial business

96. The following categories of public financial business shall be governed by the regulations in this part:

- (a) advances which are moneys lent on condition of repayment within one year;

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- (b) loans which are moneys lent on condition of repayment within periods exceeding one year; and
- (c) Equity investments which are moneys paid for stock or shares in any Institution that confers ownership rights upon the Government of Ghana.

Budgetary control of advances, loans and equity investments

97. Moneys released from the Consolidated Fund, as advances or loans or equity investments, shall be subject to limits approved by Parliament in the annual budget and applied as laid down in these Regulations.

Chief authority

98. Subject to the directions of the government, the Minister shall be the chief authority for the issue and management of all advances, loans and equity investments of the Consolidated Fund.

Need for prior agreement

99. (1) An advance or loan shall not be payable until an agreement specifying conditions and terms of recovery have been concluded between the borrower and the Government in accordance with sections 22 and 23 of the Financial Administration Act 2003, (Act 654), and shall be in the form of

- (a) a formal agreement signed by both parties in the presence of witnesses; or
- (b) a formal offer specifying conditions together with formal acceptance by the borrower.

(2) The form to be used under subregulation (1) in any particular case, if not specified by the governing enactment, shall be determined by the Minister.

Responsibility for payment

100. A payment in respect of an advance, loan or equity investment shall not be made until a copy of the appropriate agreement has been lodged with the Controller and Accountant-General.

General and specific authority

101. (1) All advances from the Consolidated Fund shall require two authorities to give effect to a payment, namely

- (a) a general authority providing for a class of advances; and
- (b) a specific authority for granting any particular advance within a class; and authority to approve a class of advances.

(2) Any scheme for establishing a class of advances shall be submitted to the Minister who shall submit it to Parliament for approval.

(3) A scheme shall include the following information:

- (a) an explanation to show the public purposes to be served by the scheme and its estimated costs;
- (b) proposed rules for operation of the scheme, specifying the terms and conditions upon which advances may be made, and the manner and period of recovery;
- (c) any interest charge to be made for the advance;
- (d) designation of the officer or officers authorized to grant and manage advances;
- (e) means of promulgating rules; and
- (f) maximum amount of advances allowed.

Authority to administer advances

102. When the rules for a class of advances are approved by Parliament" the Minister may authorise a head of department to administer advances of that class, upon application by that head, showing likely receipts and payments during any one financial year.

Authorised maximum of advances allowed

103. (1) In authorizing a head of department to administer a class of advances, the Minister shall specify the maximum amount that may be advanced under that class at any time.

(2) Copies of the authority under sub-regulation (1) shall be sent to the Controller and Accountant-General and the Auditor-General.

Responsibility of the administering authority

104. A head of department authorised to administer a class of advances shall ensure that

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- (a) the total advances outstanding at any given time do not exceed the authorised maximum;
- (b) advances are made under proper authority to the person entitled to receive them; and
- (c) advances are duly recovered in accordance with the regulations or agreements relating to them.

Increase of authorised maximum

105. (1) A head of department may apply for increase of the authorised maximum of any class of advances when submitting the departmental budget estimates.

(2) In considering an application under sub-regulation (1), the Minister shall ascertain from the Controller and Accountant-General and the Auditor-General whether the existing advances of the department concerned are being properly administered and recoveries are being promptly and fully effected.

Authority to grant advances

106. (1) The authority for the grant of any specific advance shall be the Minister.

(2) Authority to administer advances does not convey authority to grant advances unless the rules pertaining to a class of advances as approved by the Minister specify otherwise.

Delegation of powers to grant advances

107. The Minister may delegate the power to grant advances to any head of department or Chief Finance Officer not below the rank of Director and the power shall be exercised personally by the specified officer.

Applications by the administering authority

108. Where no delegation of authority to grant advances has been made to the head of department, applications to the Minister for the grant of any class of advance shall specify the total advance balance of that class outstanding at the date of the application.

Delegation of administering authority

109. (1) A head of department may delegate responsibility for the administration of advances to the Chief Finance Officer.

(2) The Chief Finance Officer may sub-delegate responsibility to an officer of the Accounting Class of a rank that may be specified in Departmental Accounting Instructions.

Responsibility for recovery

110. A head of department, or the officer to whom the duties of the head of department have been delegated in accordance with regulation 109 (delegation of administering authority), shall ensure that advances issued are duly recovered in accordance with the appropriate agreement.

Records of advances and recoveries

111. A head of department, who is an administering authority for any class of advances, shall keep accounts at the departmental headquarters that show all advances and recoveries made.

Methods of recovery

112. Advances may be recovered by any of the following methods:

- (a) deduction from payments due from Government to the borrower;
- (b) direct payment to the Government by the borrower or the borrower's proxy;
- (c) recovery from the borrower's estate; or
- (d) any other means which may appear to be feasible.

Deductions from salary

113. (1) Recoveries from official salaries shall commence from the salary of the next complete month after the month in which the advance was made.

(2) A head of department shall ensure that deductions made from salaries are paid directly into the Consolidated Fund unless otherwise stated in the agreement covering the advance.

Duty to report non-deduction

114. (1) The duty of the head of department to deduct advance recoveries from salary payments will not diminish the responsibility of a public officer, who has received an advance, to repay it according to the agreement and to report any failure to make deductions from salary when due.

(2) Failure by the beneficiary to report the absence of deduction is a breach of financial discipline as defined in regulation 8(1).

Conditions for grants of an advance

115. (1) An advance payment to a public officer shall not be made under these Regulations if

- (a) any advance of the same class in the name of the public officer has not been fully repaid;
- (b) any advance of any class in the name of the public officer is not being regularly recovered;
- (c) any advance is outstanding against the officer on account of losses, uncleared cheques or unretired imprest; and
- (d) the normal installment of recovery shall cause total advance deductions to exceed 50 per cent of net monthly salary after tax or other statutory deductions,

(2) The authority to pay an advance issued under these regulations shall contain a certificate that the officer granting the advance is satisfied that none of the conditions under subregulation (1) apply to the person receiving the advance.

Recovery on leaving the service

116. The outstanding balance of any advance to a public officer becomes a debt to government and is fully recoverable, at the date of the public officer leaving the service, and shall be aggregated with other debts due to government as provided for in the Departmental Accounting Instructions.

Transferred officers

117. (1) The balance of an advance due from an officer who is transferred to another department shall be reported to the head of the new department as required by Departmental Accounting Instructions.

(2) The balance of any advance outstanding in the public officer's name shall be treated as an inter-departmental payment.

Advances arising from losses

118. In the determination of liability of an officer responsible for a loss, an advances account shall be opened in the officer's name and subsequent investigations shall be conducted in accordance with Part IX (Losses) of these Regulations.

Responsibility for administration

119. (1) A head of department shall be

- (a) the administering authority for all loss advances,
- (b) responsible for opening and clearing accounts relating to losses incurred by the staff of the department.

(2) The Controller and Accountant-General shall notify all heads of departments of the account numbers to be used for losses.

No Authorized maximum

120. (1) Losses shall be charged to Advance Account as the need may arise and shall not be restricted by an authorised maximum as required by regulation 103 (authorized maximum of advances).

(2) A head of department shall report to the Minister whenever the losses of the department in any financial year exceed the forecast given under Part III of the Financial Administration Act, 2003, (Act 654), and explain the circumstances.

Advances to contractors

121. (1) Advances to Contractors shall belong to a general class of advances as under regulation 101.

(2) This class of advances is provided for the purposes of facilitating the work of Ghanaian contractors by assisting in the finance of works carried out on behalf of Government.

Advance under contract

122. (1) An advance shall not be made to a contractor except in accordance with the terms of the contract signed between the Government and the Contractor.

(2) A contract under sub-regulation (1) shall satisfy the requirements of regulation 99 (Need for prior agreement) and no separate advance agreement shall be required.

Authority for inclusion of advance provisions

123. A provision relating to an advance shall not be included in any contract without the prior approval of the government acting through the Minister.

Advance other than cash

124. An advance in a contract shall not be made in the form of stores, equipment or service unless the contract agreement provide for the determination of prices of these stores, equipment or services to be charged to the contract.

Recoveries to be deducted and final payments

125. (1) Recoveries in respect of contract advances shall be made from the contract payments by the head of department.

(2) A final payment on a contract shall not be made until the head of department has confirmed that no balance of an advance is outstanding and shall certify this on the voucher for final payment.

Statutory deductions

126. In all cases of contract payments, unless otherwise stated in the contract agreement, taxes shall be deducted in accordance with the relevant enactments on taxes.

Budgetary authority

127. (1) The authority of the Minister shall be required for any service undertaken by a department on behalf of another institution.

(2) An authority under subregulation (1) shall specify the terms and conditions upon which the service may be performed, including the collection of any charge for the service and the authority shall be quoted on all authorities to pay an advance and all payment vouchers.

Claims for recovery

128. Where there is a need for reimbursement for any service rendered under regulation 127, the appropriate head of department shall promptly issue claims for reimbursement in accordance with the terms of the governing agreement, supported by such detail of the original payment as may be required by the institution concerned and specified by the agreement.

Annual reports

129. A head of department shall include a statement of services performed on behalf of other agencies in the department's annual statement of accounts submitted in accordance with section 41 of the Financial Administration Act, 2003, (Act 654).

General or specific loans

130. Loans from the Consolidated Fund shall be either

- (a) general classes of loans, issued in accordance with an approved loan scheme, or
- (b) Specific loans to be approved by Parliament as a matter of policy in particular cases.

General classes of loans

131. A general class of loans shall be approved, administered and accounted for according to the procedures for loans as laid down by these Regulations and the accounting manual.

Specific loans

132. (1) A specific loan shall be sought through the Minister and shall require the approval of Parliament.

(2) An approval under sub-regulation (1) shall be sought in two stages namely

- (a) authority to negotiate a loan; and
- (b) approval of the loan agreement

Authority to negotiate a loan

133. (1) Proposals for the granting of a specific loan shall be submitted together with recommendations relating to the terms and conditions to be negotiated.

(2) Authority to negotiate may be given together with any directions of the Government regarding terms and conditions to be included in the agreement.

Approval of a loan agreement

134. (1) Loan agreements shall be drawn up in consultation with the Attorney General.

(2) The agreement shall contain a clause that its terms are subject to ratification by Parliament after signature by both parties.

(3) Upon approval of a loan agreement by Parliament the Minister shall endorse the agreement accordingly and the loan shall then be payable.

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(4) A copy of the approved agreement shall be forwarded to the Controller and Accountant-General, with a copy to the Auditor-General.

(5) The authority responsible for administering a specific loan shall

- (a) make payment of the loan
- (b) secure the due and timely collection of interest and observance of any other *condition and*
- (c) secure the due and timely recovery of the loan, in accordance with the ratified agreement.

Payment of loan

135. The Agreement for the loan shall contain the modalities for its payment.

Failure to pay interest or repay principal

136. The administering authority shall report any failure on the part of the borrower to pay interest or to repay principal by due date, to the Minister.

Penalty

137. Unless the terms of the agreement prescribe some other penalty, any interest unpaid shall be added to the principal sum loaned, and interest at the prescribed rate shall be charged on the total sum.

Submission of borrower's accounts

138. A borrowing institution shall submit its annual audited accounts to the Minister, the Controller and Accountant-General and the Auditor-General.

Statement of Public Accounts.

139.(1) The Controller and Accountant-General shall, in the Public Accounts rendered in accordance with section 41 of the Financial Administration Act, 2003 (Act 654), include detailed statements of loans from the Consolidated Fund as follows:

- (a) in the case of general classes of loans, an aggregated statement of loans of each class; and
- (b) in the case of specific loans, a detailed statement of each loan, quoting the original agreement and the balance of principal outstanding at the close of each financial year.

(2) In the report, the Controller and Accountant-General shall draw attention to any failure to recover interest or principal.

Investment proposals

140. (1) Proposals for the establishment or purchase of stock or shares in any institution shall be submitted for approval to the Minister quoting the appropriate enactment.

(2) The proposals shall give such information as the Minister may require and shall include copies of any prospectus, accounts or investigation of the financial affairs of the institution concerned and must indicate the proportion of the equity to be acquired.

Approval of investment

141. If a proposal for investment is approved, the Minister shall inform the Controller and Accountant-General of the proposed purchase, designate the administering authority and forward a copy of any agreement made in connection with the acquisition to the Controller and Accountant General and to the Auditor-General.

Responsibility of the administering authority

142. The authority administering an equity investment shall

- (a) subject to any direction of the Government, act on its behalf in the exercise of ownership rights;
- (b) protect the public interest in the operation of the institution concerned;
- (c) receive the accounts of the institution concerned and draw the attention of the Government to any matters arising;
- (d) lodge and keep stock and share certificates in safe custody; and
- (e) ensure the due collection of dividends and their lodgement into the Consolidated Fund.

Acquisition of shares

143. The administering authority of an equity investment shall be responsible for arranging for the payment of stocks or shares through the Controller and Accountant-General.

Certificate of shareholding

144. (1) As soon as the stock or share certificates have been received, the administering authority shall forward

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- (a) the original Certificate of Holding to the Minister; and
- (b) copies to the Controller and Accountant-General and the Auditor-General.

(2) The share held shall be checked on the last working day of each subsequent financial year by the administering authority and a new Certificate of Holding where applicable shall be forwarded to the Minister and Controller and Accountant-General and the Auditor-General.

Report to the Minister on equity investments

145. The administering authority shall report to the Minister

- (a) a forecast of dividend to be included in Consolidated Fund Revenue each year;
- (b) any failure of the institution to present annual audited accounts;
- (c) information on distribution of profits;
- (d) any delay in declaration and payment of dividends;
- (e) any shortfall in profits and the reasons for it;
- (f) any unsatisfactory features of the institution's operations likely to endanger Government's investment; and
- (g) any directions or representations made to the institutions in the capacity of owner.

Annual accounts

146. (1) The administering authority shall ensure that copies of the annual audited accounts are forwarded to the Controller and Accountant-General and to the Auditor-General.

(2) The administering authority shall confirm to the Minister that Government's interest is correctly reflected in the accounts of the institutions concerned and in the public accounts, and shall report any unsatisfactory features reflected in the accounts.

Annual reports

147. The administering authority shall include a report on the operation of equity interest in the annual report submitted in accordance with section 41 of the Financial Administration Act, 2003, (Act 654).

Statement of equity interests in annual accounts

148. (1) The Controller and Accountant-General shall include a statement of all Government Equity interests in the Annual Statement of Accounts submitted in accordance with section 41 of the Financial Administration Act 2003, (Act 654).

(2) The statement shall show in respect of each institution

- (a) the full title of the institution;
- (b) the administering authority;
- (c) the form and value of Government's investment;
- (d) the proportion of the equity held; and
- (e) the date of the latest annual audited accounts received from that institution.

PART V — REVENUE AND EXPENDITURE**Authority of the Minister**

149. Subject to the provisions of any enactment or to the directions of the Government, the Minister responsible for Finance shall be the chief authority responsible for the planning, determination, and allocation of resource, preparation, publication, implementation, monitoring, evaluation and control of the national Budget.

Budget committees

150. Every head of department shall establish a budget committee which shall be made up of

- (a) the head of department, who shall be the chairperson;
- (b) heads of Budget Management Centres or Cost Centres (A Budget Management Centre is a unit responsible for budget formulation, implementation, monitoring and evaluation); and
- (c) the head of procurement.

Responsibilities of budget committees

151. A budget committee shall

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- (a) review and formulate the strategic plans based on the policies of government;
- (b) review department's revenue collecting activities;
- (c) allocate resources based on objectives, outputs and activities;
- (d) co-ordinate, and consolidate the budget;
- (e) monitor and evaluate budget performance; and
- (f) report in accordance with these regulations.

Budget circular

152. (1) The Minister shall not later than eight months before the end of each financial year submit a Budget Framework Paper to the Office of the President outlining the draft preliminary constraints for the next budget period.

(2) The Minister shall not later than six months before the end of each financial year issue a budget circular detailing out the timetable for the preparation and submission of the government's macro economic policy statement and budget for such period as shall be determined by the President in accordance with article 179 of the Constitution and which shall be followed by all departments.

(3) The Budget circular shall specify the sectoral and ministerial constraints within which heads of departments will prepare their budget submissions.

Budget instructions

153. The Minister shall issue instructions concerning

- (a) the form of budgetary documents and statements;
- (b) classification of budgetary transactions;
- (c) information to be submitted in support of budgetary proposals by heads of departments;
- (d) costing of activities; and
- (e) procedures to be followed by budget committees in preparing, submitting and implementing the budget.

Supplementary instructions by Ministries

154. Every Principal Spending Officer shall within the provision of the budget circular, and in conformity with any direction of the Government for that Ministry, issue a circular to all heads of departments under that officer's control to direct attention to that Ministry's policy and to any special procedural arrangements required.

Departmental budget instructions

155. Every head of department under the control of a Principal Spending Officer, in consultation with budget committees, shall determine the procedures necessary for preparation of departmental estimates in conformity with budget guidelines and shall notify them in the Departmental Accounting Instructions prepared in accordance with regulation 4.

Submission of budget proposals

156. (1) Budget proposals from a head of department shall be routed through the sector ministry to the Minister.

(2) Budget proposals from other agencies under the Office of the President shall be routed through the Office of the President to the Minister,

(3) Budget proposals from statutory agencies that are required to submit their budget to the President shall be submitted as such.

(4) This does not apply to special agencies as defined under article 179 (2) of the Constitution of the Republic of Ghana unless a specific alternative procedure has been approved by the Minister.

Examination of budget proposals

157. (1) The Minister may require any budget proposals to be examined and reported on by any other agency of Government and may issue directions for the routing of submissions accordingly.

(2) Any officer of an examination agency under subregulation (1) shall for the purposes of the examination be deemed to have been appointed by the Minister in the exercise of the authority specified in these Regulations.

Provision of information

158. (1) The Minister may call for any information that is required for the proper discharge of the Minister's responsibilities from a department and the information shall be promptly and correctly given.

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(2) A person who fails under subregulation (1) to provide information, or submits information which that person knows to be misleading or incorrect, is in breach of discipline as defined in regulation 8(2).

Consolidated Fund revenue estimates

159. (1) Consolidated Fund Revenue includes Tax Revenues and Non-Tax Revenues as defined in these Regulations.

(2) In estimating Consolidated Fund Revenue for a budget period, a head of department shall

- (a) identify all activities that already generate revenue;
- (b) identify all activities that have the potential to generate revenue;
- (c) estimate the frequency of these activities and calculate the revenue arising from these activities; and
- (d) produce a monthly forecast identifying when revenue flows are projected to take place.

(3) The head of department in estimating Consolidated Fund revenue in subregulation (2) shall examine the administrative efficiency of collection, the accuracy of past estimates and the relevance of rates and charges to current economic conditions or financial policies.

(4) Estimates for the budget year shall be based on current rates or charges and proposals for change of rates or charges shall indicate the revenue effects of such changes.

(5) All agencies that have legislative approval to retain and utilize portions of their Internally Generated Fund shall be required to project these resources as part of their annual Non-Tax Revenue estimates.

Consolidated Fund expenditure estimates

160. (1) In estimating Consolidated Fund Expenditure for a budget period, a head of department shall;

- (a) take into consideration the Government's macro-economic framework, Government resources and priorities, and any ceilings approved by Cabinet;

- (b) prepare a strategic plan which shall include a definition of the department's mission, goals, objectives, outputs and activities;
- (c) cost and prioritise the activities of the department taking into consideration the resource ceiling;
- (d) prepare the budget statement in accordance with Part V of these Regulations; and
- (e) prepare cash forecast identifying when expenditure outflow is projected to take place.

(2) A head of department, in estimating expenditure, shall consider expenditure, which contributes to the production of the required output and sired policy outcome. .

(3) An agency that has legislative approval to retain and utilize portions its Internally Generated Fund shall programme the use of that Fund as part of its expenditure budget.

Budget hearing

161. (1) On receipt of estimates from departments, the Minister shall cause to be conducted Budget hearings to review strategic plans and estimates of the departments concerned in order to ensure that these plans and estimates e in accordance with the Government's macro-economic policy framework.

(2) Where necessary, the Minister may require a department to make adjustments to its strategic plans and estimates in order to fulfil the requirements of the Government's macro-economic policy and budget framework.

Revenue collections

162. (1) Revenue collections shall be started from the first working day of the financial year.

(2) New rates or charges become effective from the date specified in the amending enactment or any other instrument authorising the change.

Release of Funds to meet expenditure warrant

163. (1) After Parliament has approved the Budget Estimates, authority to

- (a) commit funds is conveyed to departments by the issue of warrants signed by the Minister on behalf of Government and copied to the Controller and Accountant General;

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- (b) disburse funds to meet expenditure is conveyed by the issue of cash release instructions signed by the Minister on behalf of the Government to the Controller and Accountant-General.

(2) Upon the issue of a Warrant, the authority conveyed by a Provisional Warrant shall lapse, and all expenditure made under the Provisional Warrant shall be deemed to have been made under the authority of the Warrant.

Provisional warrant

164. (1) Where the estimates are not approved before the first working day of the financial year, the President, by Provisional Warrant and with approval of Parliament, shall authorise the withdrawal from the Consolidated Fund of moneys of an amount not exceeding one-quarter of the amount included in the draft estimates.

(2) Moneys withdrawn under sub-regulation (1) shall be for the purpose of meeting expenditure on Government programmes and activities in respect of the period expiring

- (a) three months from the beginning of the financial year; or
- (b) immediately before the approval of the Consolidated Fund Expenditure Estimates, whichever is earlier.

Release of funds

165. (1) Release of Funds to the departments shall be in accordance with warrants issued by the Minister or the Minister's authorised representative with copies to the Controller and Accountant-General.

(2) The Minister shall issue cash release instructions to the Controller and Accountant-General for the transfer of cash to the Operational Bank Accounts of departments.

(3) Without prejudice to the above provision, where a revote has been approved, disbursements may be done in arrears.

Audit copies

166. Copies of all warrants and cash release instructions issued to departments shall be sent to the Auditor General or Regional and District representatives or to both as appropriate.

Authority for other receipt and payment transactions

167. A specific annual authority is not required for transacting other classes of public financial business that are governed by appropriate enactments, regulations or agreements.

Budgetary control

168. A head of department shall exercise budgetary control over the activities of the department in accordance with these Regulations and the procedures for budgetary control shall be stated in the Departmental Accounting Instructions for each department.

Warning of budget variation

169. (1) A head of department shall inform the Sector Minister or appropriate authority immediately of any circumstances that are likely to affect materially the budgetary results either through revenue and expenditure or other receipts and payments of the department.

(2) The Sector Minister or the appropriate authority shall take the necessary steps to bring to the notice of the Minister any warnings of significant or material budget variations.

Revenue and expenditure according to the estimates

170. (1) Revenue and expenditure estimates as approved by Parliament shall be arranged according to the Government of Ghana Budget Classification or Chart of Accounts as well as any other classification approved by the Minister.

(2) Expenditure of a department shall not exceed the expenditure estimates in the budget approved by Parliament.

Virement

171. (1) Where circumstances arise in which the operating requirements of a department make it necessary to rearrange the budget provision for sub-heads, items or sub-items or sub-sub-items within the ambit of a single head, savings under one classification may be utilised to provide for extra expenditure under another without affecting the total funds to be disbursed from the head.

(2) Re-arrangement or reallocation of budget provision under subregulation (1) is known as virement and may be approved as follows:

- (a) Sector Ministers may authorise virements within administrative expenditure or within service expenditure;
- (b) under no circumstance shall expenditure under personal emoluments be vired for other purposes without the approval of the Minister; and
- (c) virement between items of expenditure can only be done with the approval of the Minister.

(3) The Minister may delegate the power to authorise virements to a head of department, stating clearly the terms and extent of such delegation.

Revised budget estimate

172. (1) During the course of the financial year, the Minister, under the authority of the President, shall review the budget.

(2) Where in the course of the review it's found that the amount of moneys appropriated by the Appropriation Act for any purpose is insufficient or that a need has arisen for expenditure for a purpose for which no sum of money has been appropriated by that Act, supplementary budget estimates showing the sum of money required, shall be laid before Parliament for approval.

Content of revised estimates

173. A Revised Estimates shall contain

- (a) a statement of any increase or decrease of revenue and expenditure estimated for the financial year;
- (b) comments of the Sector Minister on the revised estimates;
- (c) comments of the Minister; and
- (d) statement of supplementary estimates required for planned activities.

Supplementary provision for existing activities

174. (1) If a head of department considers it likely that the funds provided for existing activities for the financial year will prove insufficient the head shall prioritise the activities

(2) Where prioritising shall jeopardise the production of some essential outputs, the head of department shall forward supplementary estimates to the Sector Minister, who shall make any necessary comments on the supplementary estimates before forwarding it to the Minister.

Supplementary provision for new activities

175. Subject to subregulation (2), approval for the introduction of new activities shall only be considered when introduced in the annual estimates in accordance with the procedure laid down in section 25 of the Financial Administration Act, 2003, (Act 654) and these Regulations.

(2) If the Government considers the introduction of new activities at an earlier date to be in the public interest, the Minister shall sign a certificate of urgency to be submitted with the application to Parliament.

(3) The accompanying memorandum shall indicate the reasons for issue of the certificate of urgency.

Supplementary provision arising from increase in costs of activities

176. (1) If additional funds are required because of increased activity costs that could not be foreseen when the annual estimates were presented, application for supplementary estimate shall be made to the Minister through the sector Minister or appropriate authority.

(2) The accompanying memorandum shall explain the circumstances in which the extra costs have arisen.

Notification of revised estimates

177. (1) After parliamentary approval, revised estimates shall be communicated to the Controller and Accountant-General, the Auditor-General and the department concerned.

Evasion of expenditure control

178. (1) A head of department shall not vary the normal course of payment to avoid causing an excess on any item of expenditure or to avoid lapse of funds and in particular shall not

- (a) make payments in advance for goods or services to be delivered in the subsequent financial year;
- (b) place funds on deposit, with a service provider or any other agency to avoid the consequences of lapse of funds.

(2) Failure to comply with subregulation (1) is a breach of discipline as defined in regulation 8(1).

Misapplication of funds

179. (1) Except as provided for in the Financial Administration Act, 2003, (Act 654), and these Regulations, a head of department may not authorise payment to be made out of funds earmarked for specific activities for purposes other than those activities.

(2) A person who makes a payment contrary to subregulation (1) is in breach of financial discipline as defined in regulation 8(1).

Reporting budgetary progress

180. A head of department shall not later than fifteen working days after the end of each quarter, send budgetary control reports set out on monthly basis through the Sector Minister or appropriate authority to the Minister.

PART VI — GOVERNMENT STORES**Meaning of Government stores**

181. (1) Government stores are made up of supplies of consumables non-consumables which are received, stored and available for issue

(2) Government stores must

- (a) be physically visible, movable and not issued out for use
- (b) include scraps, obsolete items and unserviceable it,

Management of: Government stores

182. (1) The acquisition, receipt, custody, control, issue and disposal of Government stores shall be in accordance with the provisions of these regulations, the Financial Administration Act 2003, (Act 654) and the Public Procurement Act, 2003, (Act 663) and any regulation made under Act 663.

(2) Subject to sub-regulation (1) the Minister may give general directions in writing to the Procurement Board on matters relating to Government stores under Act 663.

Financial management implications

183. (1) Any officer responsible for the financial management of a department shall ensure that acquisition of government stores are made and applied to public purposes in the most economical way.

(2) Subject to the provisions of any enactment, a head of department shall be the chief authority in relation to the procurement and use of government stores.

(3) A head of department shall be accountable for the proper care, custody and use of Government stores from the time of acquisition until they have been used or otherwise disposed off in accordance with these Regulations.

(4) A department shall procure government stores from only Value Added Tax (VAT) registered persons or entities and any department that requires an exemption for any specific case shall apply to the Minister with the necessary justification.

PART VII — PREPARATION AND AUDIT OF ACCOUNTS

Public accounts

184. The documents and records pertaining to Public and Trust Moneys received into, held in and paid from the Consolidated Fund shall be termed the public accounts and shall be kept by the Controller and Accountant-General in accordance with Part V of the Financial Administration Act, 2003, (Act 654).

Other Government accounts

185. The documents and records pertaining to the collection of revenue, the control of expenditure, the administration of Trust Funds, management of public stores and such other financial business as may be made the responsibility of a Government department shall be termed other government accounts and shall be kept by a head of department in accordance with Part V of the Financial Administration Act, 2003, (Act 654).

Basis of accounts

186. The Public Accounts and other government accounts shall generally be prepared on Accrual basis except that the specific basis and procedures for preparing the accounts shall be determined by the Controller and Accountant-General.

Classification of Public Accounts

187. The Controller and Accountant-General shall prepare the Public Accounts which shall be classified and arranged in accordance with the Government of Ghana Budget Classification or Chart of Accounts.

Monthly statement of Public Accounts

188. Within a period of fifteen days, or such other period as Parliament may by resolution appoint, after the end of each month, there shall be prepared and transmitted to the Auditor-General and the Minister by the Controller and Accountant-General in respect of the month, the Public accounts which shall be published in the Gazette and shall comprise

- (a) a balance sheet showing the assets and liabilities of the Consolidated Fund as at the end of the month;

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- (b) a statement of revenue and expenditure of the Consolidated Fund for the month;
- (c) a statement of receipts into and payment from the Consolidated Fund for the month and for the financial year up to the end of that month as compared with the budgetary estimates for the year;
- (d) a statement of revenue and expenditure of retained Internally Generated Fund by the departments;
- (e) cash flow statement of the Consolidated Fund for the month; and
- (f) notes that form part of the accounts.

Submission of monthly revenue and expenditure statements

189. (1) A head of department shall submit monthly statement of revenue and expenditure to the Controller and Accountant-General.

(2) The form of a monthly statement shall be provided for in the Departmental Accounting Instructions and shall include a statement of

- (a) expenditure against warrants for the month;
- (b) Non- Tax Revenue collected and paid into the Consolidated Fund; and
- (c) revenue and expenditure of retained Internally Generated Fund.

Annual statement of a department

190. Within a period of three months, or such other period as Parliament may by resolution appoint, after the end of each financial year, the head of each department shall prepare and transmit to the Auditor-General, the Minister and the Controller and Accountant-General in respect of the financial year, accounts of the department which shall comprise

- (a) a balance sheet showing the assets and liabilities of the department as at the end of the year;
- (b) a statement of revenue and expenditure for the year;
- (c) a cash flow statement of the department for the year; and

- (d) notes that form part of the accounts which shall include particulars of the extent to which the performance criteria specified in the estimate in relation to the provision of the department's output were satisfied.

Annual Statements of the Public Accounts

191. Within a period of three months, or such other period as Parliament may by resolution determine, after the end of each financial year, there shall be prepared by the Controller and Accountant-General and transmitted to the Auditor General and the Minister in respect of the financial year, the public accounts which shall comprise

- (a) a statement of the financial assets and liabilities of the Consolidated Fund at the close of the financial year, annotated with such qualifying information as may affect the significance of figures shown in the statement;
- (b) a summary statement of the receipts into and payments from the Consolidated Fund in comparison with the budget summary for the financial year;
- (c) a statement of the revenue and expenditure for the financial year in comparison with the approved and revised estimates for the year;
- (d) a statement of transactions during the year and an analysis of the position at the end of the year for
 - (i) the public debt;
 - (ii) deposits and other trust moneys;
 - (iii) the securities of government;
 - (iv) advances;
 - (v) public loans;
 - (iv) equity investments of the Consolidated Fund;
 - (v) a cash flow statement of the Consolidated Fund for the year; and
 - (vi) such other statements as maybe required by any enactment.

Failure to provide financial statements

192. (1) The Controller and Accountant-General shall include in the report under regulation 191 details of heads of departments who fail to submit financial statements of their departments in accordance with the provisions of Part V of the Financial Administration Act, 2003, (Act 654).

(2) A head of department who fails to submit financial statements of the department is in breach of financial discipline as defined in regulation 8 (1).

Closure of accounts

193. (1) At the close of business of the last working day of each month or financial year, whichever is applicable, the accounts shall be balanced off.

(2) The receipts and payments that belong to a period or a financial year other than the reporting period or financial year, shall be shown in the accounts and the details shall be given in the notes in accordance with regulations 187 and 188.

(3) Except as provided for in any enactment, no moneys shall be transferred from the appropriation to

- (a) a deposit account; or
- (b) to any other agency for the purpose of meeting payments after the close of a financial year.

(4) Where any payment has been properly charged to an advance account before the end of the financial year, or has been incorrectly charged to an appropriation account, the Controller and Accountant-General may adjust the payments to the correct appropriation account after the end of the financial year as if the expenditure authorities had not lapsed.

(5) As soon as possible and in any case not later than 30 days after the end of the financial year, the Controller and Accountant-General shall inform heads of departments of the date of final closure of the accounts and heads of departments shall ensure that their own accounts are in agreement with the public accounts before the date of final closure.

(6) Closing the public accounts for any financial year shall conclude the accounting for that year and no further adjustment shall be made to them.

(7) Closure of the public accounts shall not debar any claim, proceedings or transactions arising from the closure and any transaction or adjustment arising from closed accounts shall be recorded in the public accounts of the year in which such transaction or adjustment is made.

Deletion from the accounts

194. (1) The Controller and Accountant-General shall annually review the account balances of the balance sheet items in the public and other government accounts and make proposals to the Minister for deletion or adjustments subject to Parliamentary approval.

(2) Deletion from the accounts does not constitute a remission of an obligation, debt or claim and does not debar subsequent proceedings for recovery, should the Minister consider it necessary.

(3) The obligations, debt and claims deleted from the accounts shall be reported in financial statements.

Financial year

195. The financial year of Government shall extend from the first day of January until the thirty first day of December in each year. Audit of accounts

196. (1) The public accounts, the accounts of departments and statutory corporations and other public institutions provided for by the Financial Administration Act, 2003 (Act 654) shall be audited in accordance with the provisions of the Audit Service Act, 2000 (Act 584) and Regulations made under that Act.

(2) The responsibility of the Auditor-General for examining and certifying government accounts does not relieve any officer responsible for keeping and rendering such accounts from the duty to comply and to ensure that subordinates comply, with the provisions of any enactment, these Regulations and with any instructions or directions issued under them.

(3) Internal audit functions of a department shall be regulated by the provisions of the Internal Audit Agency Act, 2003 (Act 658), and any other enactments for the time being in force.

(4) Every department shall as part of its accounting and auditing functions establish an Audit Report Implementation Committee in accordance with section 30 of the Audit Service Act 2000 (Act 584).

Special department accounting forms

197. The Controller and Accountant-General shall approve any special department accounting forms that may be required for the department's business.

Security of signatures

198. Any officer signing any document or record pertaining to accounts shall ensure that the document or record is signed in such a way as to preclude subsequent alteration or addition to the information contained in the document or record.

Signing blank

199. (1) An officer shall not sign any incomplete document or record pertaining to accounts.

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(2) The signing of a document contrary to sub-regulation (1) is a breach of financial discipline as defined in regulation 8(1).

Signing blind

200. (1) An officer signing any document or record pertaining to accounts shall ensure that it is proper to sign the document or record, and the signature shall be evidence of the officer accepting responsibility of the propriety of the document or record.

(2) The signing of a document or record without adequate evidence of the propriety of the document or record constitutes negligence, and disciplinary action shall be taken accordingly.

Duty to report irregularity

201. (1) Any officer who discovers a financial or an accounting irregularity on the part of another officer shall report the matter in writing to a senior officer.

(2) An officer who fails to report a financial or an accounting irregularity under sub-regulation (1) commits an offence and is liable to prosecution under section 62 (1) of the Financial Administration Act, 2003 (Act 654).

Supply of account books and forms

202. An officer responsible for keeping financial and accounting records in accordance with regulation 1 shall ensure that the necessary books and forms for the purpose, are provided but the non-availability of the books, and forms shall not relieve the officer from responsibility.

Review of accounting systems

203. (1) A head of department who is satisfied that it is necessary to introduce special accounting systems in the department, shall apply to the Controller and Accountant-General for a systems review to be conducted in order to determine the most suitable system to be used.

(2) Any new accounting system shall include the detailed control arrangements to be applied to ensure the integrity of the financial statements.

(3) Any new accounting system introduced shall be consistent with the provisions of Part V of the Financial Administration Act, 2003, (Act 654). Restricted use of green ink

204. Except for an officer of the Audit Service no officer of any department shall use green ink or pencil in recording any official financial transaction.

Use of indelible ink and prohibition of alterations

205. (1) Accounting records and documents shall be written in indelible ink.

(2) An entry in an accounting record or document shall not be erased or altered by writing over.

(3) A person who contravenes sub-regulations (1) or (2) is in breach of financial discipline.

Amendment of figures

206. An incorrect figure in a document may be amended by ruling a single line through it, in such a way that the original entry may be clearly read, and the correct figure inserted above the original entry and the officer signing or certifying the document shall initial the amended entry.

Alteration of audited figures

207. (1) An amendment or adjustment shall not be made to audited figures without the express permission in writing of the Auditor General or a representative of the Auditor-General.

(2) The making of an amendment or adjustment contrary to sub-regulation (1) is a breach of financial discipline as defined in regulation 8(1).

Fraction of one Cedi

208. For the purpose of keeping public and other government accounts and preparing financial statements in accordance with the provisions of the Financial Administration Act, 2003 (Act 654), all pesewas shall be rounded upwards to the nearest Cedi.

PART VIII — VALUE BOOKS**Definition of Value Books**

209. (1) The term "Value Book" applies to any official form, book, or any electronic device used in public financial business, the improper use of which might occasion loss of public or trust moneys or loss to members of the public.

(2) Value Books include the following:

(a) official receipt documents, whether in the form of books, tickets or disc;

(b) cheque books;

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- (c) local purchase order forms;
- (d) requisitions and bill books where these form part of a standardized system as approved in Departmental Accounting Instructions;
- (e) travel warrants; and
- (f) any other form which the Controller and Accountant General may declare to be a value book.

Security printing

210. (1) Value Books shall be printed under conditions of security that, in the opinion of the Controller and Accountant-General, preclude the printing and supply of unregistered forms.

(2) The Controller and Accountant-General shall periodically review and update the security features of Value Books that are susceptible to illegal duplication.

(3) Value Books and forms shall for the purpose of records and control be identified by pre-printed serial numbers.

Responsibility of the Controller and Accountant-General

211. (1) The Controller and Accountant-General is responsible for approving the form and content of Value Books and ordering supplies of Value Books from the printers.

(2) The Controller and Accountant-General shall issue a guide to Value Books for use by departments. The guide shall list and explain the use of current forms.

(3) The Controller and Accountant-General shall in consultation with the head of a department establish stock levels of Value Books to be printed for the use of the department.

Delegation by the Controller & Accountant-General

212. The Controller and Accountant-General may, delegate the responsibility for ordering supplies of value books from printers and establishing stock levels of Value Books for the use of a department.

Printing and supply of cheques

213. Unless otherwise directed by the Minister, regulations 211 and 212 shall not apply to the printing and supply of cheque books, which are the responsibility of the banks, and requisition of cheque books shall be made in accordance with these Regulations.

Responsibility of heads of departments

214. (1) A head of department shall ensure the effective and efficient control of stocks of value books

(2) Value Books stock control procedures shall be included in the Departmental Accounting Instructions

(3) Failure to maintain adequate stock levels if the failure results in disruption of public financial business is a breach of financial discipline as defined in regulation 8(1).

Custody of Value Books

215. A person to whom Value Books are issued shall be personally responsible for the custody of the Value Books.

Duration of custody

216. (1) A stockholder of Value Books is responsible for the custody of value books until receipt of the books have been duly acknowledged by another stockholder or user.

(2) Any loss in transit shall be immediately reported to the issuing stockholder who shall be responsible for dealing with the loss in accordance with these Regulations.

Defective Books

217. (1) Value books received, whether by post or direct delivery, shall be examined for defects in printing, numbering and paging.

(2) Any Value Books found defective shall be returned to the issuing stockholder, who shall return them to the main stockholder.

(3) A main stockholder who receives returned Value Books under sub-regulation (2) shall be responsible for notifying the printer of defective deliveries. and making claims for reimbursements in respect of faulty printing.

(4) The Auditor General shall be informed of any reports or claims under sub-regulation (3).

Loss of Value Books

218. (1) If any Value Book is lost, the officer immediately responsible for custody shall report the loss to the issuing stockholder who shall be responsible for initiating a loss report in accordance with Part IX of these Regulations.

(2) Failure to report a loss of a Value Book is a breach of financial discipline as defined in regulation 8(1).

Notification to the public

219. (1) Where the circumstances of the loss of a Value Book indicate the possibility of unlawful use of the Value Book the reporting stockholder shall immediately give sufficient warning to the public and to other officials.

(2) The means adopted for giving a warning under sub-regulation (1) may vary according to circumstances but may include gazette publication, newspaper notices and the notification by circular to officials likely to be concerned and shall include any specific notification required by Departmental Accounting Instructions.

(3) Departmental Accounting Instructions shall indicate any specific notification required.

(4) The measures taken to notify the public shall be noted in the loss report.

Value of the loss

220. The value of a loss reported under regulations 218 and comprise

- (a) the intrinsic value of the Books lost;
- (b) the cost of notifying the public of the loss and otherwise dealing with the case and
- (c) the value of any loss of revenue or irregular payment occasioned by the loss of Value Book

Revenue losses

221. Where the nature of revenue collection is such that the amount due to government cannot be calculated without reference to a duplicate receipt, or to the number of tickets issued, the loss of receipt books or tickets without proof of their destruction shall be deemed to have occasioned a loss of revenue.

Cost statement on the loss

222. (1) In any loss reported under regulations 226 and 228, the head of department shall draw up and sign a cost statement showing a full amount of the loss as assessed by the head of department.

(2) This statement shall be examined and certified by the Auditor General and the amount shall then be deemed to be the value of the loss for purposes of recovery or write off.

Loss occasioned to the public

223. A claim against government shall not arise as of right for any loss occasioned to a member of the public by the loss of official value books

Copies of Value Book

224. (1) If any member of the public loses a properly completed form issued, and applies for a duplicate, a certified true copy or a photocopy may be given and a new printed form shall not be used except where this is provided for by law, and the appropriate fee has been collected.

(2) Departmental Accounting Instructions may specify a fee to be collected for the provision of copies.

Retention of used Value Books

225. Used Value Books shall be retained for safe custody- until such time as their disposal under the appropriate regulations has been authorised.

PART IX — LOSSES

Definition

226. A loss shall be considered to have occurred when the government is deprived of the use of; any public or trust moneys, public property, stores or any other financial or physical asset otherwise than in the normal course of public business.

Responsibility of the head of department

227. When a loss as in this regulation is discovered, the head of department shall investigate the circumstances of the loss,

- (a) to ascertain the extent and amount of the loss;
- (b) to determine whether control or operational arrangements need to be improved in order to prevent the occurrence of similar losses in the department or in any other department; and

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- (c) to determine whether any offence or other fault of a public officer has been revealed by the loss.

Disclosure of offences

228. The investigation of a loss does not constitute a disciplinary enquiry and if the investigation reveals that an offence has been committed, it shall be dealt with separately by the

- (a) Ghana Police Service, if a criminal offence is involved;
- (b) disciplinary authority as appointed under the Civil Service Act, 1993 (PNDCL 327) if a breach of discipline is involved; and
- (c) Financial Administration Tribunal in accordance with section 67 of Financial Administration Act, 2003(Act 654).

Declaration of losses

229. A loss may be revealed by

- (a) the discovery of any deficiency within the accounts by any public officer;
- (b) a declaration that a loss has occurred by anyone of the following:
 - (i) the Minister;
 - (ii) the Controller and Accountant-General;
 - (iii) the Auditor-General;
 - (iv) other public officers specified by any other legislation; or
 - (v) any persons who are deputies of the said officers respectively.

Duty of the head of department

230. A head of department shall

- (a) ensure that adequate investigation is made of a loss;
- (b) direct action to be taken and ensure that action is taken in

- (i) rectification of systems;
 - (ii) discipline of staff; and
 - (iii) recovery of a loss; and
- (c) authorise disposal of a case of *loss* after complying with paragraphs (a) and (b) by
- (i) write-off;
 - (ii) allowing transactions to stand charged; or
 - (iii) verifying full recovery, as the case may be.

Categories of losses

231. The categories of loss to which this part relates are

- (a) Cash deficiency which is a deficiency of cash or other negotiable instrument, whether it arises from a simple cash shortage or from the use of fictitious entries or vouchers to conceal the existence of a deficiency.
- (b) revenue losses which may arise from
 - (i) uncollectable revenue when debts due to government cannot be collected by reason that the debtor cannot be traced or is insolvent; and
 - (ii) loss of revenue, arising from failure to assess or collect in circumstances which preclude subsequent assessment or collection, and include any loss of interest caused by delay in making payments into the appropriate public funds or from the making of irregular advances.
- (c) expenditure *losses* which may arise from
 - (i) irrecoverable overpayments, when an excess payment has been made by error and recovery cannot be effected because the recipient cannot be traced or is otherwise incapable of making repayment;
 - (ii) nugatory payments, which arise in circumstances such as, the incurrance of a penalty in which government has been legally obliged to make payment, but for which no corresponding receipt ;of goods or services has been derived;

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- (iii) improper payments arising from transactions that are contrary to law, but which do not involve any offence under the criminal code, and which have been declared to be improper under regulation 229 and include cases of gross waste or extravagance;
 - (iv) excess expenditure, which is a special case of Improper Payment which arises when payments have been made in excess of approved estimates without the prior authority of Parliament; and
 - (v) fraudulent payments which arise from transactions which involve a breach of the criminal code, by the use of falsified documents or certificates to steal money or other property belonging to the state.
- (d) Store and Equipment Losses which may arise from
- (i) deficiencies, including fraudulent issues from stock and issues without proper evidence of use;
 - (ii) damage or deterioration of goods in stock; and
 - (iii) loss by accident in so far as they relate to equipment and stores in use.
- (e) Financial Losses which may arise from
- (i) irrecoverable advances and loans when moneys due to government cannot be recovered by reason of a debtor's default and include default on Government Guarantees;
 - (ii) irregular advances and loans when money cannot be recovered because government cannot establish a claim against any person or institution; as in the case of expenditure wrongly charged to advances, or advances and loans made without agreement for recovery;
 - (iii) reduction of financial asset where the value of any financial asset has to be reduced by reason of failure or capital restructuring of an enterprise;
 - (iv) losses on sale of securities where the losses are aggregated with gains over the financial year, and any net loss is written off at the end of the year.
- (f) Miscellaneous Losses which may arise from

- (i) loss of Value Books dealt with as laid down in Part VIII of these Regulations;
- (ii) the loss of safe keys of any government safe or the compromise of any combination lock;
- (iii) the cost of altering locks and providing new keys or combinations;
- (iv) the value of any missing items from the safe;
- (v) irrecoverable claims dealt with as laid down in these regulation.

Exclusions

232. The following are not losses, and the provisions of this part do not apply to them:

- (a) stores and equipment which have become unserviceable through fair wear and tear and disposed of as laid down in these Regulations;
- (b) arrears of revenue, outstanding claims, outstanding advance or loan recoveries, or over-payments until such time as they are declared to be irrecoverable or uncollectable in accordance with these Regulations;
- (c) *ex-gratia* payments approved by appropriate authority;
- (d) remission of tax, fee or penalty in accordance with the Financial Administration Act, 2003 (Act 654); and
- (e) normal wastage of stores as result of evaporation or loss of weight during storage, or specified limits of normal wastage laid down in Departmental Accounting Instructions.

Discovery of loss

233. (1) Any officer who discovers a loss, or suspects that a loss has occurred shall immediately report the matter to the head of department.

(2) failure to make a report under sub-regulation (1) is a breach of financial discipline as defined in regulation 8(1).

Initial Action by head of department

234. (1) A head of department shall be responsible for investigation and taking action on any loss.

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(2) If a head of department is satisfied that a loss has occurred, the head shall

- (a) place any accounts, vouchers and other relevant records into safe custody and make any alternative arrangements immediately necessary for the conduct of further business;
- (b) if the circumstances of the loss indicate the likelihood that a criminal offence has been committed, report the matter to the police.

(3) Investigation and subsequent actions under sub-regulation (1) shall be completed within 48 hours of the discovery and the loss shall be reported to

- (a) the Minister;
- (b) the Sector Minister;
- (c) the Controller and Accountant-General; and
- (d) the Auditor-General.

Investigation of every case of loss

235. (1) A head of department shall cause an investigation to be conducted into every reported case of loss, and where the head of department is implicated in the loss, the Sector Minister or the governing board or council in the case of agencies that are not under any sector minister, shall be the appropriate authority to cause investigation to be conducted.

(2) In the case where the Sector Minister is involved the investigating authority shall be the Office of the President.

(3) The authority responsible for investigating and dealing with a loss shall submit progress reports to the appointing authority at such times and in such form as may be specified in Departmental Accounting Instructions.

Assistance to the Police

236. If a loss involves a criminal offence, the investigating authority shall liaise with the Police investigators and shall give them such assistance as they require and records taken into custody by the Police may be subject to examination by the investigating authority.

Recommendations

237. On the basis of the findings of the investigation, the investigating authority is required to make recommendations as to the further disposal of the case by

- (a) initiation of disciplinary proceedings;
- (b) the development of remedial administrative or accounting action; or
- (c) taking any other action as is appropriate considering the circumstances of the case.

Conduct of investigation

238. (1) The investigating officer shall conduct the enquiry to avoid giving the impression that the officer is prejudging the results.

(2) The investigations officer shall examine and report on all relevant aspects and not just those that point to a particular conclusion.

Action by the head of department

239. On receipt of the investigating officer's report, the head of department, after securing My information required, shall determine further action to be taken to deal with the case by

- (a) initiating disciplinary action in respect of offences revealed by the report;
- (b) initiating remedial administrative or accounting action to be taken by the head of department or by some other authority; or
- (c) recovery of the value of the loss from a financially liable officer.

Criminal offence

240. (1) If the report of an investigating officer under regulation 238 shows that a criminal offence, other than the offence already reported under these Regulations has been committed, the facts of the case shall be put before the Police.

(2) A disciplinary action or proceedings for recovery of a loss shall not be taken against an officer facing criminal charges under subregulation (1) until the court has dealt with the case or the Police have formally indicated that they do not intend to proceed against the officer concerned.

Disciplinary offence

241. Where an officer has committed an offence which does not involve any criminal offence, disciplinary proceeding shall be instituted by the head of department.

Disciplinary proceedings to be completed

242. Disciplinary proceedings arising from a case of loss shall be completed before the investigating authority approves final disposal of the case.

Defective systems

243. If the report of the investigating authority indicates that systems currently in operation, including those for the training of staff are defective, the head of department shall consult with the Controller and Accountant-General, to consider measures for rectification.

Remedial action to be commenced

244. Once action has been agreed upon and initiated, a case of loss may be submitted for disposal to the authorities concerned as defined in the Accounting Manual, for remedial action to be commenced.

Financial liability of officers

245. (1) Recovery of the value of a loss, whether by recovery proceedings under these regulations or by a surcharge by the Auditor-General, constitutes a settlement of a civil claim against the officer arising from the loss.

(2) Recovery of a loss shall not be a substitute for criminal prosecution or disciplinary proceedings.

Offer to repay

246. If an officer freely accepts financial responsibility for a loss, the officer may offer to pay the amount back into the Consolidated Fund or the relevant Public Fund, in which case the authority responsible for disposal of the loss may

(a) accept the offer to repay, if the disciplinary offence is not serious enough to necessitate further proceedings against the officer;

(b) accept the offer in mitigation of the offence with the repayment being considered as a partial fulfilment of any penalty that may be imposed.

Liability to repay

247. A public officer may become personally responsible for repaying the value of a loss if

- (a) the loss is one falling within the ambit of section 61 of the Financial Administration Act, 2003, (Act 654); or
- (b) the loss has been the subject of disallowance and or surcharge by the Auditor-General under the authority of the Audit Service Act 2000, (Act 584).

Monetary liability

248. If a head of department considers that the report of the investigating officer shows that an officer may have received moneys that the officer has neither paid over, accounted for nor applied for the purpose for which they were received, the head of department may on behalf of the Controller and Accountant-General issue a notice to that officer or the personal representative of the officer under section 61 of the Financial Administration Act, 2003, (Act 654).

Order for recovery

249. Where a person to whom a notice has been issued under regulation 248 fails to respond to the notice within the time specified in the notice, the head of department shall inform the Controller and Accountant-General of this failure in writing and the Controller and Accountant-General shall take action as required under section 61(2) of the Financial Administration Act 2003, (Act 654).

Recovery

250. (1) Where an order for recovery has been made, the amount shall be recovered as a debt due to the government.

(2) The head of department may, if the officer remains in public employment, arrange for payment by instalments as laid down in these Regulations or else the documents shall be the basis of a civil claim against the officer or the officer's estate.

Cash liability for loss

251. (1) The procedure laid down in regulations 249 and 250 is applicable only to moneys or stores received and held by a public officer.

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(2) If losses arise by reason of failure to collect, or by a deficiency occurring after collection, recovery of the amount lost may be ordered if it is established that the loss was occasioned by an officer's misconduct, neglect of duty or negligence.

(3) If a loss occurs under subregulation (2) the head of department shall first initiate disciplinary proceedings against the officer concerned; and if the officer is found to have committed an offence, the head of department shall establish and recover the amount as laid down in regulations 249 and 250.

Surcharge proceedings

252. The imposition of a surcharge by the Auditor-General constitutes a claim against the officer concerned, and the head of department shall immediately recover the full amount surcharged from that officer, in accordance with the provisions of sections 17 and 18 of the Audit Service Act 2000, (Act 584).

Completion of useful action

253. (1) When an action of a case of loss case has been completed, and the head of department is satisfied that no useful purpose will be served by any further action, the head of department may proceed to dispose of the case.

(2) The head of department shall in any case of loss act in accordance with the powers conferred on the head in these Regulations and shall where necessary forward the case with recommendations to the appropriate authority for disposal as laid down in the Accounting Manual.

Quarterly reports of losses disposed of

254. (1) Every subordinate disposal authority shall submit returns at the end of each March, June, September and December of losses disposed of during the preceding quarter.

(2) This return shall be sent to the head of department, with copies to the Controller and Accountant-General, and the Auditor-General.

Directions

255. Where any doubt arises on the correct classification of a loss or the accounting procedure required, the directions of the Controller and Accountant- General shall be sought.

Remittances and transfer

256. Where a loss occurs in any remittance of cash or transfer of stores, responsibility for dealing with the loss shall rest with the remitting or transferring officer, unless the recipient has formally accepted delivery at the office of remittance or store of issue.

Claims

257. Where goods are received damaged or incomplete and such goods are subject to a claim on suppliers, insurers or carriers; they do not constitute a loss until the claims prove irrecoverable.

Investigation of bad debts

258. (1) The fact that losses arise from uncollectable revenue, irrecoverable overpayments, or irrecoverable claims at the time of disposal does not preclude the prior investigation of circumstances of the losses.

(2) Applications for write-off shall be accompanied by an investigation report indicating whether remedial accounting or other action is necessary.

Power of intervention

259. The Controller and Accountant-General and the Auditor-General may intervene in the disposal of any case of loss, and may

- (a) call for further information to be supplied; or
- (b) put forward opinions as to the action to be taken.

Authority of the Auditor-General.

260. The authorisation of disposal of a case of loss does not prejudice the right of the Auditor-General to carry out further investigation.

Publication of significant findings

261. A head of department shall ensure that matters of significance arising from the investigation of losses are brought to the notice of the general public.

PART X — FINANCIAL AND ACCOUNTING RECORDS**Care and custody of records**

262. A head of department shall ensure that financial and accounting records are preserved in good order in a manner that facilitates ready access for reference.

Legislative authorities

263. Preservation of records under Regulation 262 shall be governed by

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- (a) the Limitation Decree, 1972 (N.R.C;D. 54) which makes it necessary to keep financial and accounting records until such time as claims by or against government are statute-barred; and
- (b) the Public Records and Archives Administration Act 1997, (Act 535)

Departmental repositories

264. (1) Every head of department shall establish a repository or repositories to hold all financial and accounting records that are no longer required for regular office references.

(2) Repositories shall provide facilities for reference and use of the records stored in the repository and the Departmental Accounting Instructions shall provide detailed procedures for deposit and use of records within the general ambit of the regulations set out in this part.

Release of records

265. Records transferred to a departmental repository shall not be released or otherwise disposed of except under an authority prescribed by these Regulations, but in exceptional circumstances, a head of department may authorise the temporary release of records from custody.

Retention and review

266. There shall be included in the Departmental Accounting Instructions

- (a) retention periods for financial and accounting records;
- (b) details relating to their review and destruction; and
- (c) procedures to regulate the retention of financial and accounting records.

Limited or restricted publications

267. Copies of all publications relating to finance for limited or restricted circulation shall be sent immediately upon publication to

- (a) the library of the Ministry of Finance and Economic Planning; and
- (b) the departmental repository.

Security grading to be observed

268. Any security grading for restricted documents shall be duly observed during retention of the documents by the institutions as specified in regulation 267 (limited or restricted publications).

Permanent retention

269. Publications relating to finance submitted under regulation 267 shall be permanently retained, and items placed in the departmental repository shall be used only in the repository itself and not be released from custody.

Other copies

270. Copies of publications relating to finance other than those specified in this Part are not records as regulated by this Part and they shall be accounted for as departmental stores as prescribed in Part VI of these Regulations.

Report of publications

271. Departmental publications relating to finance issued during the year for limited circulation shall be listed in the annual report presented under section 41 of the Financial Administration Act, 2003 (Act 654).

Definition and sub-classes of legal documents

272. (1) For the purposes of these Regulations legal documents are documents which might be required to be produced in court to establish a claim or settle a dispute.

(2) The following sub-categories may be identified:

- (a) title Documents conferring or recording ownership of any property including title deeds, bonds, stock or share certificate;
- (b) title Deeds relating to the administration of any fund, account or property;
- (c) agreements relating to contracts, loans, advances, subventions or any other financial matter; and
- (d) other documents of special importance for which custodial arrangements outside the ordinary filing or records system is considered necessary.

Storage of legal documents

273. (1) Legal documents other than those specified under regulation 272 shall be kept at departmental headquarters in a safe, strong room or security records store under custody of an officer to be specified in Departmental Accounting Instructions.

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(2) A record of documents held shall be kept and movements of documents recorded under signature, and the officer in charge shall ensure that access to the documents is confined to authorised persons and that the documents are adequately protected against damage.

Accounting records

274. Records classified as "accounts" include manual and electronic

- (a) accounting records in the form of books, ledgers, ledger sheets, ledger cards, or machine tabulations; and
- (b) source documents for the accounting records in the form of vouchers, schedules, returns, bank or any other statements.

Definition of Working Papers

275. Working Papers are those papers created as by-products of the accounting process but which do not form part of the financial records system and include

- (a) copies of forms not used as vouchers such as office copies of requisitions, cheque order forms and cheque stubs;
- (b) record or registers used in controlling the flow of documents during accounting processes such as messenger's receipt books, registers of returns;
- (c) circulars, notices and instructions received;
- (d) local files; and
- (e) other documents such as personal working papers, drafts, calculations, note books and diaries.

Period for keeping Working Papers

276. (1) Working Papers referred to in regulation 275 shall be kept for at least one year after the date of last entry.

(2) The Auditor-General shall be consulted before destruction of Working Papers is authorised by a head of department.

Definition and classes of archival records

277. Archival records are records in either manual or electronic form, required to control the location and disposal of records and include

- (a) details of records transferred to departmental repositories;
- (b) schedules of records destroyed;
- (c) any register showing use of records after transfer to the departmental repository; and
- (d) schedules of records transferred to the National Archives.

Provisions for archival records

278. Retention, transfer, access, destruction and disposal of Archival Records shall be in accordance with the provisions of the Public Records and Archives Administration Act, 1997, (Act 535).

PART XI — STATUTORY CORPORATIONS AND OTHER PUBLIC INSTITUTIONS

Governance of statutory corporations

279. (1) Statutory corporations and other public institutions other than those set up for commercial purposes shall be governed by the relevant sections of the Financial Administration Act, 2003 (Act 654) and in addition, the Sector Minister and the Minister may give general directions in writing to the Board on matters of policy in as much as these directives do not conflict with Act 654.

(2) Notwithstanding sub-regulation (1) all heads of statutory corporations and public institutions other than those set up for commercial purposes shall seek prior approval of the Minister to maintain bank accounts in their corporate names.

(3) Statutory corporations and other public institutions shall pay to government such moneys administered by them as the Minister on the recommendation of the Sector Minister consider to be in excess of the amount required for the purpose of the corporation, and the moneys may be applied towards the discharge of an obligation of the corporation to the government or may be applied as state revenue.

(4) A copy of the audited accounts of statutory corporations and other public institutions shall be submitted to the Minister together with the budget of the ensuing year.

PART XII — LIABILITIES, OFFENCES AND PENALTIES

Disciplinary action against offenders

280. (1) Where any person is required to perform any function or duty under the Financial Administration Act 2003, (Act 654) and that person fails to perform that duty within the time frame required, the person is liable to disciplinary action as provided in the code of conduct of the Public Service.

(2) A head of department shall ensure the application of the appropriate disciplinary measures under these regulations within three months and in default the head of department shall be considered to have committed a disciplinary offence.

PART XIII — IMPREST

Definition of imprest

281. For the purposes of these Regulations an imprest is a sum of cash advanced to a public officer to meet payments which are otherwise inconvenient to disburse from Public Funds, through the normal payment procedures as laid down in Part II of these Regulations.

Issuance of imprest accounts code

282. (1) A head of department shall apply to the Controller and Accountant General for an account classification to operate an Imprest.

(2) The Controller and Accountant General shall approve and assign an imprest accounts code and inform the head of department accordingly.

Classes of imprest

283. Imprests are of two classes, namely

- (a) Standing Imprests, held throughout the financial year and replenished as necessary by presentation of paid payment vouchers to the head of department; and
- (b) Special Imprests, issued for making a particular payment, or group of payments which must be fully retired by the date specified in the approval to operate the imprest.

Administration of imprest

284. The procedures for applying, granting, disbursing and retiring of imprest shall be in accordance with the Departmental Accounting Instructions.

Payments from imprest

285. (1) Payments may only be made from the imprest on the authority of a payment voucher prepared and signed in accordance with these Regulations.

(2) The imprest holder is responsible for ensuring that

- (a) funds are available under a Warrant; and
- (b) vouchers are properly authenticated.

Sub-imprest

286. (1) An imprest holder may issue part of the imprest to a subordinate officer provided that it is used solely for the purpose for which the main imprest was issued.

(2) The imprest holder shall be responsible for the proper custody and accounting for the sub-imprest, and it shall be replenished only from the main imprest. ,

Unauthorised use of imprests

287. (1) Imprests shall be used only for the specific purpose for which they are issued.

(2) The application of imprest moneys for purposes other than those authorised, is a breach of financial discipline as defined in regulation 8 (1).

Retirement of imprest

288. (1) Imprest shall be retired at the close of a financial year and any imprest not so retired shall be adjusted to a personal advance account in the name of the imprest holder.

(2) Failure to retire an imprest by the due date, unless occasioned by the death or incapacity of the imprest holder is a breach of discipline as defined in regulation 8 (1).

(3) A head of department shall report details of imprest holders who fail to retire their imprest by the due date to the Controller and Accountant- General with a copy to the Auditor-General or the representative of the Auditor General.

Report of imprest balances

289. The Controller and Accountant General shall report balances in the hands of imprest holders in the statement of Public Accounts required under section 41 of the Financial Administration Act 2003, (Act 654).

PART XIV — PERSONNEL EMOLUMENTS**Definition of personnel emoluments**

290. For the purposes of these Regulations the term “personnel emolument” covers all payments due to public servants as remuneration for employment and include

- (a) salaries payable to public servants;
- (b) wages payable to public servants employed in daily rated post; and
- (c) allowances and any additional remuneration due to public servants as part of their conditions of service.

Authorities

291. (1) The specific authorities for the payment of personnel emoluments are as follows:

- (a) the Financial Administration Act, 2003 (Act 654), or administrative instructions issued under that Act; and
- (b) these Regulations, in matters of financial and accounting procedure not already determined by or under the Financial Administration Act, 2003 (Act 654).

Records of personal emolument

292. (1) Every head of department shall keep records of all personnel emolument of staff employed in the department, in a form that ensures that

- (a) payments are made as and when due;
- (b) overpayments are not made;
- (c) all required deductions are made at the correct time;
- (d) authorised establishments are not exceeded;
- (e) the rates authorised for payment are not exceeded; and
- (f) payments are not made to staff who do not belong to the department or unit.

(2) The records for the purpose of this regulation shall be as specified in the Departmental Accounting Instructions.

Accounting authorities

293. For the purposes of these Regulations the term "accounting authority" relates as appropriate to

- (a) the departmental pay and records section responsible for general control of personal emoluments within the department;
- (b) the local head of department responsible for notifying heads of department of circumstances affecting staff pay which arise within their jurisdiction; and
- (c) the Central Pay Processing Division of the Controller and Accountant General's Department responsible for preparation of mechanised payroll on the basis of information supplied by heads of departments.

Instructions on salaries wages and related allowances

294. Procedures to be followed in payments of salaries, wages and related allowances shall be provided in Departmental Accounting Instructions to be issued by the Controller and Accountant-General.

Use of manual vouchers

295. When a public servant's personal emolument is payable on Controller and Accountant General's Department mechanised payroll or the Departments main payroll, payment by manual vouchers is prohibited except as approved by the Controller and Accountant-General and any other system used in payment of public servants shall be approved by Controller and Accountant-General.

Deductions from salaries

296. Deduction shall not be made from personal emoluments, except for statutory deductions, disciplinary awards and voluntary deductions authorised by the head of unit upon authority of administrative instructions issued by the head of department.

Stoppage of salary payments

297. (1) A head of department shall cause the immediate stoppage of payment of salary to a public servant when that public servant has

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- (a) been absent from duty without leave or reasonable cause for a period as stipulated in the administrative regulations of the establishment;
- (b) been absent from duty on leave without pay;
- (c) been convicted of an offence involving theft or fraud, or sentence to a term of imprisonment;
- (d) resigned;
- (e) retired; or
- (f) died.

(2) All other payments due to the Public servant must also be stopped in the circumstances provided for in subregulation (1).

(3) Where the Controller and Accountant-General is of the opinion that there is an anomaly with a salary or any other payment due to the public officer, the Controller and Accountant-General may cause the stoppage of payment of the salary or the other payment to the public officer and shall within ten working days inform the head of department of the affected officer of the anomaly and the stoppage.

Notification of stoppage

298. (1) The occurrence of any of the circumstances specified in regulation 298 shall immediately be brought to the notice of the head of department or intermediate disciplinary authority as the case may be.

(2) The notification under subregulation (1) shall indicate the effective date of the stoppage and confirm that action has been taken to prevent further payment.

(3) Action under sub-regulation (2) includes

- (a) notification to the Controller and Accountant General where salary payments are made direct to the officer's bank account;
- (b) notification to the bank for repayment into the Consolidated Fund of salary or other payments credited to the public servant's bank account;
- (c) issue of the appropriate salary input to the section responsible for stopping payments on the payroll; and
- (d) notification to the internal auditor.

(4) Failure to effect the stoppage within the time required is a breach of financial discipline under regulation 8(1).

Subsequent payments

299. When salary payments have been stopped, no restoration of pay or payment of other amounts due may be made except on the written authority of the head of department or other appropriate disciplinary authority.

Effective date of stoppage

300. Unless the effective date is otherwise specified under any other enactment, the effective date shall be in the case of

- (a) a deceased public officer, the day following the date of death;
- (b) convicted officers, the date of conviction;
- (c) leave without pay, the date approved for the leave;
- (d) officers absent without leave, the first day of such absence; or
- (e) resignation and retirement, the effective date for stoppage shall be the earlier of:
 - i. date of absence; or
 - ii. date specified on relevant document.

Retirement date

301. Where the appointment of a public officer is terminated by reason of

- (a) retirement on reaching age limit;
- (b) voluntary retirement;
- (c) accepted resignation;
- (d) retirement on medical grounds or abolition of office; or
- (e) expiry of limited engagement,

any pension or gratuity payable shall be computed and approved for payment when due.

Leave before retirement date

302. Public officers shall take all leave due to them before the effective date of retirement.

Pension instructions

303. The Controller and Accountant-General shall issue Pension Instructions governing the preparation, computation and payment of retiring awards.

Responsibility for salary payment vouchers

304. (1) A head of department or a head of management unit shall examine and certify the personal emolument payment vouchers to ensure that

- (a) only staff belonging to the unit are on the payment vouchers;
- (b) in the case of staff on posting or transfer out, the name is deleted within three months;
- (c) in the case of retirement, resignation, termination, vacation of post, death, regulation 298 is strictly complied with;
- (d) any over payment of personal emolument is recovered;
- (e) newly employed staff and those posted or transferred to the unit appear on the payment voucher; and
- (f) any salary instructions issued by the Controller and Accountant-General are complied with.

(2) A head of department or management unit who fails to comply with sub-regulation (1) is liable for disciplinary action including

- (a) stoppage of salary until the anomaly is rectified;
- (b) surcharge where the non-compliance has occasioned financial loss to the state; and
- (c) any other sanctions applicable that the Controller and Accountant-General considers appropriate.

Meaning of management unit

305. For the purposes of this Part, a Management Unit is a section, cost centre or a sub-cost centre of a department in respect of which a separate salaries payment voucher is prepared

PART XV – MISCELLANEOUS**Subventions**

306. For the purposes of these Regulations a subvention is an amount payable to any institution other than a government department or public corporation to enable that institution to fulfill a public purpose approved by the Government.

Classes of subvention

307. Subventions shall be further classified and described in the estimates and accounts as

- (a) membership dues to learned societies, professional associations, etc;
- (b) subscriptions to international organisations;
- (c) grants to welfare associations and other private associations;
- (d) donations for charitable or social purposes; and
- (e) may be determined by the Minister.

Authority for payment

308. Payments of subventions shall be made in accordance with either

- (a) the rules of the institution concerned; or
- (b) an agreement made between the receiving institution and the Government.

Government appointee reporting relationships

309. The Minister shall by administrative directives determine and give directions on the form and contents of the reports to be submitted by the Directors of Companies appointed by the Government.

Interpretation and application of regulations.

310. (1) Questions arising from interpretation and application of these Regulations or from the detailed procedures required to implement them, shall be determined by the Controller and Accountant-General in consultation with the Auditor-General.

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(2) In these Regulations unless the context otherwise requires, words and expressions used shall have the same meaning as in the Financial Administration Act, 2003 (Act 654).

Revocation

311. The Financial Administration Regulations, 1979 (L.I. 1234) is hereby revoked.

HON. YAW OSAFO-MAAFO, M.P.
Minister responsible for Finance