

ACT 673
BANKING ACT, 2004

ARRANGEMENT OF SECTIONS

Preliminary Matters

1. Application of the Companies Act.
2. Functions of the Bank of Ghana.

Licensing of Banks

3. Eligibility restricted to Ghanaian corporate bodies.
4. Banking licence mandatory.
5. Application for licence.
- 5A. Types of licences.
- 5B. Limitation of Class II Banking Licence.
- 5C. Pre-requisites for a licence.
6. Provisional approval.
7. Invitation to public to subscribe to shares.
8. Final approval and issue of banking licence.
- 8A. Power to vary conditions of licences.
9. Refusal of licence.
10. Time limit for decision on application for banking licence.
11. Permissible activities of banks.
12. Restrictions on commercial, agricultural or industrial activities and immovable property.
13. Grounds for revoking licence.
14. Revocation procedure.
15. Moratorium due to revocation of licence.
16. Sanctions for unauthorised banking.
17. Use of word “bank”.
18. Inspection of suspected institutions doing banking without licence.
19. Display of banking licence.
20. Places of business to be licensed.
21. Opening of representative office.
22. Changes to regulations of banks.

Capital and Reserves

23. Capital adequacy.

24. Additional capital in respect of special risks.
25. Capital adequacy on consolidated basis.
26. Notifying non-compliance with capital requirements.
27. Penalties for non-compliance with capital requirements.
28. Persistent capital ratio deficiency.
29. Transfer of profits to reserve fund.
30. Restrictions on declaration of dividend.

Liquidity

31. Maintenance of liquid assets.
32. Notification of non-compliance with minimum liquidity requirements.
33. Penalties for non-compliance with liquidity requirements.

Ownership and Control

34. Transfer of shares affecting significant shareholdings.
35. Disapproval of transfer of shares.
36. Prohibition of transfers of, and changes in, the controlling interests.
37. Penalties for non-compliance.
38. Disqualification of directors, officers or employees.
39. Disclosure of interest.
40. Intervention of the Bank of Ghana in appointments.

Restrictions on Lending and Investments

41. Prohibition of advances against security of own shares.
42. Limits on exposures.
43. Restrictions on exposure.
44. Restrictions on lending to staff.
45. Requirements for lending to related parties.
46. Restrictions on establishment of subsidiary company.
47. Limits on investment in respect of subsidiary companies.
48. Limits on investment in respect of other institutions.
49. Reporting of large exposures.
50. Powers to vary the prudential limits.

Powers of Supervision and Control

51. Regulations.
- 51A. Guidelines.
52. Directives.
53. Information and periodic returns.

54. On-site examination.
55. Investigation or scrutiny.
56. Power of on-site examiners.
57. Taking custody of records.
58. Verification of information.
59. On-site examination reports.
60. Follow-up action on on-site examination reports.
- 60A. Appointment of adviser.
- 60B. Remedial measures.
- 60C. Appointment and the rights and responsibilities of conservator.
61. Banks to co-operate with conservator.
62. Mandatory revocation of banking licence.
63. Hearing of banks in matters relating to revocation of licence.
64. Issue of final orders after examining a bank.
65. Moratorium.
66. Appeal to Minister against orders of the Bank of Ghana.
67. Ceasing of operations following revocation of licence.
68. Winding-up of bank and appointment of liquidator.
69. Winding-up.
- 69A. Priority of deposit liabilities.
- 69B. Priority in the event of winding-up.

Accounts and Audit

70. Guidelines on accounting standards and disclosures in balance sheet and profit and loss account.
71. Accounting records.
72. Financial statements.
73. Audit of bank's accounting records.
74. Appointment of auditors.
75. The Bank of Ghana's power to appoint auditors.
76. Auditor's remuneration.
77. Auditor's right to information.
78. Auditor's report.
79. Special audit and additional information.
80. Termination of auditor's appointment.
81. Display of financial statements.

Miscellaneous

82. Prohibition of floating charge.
83. Secrecy of information.
84. Secrecy of customer information.
- 84A. Agreements for exchange of information.

85.	Disclosure by the Bank of Ghana of information relating to banks.
86.	Submission of reports on trend and progress.
87.	Immunity.
88.	Offences and penalties.
89.	Joinder of offences.
89A.	Payments by Class II banks.
89B.	Exemptions.
90.	Interpretation.
91.	Repeal of Banking Law, 1989.
92.	Validity of existing licences.
First Schedule	
Second Schedule	Oath of Confidentiality
Third Schedule	Oath of Confidentiality
Fourth Schedule	
Schedule	Evidence of Imitation of Currency Note

ACT 673
BANKING ACT, 2004(1)

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

Preliminary Matters

1. Application of the Companies Act

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

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

2. Functions of the Bank of Ghana

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

- (a) promoting an effective banking system,
- (b) dealing with an unlawful or improper practice of a bank, and

- (c) considering and proposing reforms of the laws relating to banking business.
 - (d) ensuring the soundness and stability of the financial system in this country.²⁽²⁾
- (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 the Bank of Ghana 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 generally or in respect of a particular matter, to perform a function that otherwise would be performed by the Bank of Ghana.

Licensing of Banks

3. Eligibility restricted to Ghanaian corporate bodies

Subject to this Act, no person other than a body corporate shall carry on the business of banking in or from within Ghana.³⁽³⁾

4. Banking licence mandatory

- (1) A person shall not carry on the business of banking in or from within Ghana except by or under the authority of a license issued in accordance with this Act.
- (2) A person shall not use a banking license for any purpose other than that for which it is issued.
- (3) A person who contravenes subsections (1) and (2) of this section commits an offence and is liable on summary conviction
- (a) in case of a body corporate or other body of persons to a fine not more than three thousand penalty units; and
 - (b) in the case of an individual to a fine not more than three thousand penalty units or to a term of imprisonment not exceeding ten years.⁴⁽⁴⁾

5. Application for licence

- (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 any 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 source and any other sources of funds; and
- (f) in the case of an external company registered in Ghana, an authenticated copy of its certificate of registration and a written confirmation from the banking supervisory authority in the applicant's country of incorporation that the supervisory authority has no objection to the applicant's proposal to carry on banking business in Ghana;5(5)
- (g) the measures and structures it intends to adopt to ensure that its business is conducted in accordance with sound corporate governance principles;6(6)
- (h) the processing fees and licence fees that the Bank of Ghana may by notice specify;
- (i) any other particulars that the Bank of Ghana may require.7(7)

(2) Each application shall state clearly the type of licence that is being applied for.8(8)

(3) 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.9(9)

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

(5) The Bank may require that information supplied to it be verified, certified or otherwise authenticated in the manner that the Bank may consider fit.10(10)

5A. Types of licences11(11)

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

- (a) General Banking Licence;
- (b) Class I Banking Licence; or
- (c) Class II Banking Licence.

5B. Limitation of Class II Banking Licence12(12)

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

- (a) take deposits or placements from any person resident in Ghana other than another bank holding a General Banking Licence with respect to its Class II banking business, or another bank holding a Class II Banking Licence;
- (b) invest in an asset that represents a claim on any person resident in Ghana except a claim resulting from
 - (i) a Class II banking transaction with another bank holding a General Banking Licence or a Class II Banking Licence; or
 - (ii) the purchase of bonds or other securities issued by the Government of Ghana or any other securities that may be approved by the Bank of Ghana; or
- (c) carry on business in Ghana other than the business for which its Class II Banking Licence has been issued.

5C. Pre-requisites for a licence¹³⁽¹³⁾

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

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

6. Provisional approval¹⁴⁽¹⁴⁾

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

- (a) the applicant will carry on banking business with integrity, prudence and the required professional competence;
- (b) the applicant has and will maintain paid up capital as set out in the First Schedule and hold a licence of the specified type as required; and
- (c) where the bank is an external bank, it shall have and maintain in Ghana the required capital in the form of funds transferred from abroad together with other funds that may be determined by the Bank.

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

7. Invitation to public to subscribe to shares

(1) An applicant for a General Banking Licence or a Class I Banking Licence shall not invite capital through the public issue of shares for the purpose of the proposed banking business unless the provisional approval is given in accordance with section 6.15⁽¹⁵⁾

(2) The applicant for a Class II Banking Licence shall not invite capital through a public issue of shares in Ghana.¹⁶⁽¹⁶⁾

(3) An applicant who contravenes a provision of subsection (1) or subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding one thousand five hundred penalty units.¹⁷⁽¹⁷⁾

8. Final approval and issue of banking licence

(1) The Bank of Ghana shall issue to the applicant a final approval and a licence of a specified type 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.

(2) A licence issued under this Act shall

- (a) be subject to the conditions that the Bank may impose;
- (b) in the case of a bank holding a General Banking Licence or a Class I Banking Licence, not authorise that bank to carry on business in any office or branch, other than its principal place of business, unless it has obtained the prior approval of the Bank;
- (c) in the case of a bank holding a Class II Banking Licence, not authorise that bank to have more than one place of business for the purpose of Class II banking.

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

(4) No licence granted by the Bank of Ghana shall be transferable or assignable without the prior approval of the Bank.18(18)

8A. Power to vary conditions of licences19(19)

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

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

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

9. Refusal of licence

(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 within ten days after the decision of the Bank.20(20)

(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 the decision of the Minister.

10. Time limit for decision on application for banking licence

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.

11. Permissible activities of banks

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

- (a) acceptance of deposits and any 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 in writing, 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.

12. Restrictions on commercial, agricultural or industrial activities and immovable property

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

(2) The equity capital invested in a subsidiary company by the bank shall not exceed fifteen percent 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 percent of the net worth of the bank.

(3) The aggregate amount of a loan, an advance, a credit or any 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 percent of the net worth of the bank, in the case where the bank owns one subsidiary company, or
- (b) thirty-five percent 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) Despite anything in this section, a bank may accept immovable property as security for a debt or any 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 an 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) The Bank of Ghana may, subject to the terms and conditions that it considers fit, exempt a bank holding a Class II Banking Licence or a General Banking Licence, with respect to its Class II banking business or investment banking business in currencies other than the currency of Ghana, from compliance with this section in so far as the activities referred to in these subsections are carried on outside Ghana and do not involve the acquisition of an interest in movable or immovable property in Ghana.²¹⁽²¹⁾

13. Grounds for revoking licence

- (1) The Bank of Ghana may revoke a licence granted to a bank under section 8, if it is satisfied
- (a) that 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,
 - (b) that the bank has failed to fulfil or comply with the terms and conditions stipulated in the licence, or
 - (c) that the bank has failed to commence business within one year from the date the licence was issued; or
 - (d) the bank has gone into liquidation or is wound up or otherwise dissolved; or
 - (e) the bank has insufficient assets to cover its liabilities to its depositors or the public; or
 - (f) the bank appears to the Bank of Ghana to be carrying on business in a manner which is contrary or detrimental to the interests of its depositors or the public; or
 - (g) the bank has been convicted by a domestic Court or any other Court as may be prescribed, of a crime related to the use or laundering in any manner of illegal drug proceeds, or is the affiliate or subsidiary of a parent company of a bank which has been so convicted, if the conviction is a final conviction.²²⁽²²⁾

(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.

14. Revocation procedure

- (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 the 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.

(4) Despite subsections (1) to (3), the Bank of Ghana may in cases of emergency, or in the public interest revoke the licence of a bank with immediate effect.

(5) The bank whose licence has been revoked may, within thirty days after the communication of the decision under subsection (4) make representations to the Bank.

(6) The Bank of Ghana shall, within ten days after representations made, review the action taken by it and inform the bank in writing.²³⁽²³⁾

15. Moratorium due to revocation of licence

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, the Bank of Ghana 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.

16. Sanctions for unauthorised banking

A person who carries on banking business without a licence or in breach of the conditions of its licence or contravenes section 17 commits an offence and is liable on summary conviction²⁴⁽²⁴⁾

- (a) in the case of a body corporate or any 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.

17. Use of word “bank”

(1) Except as otherwise provided for in this Act, no person, other than a bank, shall hold itself out as a bank or use the word “bank” or any of its derivatives in any language in the description or title under which that person is carrying on business in Ghana, or make a representation to this effect in any billhead, letter, paper, notice, advertisement or in any other manner whatsoever.²⁵⁽²⁵⁾

(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).

18. Inspection of suspected institutions doing banking without licence

(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, on 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 of Ghana, subject to article 88 of the Constitution.

19. Display of banking licence

(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 one thousand penalty units.

20. Places of business to be licensed

(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 mobilisation centre, or
- (d) its head office,

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

21. Opening of representative office

(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 two thousand penalty units.

22. Changes to regulations of banks

(1) A bank shall, prior to the making of an amendment to its regulations or any 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 two thousand five hundred penalty units.

Capital and Reserves

23. Capital adequacy²⁶⁽²⁶⁾

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

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

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

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

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

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

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

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

24. Additional capital in respect of special risks

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.

25. Capital adequacy on consolidated basis

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.

26. Notifying non-compliance with capital requirements

(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 of Ghana with the particulars of that non-compliance required by the Bank of Ghana.

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

27. Penalties for non-compliance with capital requirements

(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 for 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 five hundred penalty units.²⁷⁽²⁷⁾

28. Persistent capital ratio deficiency

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 the bank or take appropriate action.

29. Transfer of profits to reserve fund

(1) A bank holding a General Banking Licence or a bank holding a Class I Banking Licence 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 the payment of taxes, the following amounts:²⁸⁽²⁸⁾

- (a) where the amount of the bank's reserve fund is less than fifty percent of its paid-up capital, an amount which is not less than fifty percent of the bank's net profit for the year;
- (b) where the amount of the bank's reserve fund is fifty percent or more but less than one hundred percent of its paid up capital, an amount which is not less than twenty-five percent 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 percent or more of its paid-up capital, an amount equal to twelve and a half-percent of the bank's net profit for the year.

(2) A bank which fails to maintain a reserve fund in accordance with subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding one thousand penalty units.

30. Restrictions on declaration of dividend

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

- (a) completely written-off all its capitalised expenditure,
- (b) made the required provisions for non-performing loans and any other erosions in assets values,
- (c) satisfied the minimum capital adequacy ratio requirement, and
- (d) completely written-off 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 on 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 one hundred 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, and
- (b) the director exercised due diligence to prevent the commission of the contravention having regard to 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.

Liquidity

31. Maintenance of liquid assets

(1) The Bank of Ghana may prescribe

- (a) that a bank shall hold liquid assets of a specific amount and composition,
- (b) the amount provided for under paragraph (a) either as a certain percentage of all of 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 Bank of Ghana shall resolve the doubt.

(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 two hundred and fifty penalty units.

32. Notification of non-compliance with minimum liquidity requirements

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.

33. Penalties for non-compliance with liquidity requirements

(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 five hundred penalty units.

(4) A bank which contravenes a provision of this section is liable, in addition, 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 forty penalty units for each day during which the contravention continues.

(5) The Bank of Ghana may require a bank to furnish information by a specified date in a form that it may consider appropriate to ensure compliance with the requirements of this section.²⁹⁽²⁹⁾

(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 two hundred and fifty 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.

Ownership and Control

34. Transfer of shares affecting significant shareholdings

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.

35. Disapproval of transfer of shares

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, or

- (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.

36. Prohibition of transfers of, and changes in, the controlling interests

- (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, or
 - (b) for the sale, disposal or transfer of the whole or a part of the business of a bank, or
 - (c) for the amalgamation or merger of a bank with any other bank or institution, or
 - (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 any 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 a person who is a director or manager of any of the applicants, to provide any additional information or documents.

(3) On 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.

37. Penalties for non-compliance

(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 do any one or combination of the following³⁰⁽³⁰⁾

- (a) annul the transfer, merger, amalgamation or reconstruction, or
- (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 is binding on the parties to the share transfer and the bank concerned.

38. Disqualification of directors, officers or employees

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

- (a) has been adjudged to be of unsound mind or is detained as a criminal lunatic under a law in force in the Republic,³¹⁽³¹⁾
- (b) has been declared insolvent, has entered into terms with a person for the payment of that person’s debt or has suspended payment of that 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 two hundred and fifty penalty units or to a term of imprisonment not exceeding twelve months.

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

- (a) a person appointed as a director for the ARB Apex Bank Limited is a representative of a bank that is an affiliate to the ARB Apex Bank Limited; or
- (b) in the opinion of the Bank of Ghana, special circumstances require that the person be appointed as director of another bank.³³⁽³²⁾

39. Disclosure of interest

(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) the 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 an interest, directly or indirectly, shall be considered and decided on 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.

40. Intervention of the Bank of Ghana in appointments³⁴⁽³³⁾

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

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

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

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

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

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

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

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

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

Restrictions on Lending and Investments

41. Prohibition of advances against security of own shares

(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 one thousand penalty units.

42. Limits on exposures

(1) A bank holding a General Banking Licence or a bank holding a Class I Banking Licence shall not assume 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 percent of the net own funds of the

bank.35(34)

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

(3) Subsection (1) does not apply to transactions between banks and licensed non-banking financial institutions except as 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 one thousand penalty units.

43. Restrictions on exposure

(1) A bank shall not assume 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 un-secured exposure.

(2) Where the financial exposure is on a 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 percent of the bank's net own funds.

(3) The board of the bank is the only authority to approve or sanction any of the 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 one thousand penalty units.

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

44. Restrictions on lending to staff

(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 mille of the over-exposure which exists on that day and is liable in addition to pay to the Bank of Ghana a penalty not exceeding one thousand penalty units.

45. Requirements for lending to related parties

(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

- (a) that the person to whom the credit facility is given has creditworthiness which is not less than that normally required by the bank or any other persons to whom credit facilities are given,
- (b) that the terms of the credit facility are not less favourable to the bank than those normally offered to any other persons, and
- (c) that 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 is recorded in the minutes of that meeting.

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

46. Restriction on establishment of subsidiary company

(1) A bank shall not establish a subsidiary company or a branch without the prior approval in writing of the Bank of Ghana.³⁶⁽³⁵⁾

(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 one thousand penalty units.

47. Limits on investment in respect of subsidiary companies

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

(3) The aggregate amount of financial exposure including the credit facilities which a bank may assume 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 percent 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 one thousand penalty units.

48. Limits on investment in respect of other institutions

(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 percent 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 one thousand penalty units.

49. Reporting of large exposures

(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 one thousand penalty units.

50. Powers to vary the prudential limits

The Bank of Ghana may vary any of the prudential limits that are prescribed under the various provisions of sections 41 to 49, for all the banks or a particular bank, for the period determined by the Bank of Ghana.

Powers of Supervision and Control

51. Regulations

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 the Regulations that are necessary to give full effect to this Act.

51A. Guidelines³⁷⁽³⁶⁾

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

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

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

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

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

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

52. Directives

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

(a) that it is necessary to secure the proper management of a bank generally,

(b) that 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) that it is necessary in the interests of bank policy.
- (2) The 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 any other adjustments made by the auditors to the accounts originally submitted for audit,
 - (iv) the details of the adjustments not made to the accounts because they are not considered to be material,
 - (v) the details of the areas where the manual of accounting for banks issued by the Bank of Ghana has not been complied with, and
 - (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 any other asset accounts,
 - (ii) against off-balance sheet items, and
 - (iii) for credits, accruals and any 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, and 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 one thousand penalty units.

53. Information and periodic returns

(1) The Bank of Ghana shall, for the purpose of supervision, require a bank to submit to it any information or data relating to the assets, liabilities, income and expenditure of that bank, or any of that

bank's affairs, in the prescribed form, at an interval and within the times stipulated by the Bank of Ghana and that bank shall comply with the requirement.

- (2) The Bank of Ghana may impose fines not exceeding five hundred 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.

54. On-site examination

(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 that the Bank of Ghana considers appropriate.

55. Investigation or scrutiny

Without prejudice to its powers to examine banks under section 54, the Bank of Ghana 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.

56. Power of on-site examiners

(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 co-operate 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 on a director, an officer or any other employee of a bank to furnish an 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 a 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 a provision of this section is liable to pay to the Bank of Ghana a fine not exceeding one thousand penalty units.

57. Taking custody of records

- (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 the 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 the documents in that official's custody and account for their disposal.

58. Verification of information

(1) The Head of Banking Supervision may authorise any of the officials of the Department 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 one thousand penalty units.

59. On-site examination reports

(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 on 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 one thousand penalty units.

60. Follow-up action on on-site examination reports

(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 specified by the Bank of Ghana 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 one thousand penalty units.

60A. Appointment of adviser³⁸⁽³⁷⁾

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

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

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

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

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

(6) An adviser appointed under this section

- (a) shall hold office for the period that the Bank of Ghana may specify, and
- (b) shall furnish the Bank of Ghana with a status report on the bank as frequently as the Bank of Ghana may determine.

60B. Remedial measures³⁹⁽³⁸⁾

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

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

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

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

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

60C. Appointment and the rights and responsibilities of conservator⁴⁰⁽³⁹⁾

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

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

officials.

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

(3) The conservator may,

- (a) set aside a decision of the bank's board taken against the conservator's recommendation, or
- (b) move a resolution at a general meeting of the bank's shareholders, or
- (c) hold up a decision taken at the general meeting of the shareholders if the conservator considers it to be prejudicial to the interest of depositors, with the prior approval in writing of the Bank of Ghana.

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

61. Banks to co-operate with conservator

(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 five hundred penalty units or to a term of imprisonment not exceeding two years.

62. Mandatory revocation of banking licence

(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 appoint a liquidator for the winding up of the bank.⁴¹⁽⁴⁰⁾

63. Hearing of banks in matters relating to revocation of licence

(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) Despite 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.

64. Issue of final orders after examining a bank

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 considers fit and issue orders in writing accordingly.

65. Moratorium

- (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, in full or partially, for a limited period not exceeding ninety days from the date of the 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 considers fit.

66. Appeal to Minister against orders of the Bank of Ghana

(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, 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.

67. Ceasing of operations following revocation of licence

(1) Where the Bank of Ghana revokes a banking licence, the bank shall cease operations, if the bank has not ceased operations 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 one thousand penalty units or in default, to a term of imprisonment not exceeding five years.

68. Winding-up of bank and appointment of liquidator

- (1) Where the Bank of Ghana
 - (a) has revoked the banking licence 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, despite 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.

(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.

69. Winding-up⁴²(41)

(1) Despite anything to the contrary in the Companies Act, 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 state 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 subsections (2) to (5) of section 68 shall apply.

69A. Priority of deposit liabilities⁴³(42)

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

69B. Priority in the event of winding-up⁴⁴(43)

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

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

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

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

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

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

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

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

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

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

“**bank**” means a bank as defined in section 90 of this Act and any person licensed as a bank or permitted to carry on banking business in the country in which it is incorporated.
- (6) For the purpose of subsection (5) (b), money is paid on terms or to the giving of security if, and only if
- (a) it is paid by way of advance or part-payment for the sale, hire or other provision of property or services of any kind and is repayable only in the event that the property or services is or are not in fact sold, hired or otherwise provided,
 - (b) it is paid by way of security for payment for the provision of property or services of any kind provided or to be provided by the bank by whom or on whose behalf the money is accepted; or
 - (c) it is paid by way of security for the delivery or return of property, whether in a particular state of repair or otherwise.

Accounts and Audit

70. Guidelines on accounting standards and disclosures in balance sheet and profit and loss account

(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 one thousand penalty units.

71. Accounting records

(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 the country.

(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.

72. Financial statements

(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 or as the Bank of Ghana may otherwise approve.⁴⁵⁽⁴⁴⁾

(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 one thousand penalty units.

73. Audit of bank's accounting records

The balance sheet and profit and loss account referred to in section 72 and the accounting records of the bank for the period shall be audited by qualified auditors duly appointed in accordance with this Act.

74. Appointment of auditors

(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 approved by the Bank of Ghana in the manner and on the terms that may be prescribed.⁴⁶⁽⁴⁵⁾

(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 a 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.

75. The Bank of Ghana's power to appoint auditors

(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 on 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 subsection (1) shall pay to the Bank of Ghana a fine not exceeding one thousand penalty units.

76. Auditor's remuneration

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

(2) Where for a 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.

77. Auditor's right to information

(1) An auditor of a bank shall have

(a) a right of access to the accounting records, minutes book, files and any 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 functions of the auditor.

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

78. Auditor’s report

(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 audit 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 functions,
- (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.

79. Special audit and additional information

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.

80. Termination of auditor’s appointment

(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 two hundred and fifty penalty units or to a term of imprisonment not exceeding twelve months.

81. Display of financial statements

(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 form audit reports, and
 - (ii) publish the financial statements together with the auditors' certificates to be published in a daily newspaper circulating in the country.

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

Miscellaneous

82. Prohibition of floating charge

(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 one thousand penalty units.

83. Secrecy of information⁴⁷⁽⁴⁶⁾

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

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

(2) Except

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

- (i) by an order of a Judge in chambers or any court of law; or
- (ii) under any enactment,

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

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

(4) Nothing in this section shall preclude

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

84. Secrecy of customer information⁴⁸⁽⁴⁷⁾

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

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

before the chief executive officer or deputy chief executive officer of the bank in the form set out in Part II of the Third Schedule, before the person begins to perform any function under the banking laws.

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

(3) The duty of confidentiality imposed under this section shall not apply where

- (a) a customer who had been issued a credit card or charge card by a bank, has had the card suspended or cancelled by the bank by reason of default in payment, and the bank discloses information related to the customer's name and identity, the amount of indebtedness and the date of suspension or cancellation of the credit card or charge card to other banks issuing credit cards or charge cards in Ghana;
- (b) the customer is declared bankrupt in Ghana or, in the case of a company, is being wound up;
- (c) the customer has passed away, testate or intestate, and the information is required by the

appointed personal representative of the deceased or the testamentary executor solely in connection with the succession estate;

- (d) civil proceedings arise involving the bank and the customer or the account of the customer;
 - (e) the information is required by a colleague in the employment of the same bank in Ghana or an auditor or legal representative of the bank who requires and is entitled to know the information in the course of professional duties;
 - (f) the information is required by another bank for the purpose of assessing the credit-worthiness of a customer, if the information is being sought for commercial reasons and is of a general nature;
 - (g) the bank has been served with a garnishee order attaching moneys in the account of the customer;
 - (h) any person referred to in subsection (1) is summoned to appear before a court or a Judge in Ghana and the court or the Judge orders the disclosure of the information;
 - (i) the bank is required to make a report or provides additional information on a suspicious transaction to the Financial Intelligence Centre set up under the Anti-money Laundering Law in force.
- (4) Subject to subsections (6) and (7), where the head office of a bank
- (a) incorporated outside Ghana requires information from its branch in Ghana about any transaction of that branch; or
 - (b) incorporated in Ghana requires information from its branch outside Ghana about any transaction of that branch; the information shall be disclosed.

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

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

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

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

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

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

- (a) the applicant is acting in the discharge of official duty;
- (b) the information is material to civil or criminal proceedings, whether pending or contemplated or is required for the purpose of an enquiry into or related to the trafficking of narcotic and dangerous drugs, arms trafficking, offences related to terrorism or money laundering; or
- (c) the disclosure is otherwise necessary, in the circumstances.

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

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

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

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

84A. Agreements for exchange of information⁴⁹⁽⁴⁸⁾

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

85. Disclosure by the Bank of Ghana of information relating to banks

Despite 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 any 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.

86. Submission of reports on trend and progress

(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.

87. Immunity⁵⁰⁽⁴⁹⁾

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

88. Offences and penalties

(1) The Attorney-General may, by executive instrument, authorise the officers who are 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.

89. Joinder of offences

Despite 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.

89A. Payments by Class II banks⁵¹⁽⁵⁰⁾

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

89B. Exemptions⁵²⁽⁵¹⁾

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

(a) its Class II banking transactions,

(b) its dealing with residents with the approval of the Bank of Ghana, and

(c) any authorised dealing in property in Ghana.

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

90. Interpretation

In this Act, unless the context otherwise requires,

“applicant” means a body corporate;

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

- (a) general banking under a General Banking Licence; or
- (b) Class I banking, under a Class I Banking Licence; or
- (c) Class II banking, under a Class II Banking Licence from within Ghana;⁵³⁽⁵²⁾

“banking business” means

- (a) accepting deposits of money from the public, repayable on demand or otherwise and withdrawable by cheque, draft, orders or by any other means,
- (b) financing, whether in whole or in part or by way of short, medium or long term loans or advance, of trade, industry, commerce or agriculture, and
- (c) any other business activities that the Bank of Ghana may prescribe or recognise as being part of banking business;⁵⁴⁽⁵³⁾

“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;

“Class I banking” means banking business other than Class II banking business;⁵⁵⁽⁵⁴⁾

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

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

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

“Class II banking transactions” means transactions effected by a bank holding a Class II Banking Licence pursuant to its licence or transactions of a similar nature effected by a bank holding a General Banking Licence pursuant to that licence;

“concordat” means agreement;

“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;

“conservator” means a person who performs the function of a conservator as specified in this Act;56(55)

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

- (a) which represents more than fifty percent 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 an unincorporated body of persons, a concern or a combination of that person, firm, body corporate, unincorporated body of persons or concern 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 unincorporated body of persons, concern or combination, and
- (b) the value of the bank’s holdings of shares and debentures and any other debt securities issued by that person, firm, body corporate, 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 and Bank Securities; and
- (f) any other securities approved by the Bank of Ghana;

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

“functions” includes powers and duties;

“general banking business” means Class I and Class II banking business;57(56)

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

“key management personnel” means

- (a) the chief executive officer, deputy chief executive officer, chief operating officer, chief financial officer, secretary, treasurer, chief internal auditor or manager of a significant business unit of the bank; or
- (b) any person with similar responsibilities as a person in paragraph (a);

“large exposure” means financial exposure to a single borrower or group of connected borrowers that in the aggregate exceeds ten percent 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**” includes shareholders funds and stated capital, capital surplus from revaluation of assets and any other reserves;

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

“**ordinarily resident**” means a situation where a person has lived in this country for at least twelve months;58(57)

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

“**public interest**” includes a right or advantage which enures or is intended to enure to the general benefit of the people of this country;59(58)

“**significant share holding**” means a direct or an indirect holding in a bank

(a) which represents ten percent 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.

91. Repeal of Banking Law, 1989

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

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

92. Validity of existing licences

(1) A bank licensed under the Banking Law, 1989 (P.N.D.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.

SCHEDULES60(59)

FIRST SCHEDULE

[Section 6 (1) (b)]

<i>Type of Licence</i>	<i>Type of Bank</i>	<i>Minimum Initial Paid up Capital (after deduction of accumulated losses)</i>
------------------------	---------------------	--

General Banking Business	All types	Seventy billion cedis in relation to its Class I Banking Business in a currency and other amounts, as the Bank of Ghana may determine.
Rural Banks		
Class I Banking Licence		
Class II Banking Licence		An amount in a currency as the Bank of Ghana may determine from time to time.
Rural Banks		500 million cedis in relation to Rural Banks.

SECOND SCHEDULE

PART I

[Section 83 (1) (a)]

Oath of Confidentiality

In the High Court of Ghana

I being appointed do hereby swear/solemnly

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

Signature of declarant

Taken before me,

The Registrar of the High Court on (date)

PART II

[Section 83 (1) (b)]

Declaration of Confidentiality

I being

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

Signature of declarant

Made before me,

Name

The chairperson of the Board on
(date)

THIRD SCHEDULE

PART I

[Section 84 (1) (a)]

Oath of Confidentiality

In the High Court of Ghana

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

Signature of declarant

Taken before me,

The Registrar of the High Court on
(date)

PART II

[Section 84 (1) (b)]

Declaration of Confidentiality

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

Signature of declarant

Made before me,

Name

The Chief Executive Officer on (date)

FOURTH SCHEDULE

[Section 89B]

Value Added Tax Act, 1998 (Act 546);

Internal Revenue Act, 2000 (Act 592);

Financial Administration Act, 2003 (Act 654);

Stamp Duty Act, 2005 (Act 689);

and other Acts specified by the Minister.

Endnotes

1 (Popup - Footnote)

1. The Act was assented to on 29th January, 2004 and published in the Gazette on 29th October, 2004.

2 (Popup - Footnote)

2. Added by section 1 of the Banking (Amendment) Act, 2007 (Act 738).

3 (Popup - Footnote)

3. Substituted by section 2 of the Banking (Amendment) Act, 2007 (Act 738).

4 (Popup - Footnote)

4. Substituted by section 3 of the Banking (Amendment) Act, 2007 (Act 738).

5 (Popup - Footnote)

5. Inserted by section 4 (a) of the Banking (Amendment) Act, 2007 (Act 738).

6 (Popup - Footnote)

6. Paragraphs (g) and (h) inserted by section 4 (b) of the Banking (Amendment) Act, 2007 (Act 738).

7 (Popup - Footnote)

7. Paragraph (i), previously paragraph (f), renumbered by section 4 (c) of the Banking (Amendment) Act, 2007 (Act 738).

8 (Popup - Footnote)

8. Inserted by section 4 (d) of the Banking (Amendment) Act, 2007 (Act 738).

9 (Popup - Footnote)

9. Subsection (3), previously subsection (2), renumbered by section 4 (e) of the Banking (Amendment) Act, 2007 (Act 738).

10 (Popup - Footnote)

10. Subsections (4) and (5) added by section 4 (f) of the Banking (Amendment) Act, 2007 (Act 738).

11 (Popup - Footnote)

11. Inserted by section 5 of the Banking (Amendment) Act, 2007 (Act 738).

12 (Popup - Footnote)

12. Inserted by section 5 of the Banking (Amendment) Act, 2007 (Act 738).

13 (Popup - Footnote)

13. Inserted by section 5 of the Banking (Amendment) Act, 2007 (Act 738).

14 (Popup - Footnote)

14. Substituted by section 6 of the Banking (Amendment) Act, 2007 (Act 738).

15 (Popup - Footnote)

15. Amended by section 7 (a) of the Banking (Amendment) Act, 2007 (Act 738).

16 (Popup - Footnote)

16. Inserted by section 7 (b) of the Banking (Amendment) Act, 2007 (Act 738).

17 (Popup - Footnote)

17. Subsection (3), previously subsection (2), renumbered and amended by section 7 (c) of the Banking (Amendment) Act, 2007 (Act 738).

18 (Popup - Footnote)

18. Subsections (2) to (4) added by section 8 (b) of the Banking (Amendment) Act, 2007 (Act 738).

19 (Popup - Footnote)

19. Inserted by section 9 of the Banking (Amendment) Act, 2007 (Act 738).

20 (Popup - Footnote)

20. Amended by section 10 of the Banking (Amendment) Act, 2007 (Act 738).

21 (Popup - Footnote)

21. Substituted by section 11 of the Banking (Amendment) Act, 2007 (Act 738).

22 (Popup - Footnote)

22. Paragraphs (d) to (g) added by section 12 of the Banking (Amendment) Act, 2007 (Act 738).

23 (Popup - Footnote)

23. Subsections (4) to (6) added by section 13 of the Banking (Amendment) Act, 2007 (Act 738).

24 (Popup - Footnote)

24. Amended by section 14 of the Banking (Amendment) Act, 2007 (Act 738).

25 (Popup - Footnote)

25. Substituted by section 15 of the Banking (Amendment) Act, 2007 (Act 738).

26 (Popup - Footnote)

26. Substituted by section 16 of the Banking (Amendment) Act, 2007 (Act 738).

27 (Popup - Footnote)

27. The words “that the Bank of Ghana may impose” have been omitted as being incompatible with the amendment of the provision.

28 (Popup - Footnote)

28. Amended by section 17 of the Banking (Amendment) Act, 2007 (Act 738).

29 (Popup - Footnote)

29. Substituted by section 18 of the Banking (Amendment) Act, 2007 (Act 738).

30 (Popup - Footnote)

30. Amended by section 19 of the Banking (Amendment) Act, 2007 (Act 738).

31 (Popup - Footnote)

31. Amended by section 20 (a) of the Banking (Amendment) Act, 2007 (Act 738).

32 (Popup - Footnote)

33. Added by section 20 (c) of the Banking (Amendment) Act, 2007 (Act 738).

33 (Popup - Footnote)

34. Substituted by section 21 of the Banking (Amendment) Act, 2007 (Act 738).

34 (Popup - Footnote)

35. Amended by section 22 of the Banking (Amendment) Act, 2007 (Act 738).

35 (Popup - Footnote)

36. Amended by section 23 of the Banking (Amendment) Act, 2007 (Act 738).

36 (Popup - Footnote)

37. Inserted by section 24 of the Banking (Amendment) Act, 2007 (Act 738).

37 (Popup - Footnote)

38. Inserted by section 25 of the Banking (Amendment) Act, 2007 (Act 738).

38 (Popup - Footnote)

39. Inserted by section 25 of the Banking (Amendment) Act, 2007 (Act 738).

39 (Popup - Footnote)

40. Inserted by section 25 of the Banking (Amendment) Act, 2007 (Act 738).

40 (Popup - Footnote)

41. Amended by section 26 of the Banking (Amendment) Act, 2007 (Act 738).

41 (Popup - Footnote)

42. Heading amended by section 27 of the Banking (Amendment) Act, 2007 (Act 738).

42 (Popup - Footnote)

43. Inserted by section 27 of the Banking (Amendment) Act, 2007 (Act 738).

43 (Popup - Footnote)

44. Inserted by section 27 of the Banking (Amendment) Act, 2007 (Act 738).

44 (Popup - Footnote)

45. Amended by section 28 of the Banking (Amendment) Act, 2007 (Act 738).

45 (Popup - Footnote)

46. Amended by section 29 of the Banking (Amendment) Act, 2007 (Act 738).

46 (Popup - Footnote)

47. Substituted by section 30 of the Banking (Amendment) Act, 2007 (Act 738).
- 47 (Popup - Footnote)**
48. Substituted by section 31 of the Banking (Amendment) Act, 2007 (Act 738).
- 48 (Popup - Footnote)**
49. Inserted by section 32 of the Banking (Amendment) Act, 2007 (Act 738).
- 49 (Popup - Footnote)**
50. Substituted by section 33 of the Banking (Amendment) Act, 2007 (Act 738).
- 50 (Popup - Footnote)**
51. Inserted by section 34 of the Banking (Amendment) Act, 2007 (Act 738).
- 51 (Popup - Footnote)**
52. Inserted by section 34 of the Banking (Amendment) Act, 2007 (Act 738).
- 52 (Popup - Footnote)**
53. Substituted by section 35 (a) of the Banking (Amendment) Act, 2007 (Act 738).
- 53 (Popup - Footnote)**
54. Substituted by section 35 (b) of the Banking (Amendment) Act, 2007 (Act 738).
- 54 (Popup - Footnote)**
55. Definitions of “Class I banking”, “Class II banking business”, “Class I Banking Licence”, “Class II Banking Licence”, “Class II banking transactions” and “concordant” inserted by section 35 (c) of the Banking (Amendment) Act, 2007 (Act 738).
- 55 (Popup - Footnote)**
56. Inserted by section 35 (c) of the Banking (Amendment) Act, 2007 (Act 738).
- 56 (Popup - Footnote)**
57. Definitions of “general banking business”, “General Banking Licence” and “key management personnel” inserted by section 35 (d) of the Banking (Amendment) Act, 2007 (Act 738).
- 57 (Popup - Footnote)**
58. Definitions of “non-resident” and “ordinarily resident” inserted by section 35 (e) of the Banking (Amendment) Act, 2007 (Act 738).
- 58 (Popup - Footnote)**
59. Inserted by section 35 (f) of the Banking (Amendment) Act, 2007 (Act 738).
- 59 (Popup - Footnote)**
60. First to Fourth Schedules added by section 36 of the Banking (Amendment) Act, 2007 (Act 738).