

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

### ARRANGEMENT OF SECTIONS

#### *Section*

- 1) Section 2 of Act 673 amended
- 2) Section 3 of Act 673 amended
- 3) Section 4 of Act 673 amended
- 4) Section 5 of Act 673 amended
- 5) Sections 5A, 5B and 5C of Act 673 inserted
- 6) Section 6 of Act 673 amended
- 7) Section 7 of Act 673 amended
- 8) Section 8 of Act 673 amended
- 9) Section 8A of Act 673 inserted
- 10) Section 9 of Act 673 amended
- 11) Section 12 of Act 673 amended
- 12) Section 13 of Act 673 amended
- 13) Section 14 of Act 673 amended
- 14) Section 16 of Act 673 amended
- 15) Section 17 of Act 673 amended
- 16) Section 23 of Act 673 amended

- 17) Section 29 of Act 673 amended
- 18) Section 33 of Act 673 amended
- 19) Section 37 of Act 673 amended
- 20) Section 38 of Act 673 amended
- 21) Section 40 of Act 673 amended
- 22) Section 42 of Act 673 amended
- 23) Section 46 of Act 673 amended
- 24) Section 51A of Act 673 inserted
- 25) Section 60A of Act 673 inserted
- 26) Section 62 of Act 673 amended
- 25) Sections 69A and 69B of Act 673 inserted
- 26) Section 72 of Act 673 amended
- 27) Section 74 of Act 673 amended
- 28) Section 83 of Act 673 amended
- 29) Section 84 of Act 673 amended
- 30) Section 84A of Act 673 inserted
- 31) Section 87 of Act 673 amended
- 32) Sections 89A and 89B of Act 673 inserted
- 33) Section 90 of Act 673 amended
- 34) First, Second, Third and Fourth Schedules to Act 673 inserted

**THE SEVEN HUNDRED AND THIRTY-EIGHTH**

**OF THE PARLIAMENT OF THE REPUBLIC OF GHANA**

ENTITLED

**THE BANKING (AMENDMENT) ACT 2007**

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

DATE OF ASSENT: *18th June, 2007.*

ENACTED by the President and Parliament.

Section 2 of Act 673 amended

1. Subsection (1) of section 2 of the Banking Act, 2004 (Act 673) referred to as the principal enactment is amended by the addition of a new paragraph (d), "(d) ensuring the soundness and stability of the financial system in this country,"

Section 3 of Act 673 amended

2. The principal enactment is amended by the substitution for section 3 of

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

**Section 4 of Act 673 amended**

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

"40 (1) A person shall not carry on the business of banking in or from within Ghana except by or under the authority of a license issued in accordance with this Act

(2) A person shall not use a banking license for any purpose other than that for which it is issued

(3) A person who contravenes subsection (1) and (2) of this section commits an offence and is liable on summary conviction

(a) in case of a body corporate or other body of persons to a fine not more than three thousand penalty units; and

(b) in the case of an individual to a fine not more than three thousand penalty units or to a term of imprisonment not exceeding ten year so

#### **Section 5 of Act 673 amended**

4. Section 5 of the principal enactment is amended (a) by the insertion after paragraph (e) of

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

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

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

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

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

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

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

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

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

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

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

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

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

### **"Types of licences**

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

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

### **Limitation of Class II Banking Licence**

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

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

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

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

(ii) the purchase of bonds or other securities issued by the Government of Ghana or any other securities that may be approved by the Bank of Ghana; or

(c) carry on business in Ghana other than the business for which its Class II Banking Licence has been issued.

### **Pre-requisites for a licence**

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

- (a) the technical knowledge, experience, financial conditions and history of the applicant;
- (b) the adequacy of the capital structure of the applicant;
- (c) the character of the business and its management;

- (d) the adequacy of the applicants accounting control systems and records;
- (e) in the case of an applicant incorporated outside Ghana, that the applicant is a branch or related company of a foreign bank of established international reputation; and
- (j) the ability and willingness of the applicant to comply with the other conditions that the Bank may impose."

### **Section 6 of Act 673 amended**

**6) The principal enactment is amended by the substitution for section 6 of "Provisional approval**

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

(a) the applicant will carry on banking business with integrity, prudence and the required professional competence;

(b) the applicant has and will maintain paid up capital as set out in the First Schedule and hold a licence of the specified type as required; and

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

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

### **Section 7 of Act 673 amended**

7. Section 7 of the principal enactment is amended;

(a) by the insertion of "for a General Banking Licence or a Class I Banking Licence" after "applicant";

(b) by the insertion of a new subsection (2), and

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

(c) by the renumbering of subsection (2) as subsection (3) and by the insertion of

"or subsection (2)" after "subsection (1)".

### **Section 8 of Act 673 amended**

**8.** Section 8 of the principal enactment is amended;

(a) by the numbering of section 8 as 8 (1) and the insertion of "of a specified type".

(b) by the insertion of new subsections (2), (3) and (4) "(2) A licence issued under this Act shall

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

(c) in the case of a bank holding a Class II Banking Licence, not authorise that bank to have more than one place of business for the purpose of Class II banking;

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

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

### **Section 5A of Act 673 inserted**

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

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

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

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

### **Section 9 of Act 673 amended**

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

### **Section 12 of Act 673 amended**

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

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

### **Section 13 of Act 673 amended**

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

"(d) the bank has gone into liquidation or is wound up or otherwise dissolved; or

(e) the bank has insufficient assets to cover its liabilities to its depositors or the public; or

(f) the bank appears to the Bank of Ghana to be carrying on business in a manner which is contrary or detrimental to the interests of its depositors or the public; or

(g) the bank has been convicted by a domestic Court or any other Court as may be prescribed, of a crime related to the use or laundering in any manner of illegal drug proceeds, or is the affiliate or subsidiary of a parent company of a bank which has been so convicted, if the conviction is a final conviction."

### **Section 14 of Act 673 amended**

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

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

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

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

### **Section 16 of Act 673 amended**



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

#### **Section 17 of Act 673 amended**

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

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

#### **Section 23 of Act 673 amended**

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

#### **"Capital adequacy**

23. (1) A bank holding a General Banking Licence shall at all times while in operation, maintain a minimum capital adequacy ratio often 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 often per cent.

(3) A bank holding a Class n 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 judgment, to protect the interests of depositors and potential depositors and the public.

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

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

#### **Section 29 of Act 673 amended**

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

#### **Section 33 of Act 673 amended**

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

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

#### **Section 37 of Act 673 amended**

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

#### **Section 38 of Act 673 amended**

20. Section 38 of the principal enactment is amended

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

(b) by the deletion of paragraph (1) (e) and the addition of a new paragraph "(e) is a director, chief executive or employee of another bank." (c) by the addition of a new subsection (4)

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

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

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

#### **Section 40 of Act 673 amended**

**21.** The principal enactment is amended by the substitution for section 40 of "**Intervention of the Bank of Ghana in appointments**

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

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

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

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

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

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

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

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

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

#### **Section 42 of Act 673 amended**

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

### **Section 46 of Act 673 amended**

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

### **Section 51A of Act 673 inserted**

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

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

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

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

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

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

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

### **Section 60A of Act 673 inserted**

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

### **"Appointment of adviser**

60A. (1) The Bank of Ghana may, if it considers it necessary to improve the affairs of a bank after examining a bank's explanation, appoint a competent person as adviser to the bank's chief executive at the expense of the bank. (2) The Bank of Ghana may give a hearing to the bank before issuing the order unless it considers that the consequent delay in action would not be in the interest of the bank.

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

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

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

(6) (a) An adviser appointed under this section shall hold office for the period that the Bank of Ghana may specify, and

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

### **Remedial measures**

60B. Where the Bank of Ghana is satisfied after an examination under section 55 or otherwise based on the information at its disposal, that a bank (a) has failed to comply with a provision of this Act or of Regulations or rules or directives issued under this Act;

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

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

(i) prohibit the bank from receiving fresh deposits or renewing the existing deposits;

(ii) prohibit the bank from further lending or taking further financial exposures, or capital expenditure;

(iii) prohibit the bank from paying a dividend on its equity capital or issue rights shares or bonus shares to shareholders or to any person claiming under their authority;

(iv) suspend or remove from office the chief executive of the bank or restrict the chief executive's powers;

(v) recommend the removal from any or all of the directors on the board of the bank or restrict their powers;

(vi) appoint a conservator to take over the management of the bank, pending a decision on the bank's future set-up;

(vii) revoke the licence issued to the bank to carry on banking; or (viii) appoint a liquidator for the winding-up of the bank.

## **Appointment and the rights and responsibilities of conservator**

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

(a) holds office for the period or the extended period that the order may specify, unless the appointment is terminated by the Bank of Ghana;

(b) draws salary and other emoluments from the bank which shall provide the conservator with the perquisites and amenities specified in the letter of appointment of the conservator;

(c) has the powers of the chief executive to do the things that may be necessary for the management of the affairs, business and property of the bank;

(d) may attend the meetings of the board of the bank and its committees and move a resolution that the conservator considers appropriate and vote on any subject at those meetings; and (e) may appoint competent officials to assist the conservator or delegate authority to other officials.

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

(3) The conservator may,

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

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

(c) hold up a decision taken at the general meeting of the shareholders if the conservator considers it to be prejudicial to the interest of depositors,

with the prior approval in writing of the Bank of Ghana,

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

## **Section 62 of Act 673 amended**

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

## **Sections 69A and 69B of Act 673 inserted**

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

### **"Priority of deposit liabilities**

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

### **Priority in the event of winding up**

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

(a) the assets of the bank held, as determined under this Act and by the Bank of Ghana, in relation to the Class I banking business of the bank shall be available to meet the deposit liabilities of the bank in the following order of priority;

(i) deposit liabilities incurred by the bank in the course of its Class I banking business with non-bank customers,

(ii) deposit liabilities incurred by the bank, in the course of its Class I banking business, with other banks in respect of their Class I banking business,

(iii) deposit liabilities incurred by the bank in the course of its Class I banking business with other banks including those incurred with its own bank with respect to its Class II banking business,

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

(vi) deposit liabilities incurred by the bank in the course of its Class II banking business with other banks, (vii) subject to the Bodies Corporate (Official Liquidation) Act, 1963 (Act 180) other liabilities of the bank incurred in the course of its Class II banking business.

(b) The assets of the bank held, as determined under this Act and by the Bank of Ghana, in relation to the Class II banking business of the bank, shall be available to meet the deposit liabilities of the bank in the following order of priority;

(i) deposit liabilities incurred by the bank in the course of its Class II banking business with non-bank customers,

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

(v) deposit liabilities incurred by the bank in the course of its Class I banking business with other banks,

(vi) subject to the Bodies Corporate (Official Liquidation) Act, other liabilities of the bank incurred in the course of its Class I banking business.

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

(a) deposit liabilities incurred by the bank with non-bank customers; (b) deposit liabilities incurred by the bank with other banks;

(c) subject to the Bodies Corporate (Official Liquidation) Act, 1963 (Act 180) other liabilities incurred by the bank.

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

(a) deposit liabilities incurred by the bank with non-bank customers;

(b) deposit liabilities incurred by the bank with other banks;

(c) subject to the Bodies Corporate (Official Liquidation) Act, 1963 (Act 180) other liabilities incurred by the bank

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

(5) For the purpose of section 69 A 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 incircumstances 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 byway 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 byway 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 byway of security for the delivery or return of property, whether in a particular state of repair or otherwise."

### **Section 72 of Act 673 amended**

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

### **Section 74 of Act 673 amended**

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

### **Section 83 of Act 673 amended**

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

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

(a) in the case of a Director or head of department, take an oath of confidentiality in the form set out in Part I of the Second Schedule; and

(b) in any other case, make a declaration of confidentiality before the chairperson of the Board in the form set out in Part II of the Second Schedule,

before the person begins to perform any functions under the banking laws. (2) Except

(a) for the purposes of

(i) the performance of functions or the exercise of powers under the banking laws; or

(ii) meeting the requirements of an agreement or understanding reached by the Bank with any other relevant supervisory body; or

(b) when lawfully required to do so,

(i) by an order of a Judge in chambers or any court of law; or

(ii) under any enactment,

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

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

(4) Nothing in this section shall preclude

(a) the exchange or disclosure of information, under conditions of confidentiality, between the Bank and a foreign regulatory agency performing functions similar to those of the Bank under this Act, pursuant to any existing or future Treaty, or agreement or Memorandum of Understanding entered into by the Bank or the Republic of Ghana;

(b) the disclosure of information pursuant to an order made by the Judge in chambers under any relevant enactment related to mutual assistance in criminal and related matters to a foreign state; or

(c) the disclosure of information to the Financial Intelligence Centre set-up under the Anti-Money Laundering Law in force.

### **Section 84 of Act 673 amended**

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

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

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

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

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

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

(a) a customer who had been issued a credit card or charge card by a bank, has had the card suspended or cancelled by the bank by reason of default in payment, and the bank discloses information related to the customer's name and identity, the amount of indebtedness and the date of suspension or cancellation of the credit card or charge card to other banks issuing credit cards or charge cards in Ghana;

(b) the customer is declared bankrupt in Ghana or, in the case of a company, is being wound up; bank

(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

(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 section 84A and 85, in the event of any conflict or inconsistency between any provision of this section and the provisions of any other enactment, the provisions of this section shall prevail

### **Section 84A of Act 673 inserted**

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

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

### **Section 87 of Act 673 amended**

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

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

### **Sections 89A and 89B of Act 673 inserted**

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

#### **"Payments by Class II banks**

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

#### ***Exemptions***

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

*(a) its Class II banking transactions,*

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

*(c) any authorised dealing in property in Ghana.*

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

### **Section 90 of Act 673 amended**

**35.** The principal enactment is amended in section 90 by (a) the substitution for the definition of" bank" of

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

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

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

(a) accepting deposits of money from the public, repayable on demand or otherwise and withdrawable by cheque, draft, orders or by any other means;

(b) financing, whether in whole or in part or by way of short, medium or long term loans or advance, of trade, industry, commerce or agriculture, and

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

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

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

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

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

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

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

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

"concordat" means agreement.

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

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

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

"key management personnel" means

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

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

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

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

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

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

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

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

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

Type of Licence

General Banking Business Rural Banks

Class I Banking Licence

Class II Banking Licence

Rural Banks

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

Type of Bank     Minimum Initial Paid up Capital

(after deduction of accumulated losses)

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.

An amount in a currency as the bank of Ghana may determine from time to time. 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

1. .... 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  
on

High

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

Signature of

declarant.

Made before me,

Name

The chairperson of the Board on (date)

**THIRD SCHEDULE Part I**

**(Section 84 (1) (a)) Oath of confidentiality**

IN THE HIGH COURT OF GHANA

I ..... being

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.

declarant. .

Signature of

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 matter or information related to the affairs of any person, 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)

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."