

ACT 733
CENTRAL SECURITIES DEPOSITORY ACT, 2007

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ACT 733
CENTRAL SECURITIES DEPOSITORY ACT, 2007(1)

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

Establishment and Functions of Central Securities Depository

1. Establishment of a central securities depository

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

2. Application procedure

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

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

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

3. Grant of application

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

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

4. Conditions for grant of application

The Commission may, impose conditions in relation to

- (a) the paid-up or authorised capital of the depository,
- (b) the shareholding of the members of the depository,

- (c) the appointment of the board of directors and management of the depository, and
- (d) any other matters that the Commission considers appropriate in approving an application.

5. Alterations to central securities depository rules by a depository

- (1) A depository shall not amend its rules, except with the prior approval of the Commission.
- (2) A depository which intends to amend its rules shall apply in writing to the Commission.
- (3) The Commission shall within thirty days after receipt of the application communicate its decision in writing to the depository.

6. Amendment of central securities depository rules by the Commission

- (1) The Commission may amend the central securities depository rules after consultation with the depository.
- (2) The Commission shall in writing specify any amendments made and the date on which the amendments shall come into force.

7. Functions of a central securities depository

A depository shall

- (a) facilitate the admittance of securities into the central securities depository;
- (b) facilitate the deposit and withdrawal of certificates in respect of securities admitted in the central securities depository;
- (c) facilitate the dematerialisation of securities accounts;
- (d) open, maintain and close securities accounts;
- (e) establish a proper and efficient system for the verification, inspection, identification and recording of book-entry securities with the central depository;
- (f) facilitate the efficient transfer of book-entry securities;
- (g) facilitate the efficient process of cash payment in exchange for securities;
- (h) facilitate the registration of dealings in book-entry securities;
- (i) operate securities accounts for the handling of book-entry securities and cash;
- (j) designate one or more banks as a settlement partner for the settlement of funds in respect of transactions cleared through a depository;
- (k) facilitate the efficient collection of fees and other charges that may be required;
- (l) guard against falsification of any records or accounts required to be kept or maintained under this Act; and
- (m) perform other functions that are necessary to ensure orderly dealings in admitted or dematerialised securities, or as the Commission may from time to time prescribe.

8. Fees

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

9. Appointment of participants for a central securities depository

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

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

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

(3) A central securities depository participant shall

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

10. Directions by central securities depository

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

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

11. Central securities depository to provide assistance to the Commission

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

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

Admitted and Dematerialised Securities

12. Issue of uncertificated or dematerialised securities

(1) An issuer of securities to the public may

- (a) issue a security in uncertificated or dematerialised form where it is authorised in its regulations and authorised by a resolution of its board of directors,
- (b) convert a certificated security into an uncertificated security where it is authorised in its

regulations and by a resolution of its board of directors.

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

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

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

13. Admittance of securities

(1) Subject to subsection (2), a stock exchange may, after consultation with a central securities depository, prescribe that any security

(a) listed or quoted, or

(b) proposed to be listed or quoted,

on the stock exchange, be admitted by depositing the security with the central securities depository.

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

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

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

14. Verification of certificates and transfer to a central securities depository

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

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

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

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

(b) in relation to any security,

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

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

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

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

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

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

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

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

15. Trading of eligible securities

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

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

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

16. Restriction on trade in eligible securities

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

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

17. Receipt of certificates of eligible securities for safe custody

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

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

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

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

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

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

19. Withdrawal of immobilised securities

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

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

after the date of receipt of the withdrawal documents to be forwarded to the participant.

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

20. Trading of securities withdrawn from central securities depository

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

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

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

21. Withdrawal of prescribed securities prohibited

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

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

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

- (a) inform the depository of the decision, and
- (b) give notice to the public of
 - (i) the book-entry securities restricted or prohibited from withdrawal, and
 - (ii) the period of the restriction or prohibition.

22. Dematerialisation of securities

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

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

(3) An issuer of a dematerialised security shall

- (i) give notice to the public that the security shall, on the dematerialisation date, become a dematerialised security; and
- (ii) take necessary steps to amend its Regulations, deed of establishment, trust deed, or enabling statute, as the case may be, to comply with this Act and the central securities depository rules within a period stipulated in the notice,

upon being notified of the decision.

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

23. Central securities depository to maintain official record of depositors

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

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

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

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

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

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

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

24. Issuer not to issue certificates in respect of dematerialised securities

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

25. Effect of reference to records in a central securities depository

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

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

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

26. Application to collective investment schemes

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

- (a) a register of a collective investment scheme, is a reference to the record of depositors maintained by the depository,
- (b) a transfer of interest in a collective investment scheme from one investor to another, is a

reference to a book-entry transfer by the central securities depository, and

- (c) a certificate issued as evidence of an interest in a collective investment scheme, is a statement of account issued by the depository.

27. Rules in respect of dematerialised securities

The Commission may prescribe rules in respect of dematerialised securities

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

Securities Accounts and Records

28. Dealers in book-entry securities to hold securities account

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

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

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

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

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

29. Issuance of statements of accounts

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

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

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

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

30. Duty of central securities depository to keep records and accounts

A depository shall keep records and accounts to show particulars of

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

31. Audit of records and accounts

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

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

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

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

Securities Transactions and Entries

32. Evidence of transactions in respect of deposited securities

A transaction in respect of a deposited security by a depositor

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

33. Provision of record of depositors to issuers

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

(2) A record of depositors

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

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

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

34. Depositor to be treated as member or debenture holder

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

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

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

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

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

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

35. Register of Depositors

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

- (a) members of the company in respect of the amount of deposited securities entered against their respective names in the Register of Depositors; or
- (b) holders of the amount of the issuer's deposited securities other than shares entered against their names in the Register of Depositors.

(2) This Act shall not affect

- (a) the obligation of a company to keep a register of its members, and allow inspection of the register under the Companies Code;
- (b) the obligation of a company to keep a register of holders of debentures issued by the company and allow inspection of the register, under the Companies Code;
- (c) the obligation of an issuer other than a company to keep a register of the holders of securities issued by the issuer;
- (d) the right of a depositor to withdraw documents showing title to securities, from the depository at any time in accordance with the central securities depository rules and to register them in the depositor's name; or

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

36. Termination and set-off

(1) The Central Securities Depository may terminate its agreement

- (a) to clear or settle securities transactions, or
- (b) to act as a depository for securities,

with an insolvent participant or with a participant in respect of whom insolvency or bankruptcy proceedings are commenced.

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

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

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

37. Prohibition in dealings in book-entry securities

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

38. Public offer of securities

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

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

- (a) confirm with the central securities depository the record of the successful applicants together with information required by the central securities depository in order to make appropriate entries in the securities accounts of the respective applicants, and
- (b) deliver to the central securities depository the certificates, if any, in denominations specified by the central depository registered in the name of the central securities depository or its nominee company.

(3) For the purposes of this section

“offeror in relation to a security” means the person offering the security for sale;

“a reference to a security proposed to be listed on a stock exchange” means a reference to a

security which has been approved by the Commission to be listed on the stock exchange.

39. Corporate actions

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

- (a) makes a bonus issue of shares by way of an increase in its total issued capital, or issues securities because of a rights issue or the conversion of debt securities, or
- (b) issues securities because of an exercise of a right or option to acquire securities in the share capital of the issuer,

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

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

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

40. Underwriters to open securities accounts

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

41. Charging of securities

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

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

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

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

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

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

(7) This section shall not

- (a) apply to floating charges,

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

42. Securities in or under suspense

- (1) A depository may specify a deposited securities account to be in suspense
 - (a) where the transfer of the security in the name of the central securities depository or its nominee company is not registrable by the issuer,
 - (b) where an application for withdrawal of the security has been made by a depositor, or
 - (c) in circumstances prescribed by the depository under the central securities depository rules.
- (2) A depository may specify that a book-entry security in a security account is under suspense
 - (a) where there is a need for the central securities depository to restrict the transfer, charge or mortgage of the security in the event of an objection or investigation made in accordance with the central securities depository rules, and
 - (b) where the depository has been instructed to restrict the movement of book-entry transfers by the Commission or by a court of competent jurisdiction.

Security, Secrecy and Investigation Provisions

43. Security measures

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

44. Duty to maintain secrecy

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

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

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

45. Permitted disclosures

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

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

46. Regulation of access to computer system

- (1) A central securities depository may give access to its computer system to
 - (a) its agents,
 - (b) a stock exchange on which book-entry securities are listed,
 - (c) a clearing house of a stock exchange,
 - (d) issuers, and
 - (e) any other person as may be prescribed by the Commission by Regulations made under this Act.
- (2) The Commission may, prescribe rules, to provide for the extent to which a user or class of users can or cannot have access to the system for the purpose of regulating access to the computer system of a central securities depository.
- (3) A person who

- (a) being a user, unlawfully gains access or attempts to gain access to a computer system of a central securities depository,
- (b) unlawfully gains access, or attempts to gain access to a computer system of a central securities depository, or
- (c) unlawfully interferes with, impedes or attempts to interfere with or impede, the operation of a computer system of a central securities depository,

commits an offence and is liable on summary conviction to a fine of seven hundred penalty units or to a term of imprisonment not exceeding five years or to both.

47. Power of the Commission to require production of records

(1) The Commission may give directions in writing to

- (a) a central securities depository,
- (b) a nominee of a central securities depository,
- (c) a central securities depository agent,
- (d) a user,
- (e) a person who is or has been an officer or employee of a central securities depository, or
- (g) an agent, advocate, solicitor, auditor, or other person acting in any capacity for or on behalf of a central depository or its nominee company, or a central securities depository agent, or a user,

to produce to the Commission records or accounts related to the business or affairs of a depository agent, or user or records or accounts required to be kept by a central securities depository under this Act.

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

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

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

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

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

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

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

48. Power of Commission to enter and search premises

(1) The Commission shall enter and search premises

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

(2) A person who

- (a) obstructs or hinders the Commission in the exercise of its powers,
- (b) fails to give to the Commission assistance that it may reasonably require,

commits an offence and is liable on summary conviction to a fine of five hundred penalty units or to a term of imprisonment not exceeding three years or to both.

49. Disclosure to Commission

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

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

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

50. Investigation by Commission

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

51. Power of court to make orders

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

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

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

- (a) served on the relevant parties, and
- (b) published in a manner that is considered appropriate.

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

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

Miscellaneous Provisions

52. Preservation of records and accounts

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

53. Guarantee Fund

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

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

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

54. Falsification of records or accounts

(1) A person who

- (a) records or stores, information that is false or misleading;
- (b) falsifies, destroys or removes
 - (i) information which is recorded or stored by that person,
 - (ii) information which is prepared for the purpose of being recorded or stored,
 - (iii) information which is prepared for use in compiling records, and
 - (iv) information which is prepared for use in recovering other information,

in relation to a record or an account required to be kept by a depository or its agent under this Act by means of a mechanical device, an electronic device, or any other device,

commits an offence and is liable on summary conviction to a fine of not more than five hundred penalty units or to imprisonment for a term of not more than three years or to both.

(2) A person who is responsible for recording or storing information but fails to do so

- (i) with intent to falsify any entry made, or record intended to be compiled from the information that has been recorded or stored, and
- (ii) knowing that the failure to record or store the information will render the information recorded or stored, false or misleading,

commits an offence and is liable on summary conviction to a fine of not more than five hundred penalty units, or to imprisonment for a term of not less than three years, or both.

55. Destruction, concealment, or alteration of records

A person who

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

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

56. Furnishing false or misleading information

A person who furnishes information which is false or misleading

- (a) for the purpose of, or in connection with, any application under this Act; or
- (b) in compliance with any requirement imposed on that person under this Act,

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

57. Offences by bodies corporate

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

- (a) the offence was committed without the person's consent or connivance; and
- (b) the person exercised diligence to prevent the commission of the offence having regard to the nature of the person's functions in that capacity and to other circumstances.

58. General penalty

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

59. Regulations

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

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

60. Interpretation

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

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

“admittance of securities date” in relation to any eligible security, means the date specified in the notice given by a stock exchange as being the last day on which the eligible security may be traded on a stock market of the stock exchange unless such security has been deposited with the central depository;

“admittance of security” means a security in which the underlying certificate has been deposited with and is held by a central depository;

“agent” means a central securities depository agent;

“bank” mean a body corporate which is issued with a licence in accordance with the Banking Act, 2004 (Act 673);

“bare trustee” means a trustee who has no beneficial interest in the subject matter of the trust;

“bearer security” means a security the title to which is transferable by delivery with or without endorsement of the certificates representing such securities;

“buying in” means the buying effected by a security exchange, according to the rules of the stock exchange of securities which a seller has failed to deliver on a day fixed for settlement;

“charge” includes a pledge or a mortgage;

“certificate” means a document that is a document of title to a security;

“central depository agent” in relation to any central depository, means a person appointed to be an agent of that central depository;

“central securities depository” or **“depository”** means a company approved by the Commission to establish and operate a system for the central handling of securities—

- (i) whereby the securities are immobilised or dematerialised and dealings in respect of those securities are effected by means of entries in securities accounts without the physical necessity of certificates; or
- (ii) which permits or facilitates the settlement or registration of securities transactions of dealings in securities without the physical necessity of certificates; and
- (iii) which provides other facilities and services incidental with the proceeding provisions;

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

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

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

- (i) the central equipment comprising hardware and software associated with that hardware, located at the premises of the central depository, and
- (ii) the terminals located at the premises of the users;

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

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

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

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

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

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

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

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

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

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

“depository” means a central securities depository;

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

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

“institutional investor” means a person whose ordinary course of business is to hold, manage or invest funds in connection with retirement benefits, insurance contracts, mortgage and savings schemes and any funds or scheme in the nature of a collective investment scheme;

“issuer” in relation to a security, includes the company, corporation, Government or body corporate or unincorporated or other person, which issued that security, and any person performing the functions of a registrar for the issuer in respect of the security;

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

“listed security” means a book-entry security listed on a stock exchange in Ghana;

“market day” means any day during which a stock exchange is open for business;

“member” in relation to

- (i) a stock exchange, means a person who is recognised as a member of a stock exchange; and
- (iii) a company, means a person who is recognised as a member of a company under the Companies Code;

“Minister” means the Minister responsible for Finance;

“non-bearer security” means a security other than a bearer security;

“notification date” means the date on which is given by a stock exchange;

“official list” in relation to a stock exchange in Ghana, means a list or lists specifying all securities which have been admitted for listing on that stock exchange;

“prescribe” means prescribed by regulations under this Act;

“record” in addition to a record in writing, includes

- (i) a photograph;
- (ii) a disc, tape, sound-track, or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced from the disc, tape, sound-track or other device; and
- (iii) a film, tape or other device on which visual images are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced therefrom, and any reference to a copy of a record includes a film, tape or other device;
- (iv) in the case of a record falling within paragraph (ii) but not paragraph (iii) of this definition, a transcript of the sounds or other data embodied therein;
- (v) in the case of a record falling within paragraph (iii) but not paragraph (iv) of this definition, a still reproduction of the images embodied therein, whether enlarged or not; and
- (vi) in the case of a record falling within both paragraphs (ii) and (iii) of this definition, the transcript of the sounds or other data embodied therein together with the still reproduction of the images embodied therein;

“Register of depositors” means a record maintained by a central securities depository to an issuer which contains specified particulars;

“Registrar” means a person appointed by an issuer to perform the functions of a registrar of its securities;

“securities” includes—

- (i) debentures, shares, bonds or notes issued or proposed to be issued by a body corporate and any right, warrant or option in respect of them,
- (ii) bonds, treasury bills or other loan instrument of the Government of Ghana or of any other country,
- (iii) rights of interest, whether described as units or otherwise under a collective investment scheme,
- (iv) other rights, interests or instruments that the Minister may, by notice in the *Gazette*, prescribe;

“securities account” means an account established by a central securities depository for a depositor for the recording of deposited securities and cash balances, in respect of dealings in the securities by the depositor;

“selling out” means the selling of securities effected by a stock exchange according to the rules of the stock exchange, in which a buyer has failed to accept and to pay for when delivered on a day fixed for the settlement;

“settlement partner” means a commercial bank designated by a depository participant to settle its transactions with the central securities depository;

“stock market” means a market exchange or other place at which, or a facility by means of which securities are regularly offered for sale, purchase or exchanged; and

“user” means a central securities depository agent, an issuer, a stock exchange or another person that may be prescribed by the Commission who may be given access to a computer system of a central depository.

61. References

A reference in this Act to

- (a) writing includes any mode of presenting or reproducing letters, figures or marks in a visible form, and
- (b) a security being deposited or required to be deposited with a central securities depository shall be construed as a reference to a deposit of
 - (i) the certificate,
 - (ii) the instrument of transfer, if any, or
 - (iii) any other document representing the security,

to the central securities depository.

62. Consequential amendments

- (1) The Securities Industry Law, 1993 (P.N.D.C.L. 333) as amended by the Securities Industry

(Amendment) Act, 2000 (Act 590) is hereby further amended

(a) by the insertion of a new section 9 (c) as follows:

“to register, licence, authorise or regulate, in accordance with this Act or any regulations made under it, stock exchanges, investment advisers, unit trust schemes, mutual funds, securities dealers, central securities depositories, and their agents, and to control and supervise their activities with a view to maintaining proper standards of conduct and acceptable practices in the securities business;”

(b) by the deletion of the following from the definition of “dealer” under section 142 of the Securities Industry Law, 1993 (P.N.D.C.L. 333) as amended by section 12 (c) of the Securities Industry (Amendment) Act, 2000 (Act 590):

“a person who performs the functions of central securities depository and/or provides securities clearing and settlement facilities”.

(2) Section 52 of the Companies Code is hereby repealed.

(3) Section 82 of the Companies Code is hereby repealed.

(4) The First Schedule to the Companies Code, is hereby amended by the substitution of the following for the definition of the “Register”:

“Register” includes a Register maintained in electronic form and saved on any device including a disc, tape, or other device in which sounds or other data are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced from the disc, tape or other device.”

Endnotes

1 (Popup - Footnote)

1. This Act was assented to on the 16th May, 2007 and notified in the *Gazette* on the 24th May, 2007.