

BANKING ACT, 2004 (ACT 673)

Section

PART I—PRELIMINARY MATTERS

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

PART II—LICENSING OF BANKS

3. Eligibility Restricted to Ghanaian Corporate Bodies
4. Banking Licence Mandatory
5. Application for Licence
6. Provisional Approval
7. Invitation to Public to Subscribe to Shares
8. Final Approval and Issue of Banking Licence
9. Refusal of Licence
10. Time limit for Decision on Application for Banking Licence
11. Permissible Activities of Banks
12. Restrictions on Commercial, Agricultural or Industrial Activities and Immovable Property
13. Grounds for Revoking Licence
14. Revocation Procedure
15. Moratorium Due to Revocation of Licence
16. Sanctions for unauthorised Banking
17. Use of Word 'Bank'
18. Inspection of Suspected Institutions doing Banking Without Licence
19. Display of Banking Licence
20. Places of Business to be Licensed
21. Opening of Representative Office
22. Changes of Regulations of Banks

PART III—CAPITAL AND RESERVES

23. Capital Adequacy
24. Additional Capital in Respect of Special Risks
25. Capital Adequacy on Consolidated Basis
26. Notifying Non-compliance with Capital Requirements,
27. Penalties for Non-compliance with Capital Requirements
28. Persistent Capital Ratio Deficiency
29. Transfer of Profits to Reserve Fund
30. Restrictions on Declaration of Dividend

PART IV—LIQUIDITY

31. Maintenance of Liquid Assets
32. Notification of Non-compliance with Minimum Liquidity Requirements
33. Penalties for Non-compliance with Liquidity Requirements

PART V—OWNERSHIP AND CONTROL

34. Transfer of Shares Affecting Significant Shareholdings
35. Disapproval of Transfer of Shares
36. Prohibition of Transfers of, and Changes in, the Controlling Interests
37. Penalties for Non-compliance
38. Disqualification of Directors, Officers or Employees
39. Disclosure of Interest
40. Intervention of the Bank of Ghana in Appointments

PART VI—RESTRICTIONS ON LENDING AND INVESTMENTS

41. Prohibition of Advances Against Security of Own Shares
42. Limits on Exposures
43. Restrictions on Exposure
44. Restrictions on Lending to Staff

45. Requirements for Lending to Related Parties
46. Restrictions on Establishment of Subsidiary Company
47. Limits on Investment in Respect of Subsidiary Companies
48. Limits on Investment in Respect of Other Institutions
49. Reporting of Large Exposures
50. Powers to Vary the Prudential Limits

PART VII—POWERS OF SUPERVISION AND CONTROL

51. Regulations
52. Directives
53. Information and Periodic Returns
54. On-site examination
55. Investigation or Scrutiny
56. Power of On-site Examiners
57. Taking Custody of Records
58. Verification of Information
59. On-site examination Reports
60. Follow-up Action on On-site Examination Reports
61. Banks to Co-operate with Conservator
62. Mandatory Revocation of Banking Licence
63. Hearing of Banks in Matters Relating to Revocation of Licence
64. Issue of Final Orders after Examining a Bank
65. Moratorium
66. Appeal to Minister Against Orders of Bank of Ghana
67. Ceasing of Operations following Revocation of Licence
68. Winding up of Bank and Appointment of Liquidator
69. Voluntary Winding-up

PART VIII—ACCOUNTS AND AUDIT

70. Guidelines on Accounting Standards and Disclosures in Balance Sheet and Profit and Loss Account
71. Accounting Records
72. Financial Statements
73. Audit of Bank's Accounting Records
74. Appointment of Auditors
75. The Bank of Ghana's Powers to Appoint Auditors
76. Auditor's Remuneration
77. Auditor's Right to Information
78. Auditor's Report
79. Special Audit and Additional Information
80. Termination of Auditor's Appointment
81. Display of Financial Statements

PART IX—MISCELLANEOUS

82. Prohibition of Floating Charge
83. Secrecy of Information
84. Secrecy of Customer Information
85. Disclosure by the Bank of Ghana of Information Relating to Banks
86. Submission of Reports on Trend and Progress
87. Protection for Officials
88. Offences and Penalties
89. Joinder of Offences
90. Interpretation
91. Repeal of Banking Law, 1989
92. Validity of Existing Licences

THE SIX HUNDRED AND SEVENTY-THIRD
ACT
OF THE PARLIAMENT OF THE REPUBLIC
OF GHANA
ENTITLED

THE BANKING ACT, 2004

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

DATE OF ASSENT: 29th January, 2004.

BE IT ENACTED by Parliament as follows:

PART I—PRELIMINARY MATTERS

Section 1—Application of the Companies Code

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

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

Section 2—Functions of the Bank of Ghana

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

(a) promoting an effective banking system;

(b) dealing with any unlawful or improper practices of banks, and

(c) considering and proposing reforms of the laws relating to banking business.

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

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

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

PART II—LICENSING OF BANKS

Section 3—Eligibility Restricted to Ghanaian Corporate Bodies

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

Section 4—Banking Licence Mandatory

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

(2) A person who carries on banking business without a licence commits an offence and is liable on summary conviction

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

(b) in the case of an individual to a fine not exceeding three thousand penalty units or to a term of imprisonment not exceeding ten years.

Section 5—Application for Licence

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

(a) a certified true copy of the Regulations or other instrument relating to the proposed bank or under which a person proposing to carry on banking business was established;

(b) the names, addresses, and occupations of persons including their corporate affiliations who will hold significant shareholdings, directly or indirectly, in the proposed banking business and the respective values of the share holdings and their certified financial positions;

(c) the particulars of the directors or key management personnel concerned with the management of the banking business, including their background, certified financial position, business interests and performance of the business concerns under their control or management;

(d) the feasibility reports including a business plan and financial projections for the first five years and areas of specialisation intended;

(e) documentary evidence of the capital, their sources and other sources of funds; and

(f) any other particulars that the Bank may require.

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

Section 6—Provisional Approval

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

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

(b) the applicant has an initial paid-up capital that is required to hold a licence which in the case of a

(i) Ghanaian bank, is not less than five billion cedis; or

(ii) foreign bank, is not less than eight billion cedis, of which not less than sixty per cent shall be brought into Ghana in convertible currency;

(iii) development bank for medium or long term financing is not less than ten billion cedis; or

(iv) rural bank, is not less than one hundred million cedis.

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

Section 7—Invitation to Public to Subscribe to Shares

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

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

Section 8—Final Approval and Issue of Banking Licence

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

(a) with the organisational and infrastructural arrangements made by the applicant, and

(b) that the applicant has complied with the terms and conditions stipulated in the provisional approval.

Section 9—Refusal of Licence

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

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

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

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

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

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

Section 10—Time Limit for Decision on Application for Banking Licence

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

Section 11—Permissible Activities of Banks

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

(a) acceptance of deposits and other repayable funds from the public;

(b) lending;

(c) financial leasing;

(d) Investment in financial securities;

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

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

Section 12—Restrictions on Commercial, Agricultural or Industrial Activities and Immovable Property

- (1) Subject to subsections (2), (3) and (4), a bank shall not directly engage in any commercial, agricultural or industrial undertaking unless it establishes for that purpose a subsidiary company of the bank registered in Ghana.
- (2) The equity capital invested in a subsidiary company by the bank shall not exceed fifteen per cent of the net worth of the bank and where the bank has more than one subsidiary company the equity capital invested in those subsidiary companies by the bank shall not exceed in the aggregate twenty-five per cent of the net worth of the bank.
- (3) The aggregate amount of any loan, advance, credit or other facility and equity capital which a bank may grant and invest under subsection (2) shall not at any one time exceed
- (a) twenty-five percent of the net worth of the bank, in the case where the bank owns one subsidiary company; or
 - (b) thirty-five percent of the net worth of the bank, in the case where the bank owns more than one subsidiary company.
- (4) A bank shall not build, purchase or take a lease of immovable property except
- (a) for the provision of premises or housing the business or staff of the bank; or
 - (b) for the provision of amenities for its staff.
- (5) Notwithstanding anything in this section, a bank may accept immovable property as security for any debt or other liability and may acquire an interest which a bank may lawfully acquire in the satisfaction of a debt due to it.
- (6) An interest acquired under subsection (5) shall be disposed of by the bank within one year after the acquisition or within a longer period that may be determined by the Bank of Ghana on application made by the bank.
- (7) This section does not prevent a bank from letting or subletting a part of immovable property which is ordinarily used for housing its business where the property is in excess of the immediate requirements of the bank.
- (8) A bank which contravenes a provision of this section commits an offence and is liable on summary conviction to a fine not exceeding 1500 penalty units.

Section 13—Grounds for Revoking Licence

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