

BANKING LAW, 1989

IN pursuance of the Provisional National Defence Council (Establishment) Proclamation, 1981 this Law is hereby made:

PART I—LICENSING OF BANKS

1. No person other than a body corporate incorporated in Ghana shall carry on the business of banking in Ghana. Banks to be incorporated in Ghana.
2. No person shall carry on the business of banking (whether as a principal or agent) except by or under the authority of a licence issued in accordance with this Law. All Banks must be licensed.
3. (1) Every application for a licence shall be made in writing to the Bank of Ghana and shall be accompanied by— Application for licence, etc.
- (a) a certified true copy of the regulations or other instrument, relating to the proposed business of banking, or by or under which any person proposing to carry on such business was established;
 - (b) particulars of the directors or persons concerned with the management of the said business;
 - (c) a feasibility report including a business plan and projections for the first five years; and
 - (d) such other particulars as the Bank of Ghana may require.
- (2) No person shall be qualified to hold a licence unless—
- (a) in the case of a Ghanaian banking business, the business maintains a minimum paid-up capital of not less than two hundred million cedis; or
 - (b) in the case of a foreign banking business, the business maintains a minimum paid-up capital of five hundred million cedis of which the equivalent of not less than three hundred million cedis are brought into Ghana in convertible currency; or
 - (c) in the case of a development banking business for medium or long term financing of trade, industry, commerce or agriculture, the business maintains a paid-up capital of not less than one billion cedis.
 - (d) in the case of a rural bank, the bank maintains such minimum paid-up capital as the Bank of Ghana may prescribe.
- (3) The Bank of Ghana may, after consultation with the Secretary, by executive instrument alter all or any of the capital requirements prescribed by or under subsection (2).
4. (1) Subject to subsection (2) of this section, the Bank of Ghana may issue a licence to any person who duly complies with the provisions of this Law relating to application and eligibility for a licence. Issue and revocation of a licence.

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(2) A licence shall be issued subject to the approval of the Secretary and upon such terms and conditions as the Bank of Ghana may determine.

(3) A licence once issued shall not be revoked and neither shall the terms and conditions attached to the licence be varied or added to in any way unless not later than one month before the date on which the Bank of Ghana proposes to effect the revocation of the licence or variation of or addition to the conditions attached to the licence the bank concerned is notified by the Bank of Ghana of the action it contemplates to take.

(4) Any such bank shall within the period of one month be entitled to petition the Secretary in writing against the revocation, variation or addition being contemplated by the Bank of Ghana.

(5) The Secretary shall, without prejudice to any legal rights of either the Bank of Ghana or the petitioning bank, refer the matter to a panel of three experts, one chosen by Bank of Ghana and the other two experts by the Secretary and the petitioning bank respectively and the Secretary shall take the findings of the panel into consideration in deciding the matter.

PART II—STATUTORY OBLIGATIONS OF BANKS

Opening and closing of branches of banks.

5. No bank shall open a new branch or agency of the bank or close down or change the location of any branch or agency of the bank existing at the commencement of this Law unless it first obtains the permission of the Bank of Ghana.

Banks to furnish alterations in regulations, etc.

6. (1) A bank shall furnish the Bank of Ghana with every alteration in the regulations or other instrument by or under which it was established or every change of a director of the bank not less than three months before the date of the coming into effect of the alteration or change.

(2) Any alteration or change required to be so furnished shall be accompanied by a statutory declaration verifying the alteration or change, which shall be made by the Managing Director or Chief Executive of the bank or by any person authorised to act in that behalf.

Banks to invite deposits from the public.

7. Notwithstanding the provisions of the Companies Code, 1963 (Act 179) a bank may make an invitation to the public to deposit money for fixed periods or payable on demand.

Capital adequacy.

8. (1) Every bank shall at all times while in operation maintain a minimum capital adequacy ratio of 6 per cent; provided that a higher capital adequacy ratio may be fixed—

(a) by the Bank of Ghana with respect to a particular bank; or

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(b) generally with respect to the banks by the Bank of Ghana with the prior approval of the Secretary, and for such period as the Bank of Ghana may determine.

(2) The capital adequacy ratio shall be measured as a percentage of the capital base of the bank to its adjusted asset base in accordance with the provisions of the First Schedule to this Law.

(3) Any bank which fails to maintain the level of capital adequacy determined under subsection (1) shall be liable to pay to the Bank of Ghana on each day that the deficiency continues as penalty one-half per mille of the difference between the capital adequacy that the bank should have maintained and the level of capital adequacy actually maintained by the bank, and unless such deficiency is remedied within 90 days after it has occurred the Bank of Ghana may prohibit the bank concerned from granting loans or credits or from making investments or accepting deposits.

9. Every bank shall maintain a Reserve Fund into which shall be transferred out of the bank's net profits for each year, before the bank declares any dividend and after it has made provision for any taxes, the following amounts—

Banks to maintain Reserve Fund.

- (a) where the amount of the bank's Reserve Fund is less than 50 per cent of its paid-up capital, an amount which shall not be less than 50 per cent of the bank's net profit for the year;
- (b) where the amount of the bank's Reserve Fund is 50 per cent or more but less than 100 per cent of its paid-up capital, an amount which shall not be less than 25 per cent of the bank's net profit for the year; or
- (c) where the amount of the bank's Reserve Fund is equal to 100 per cent or more of its paid-up capital an amount equal to 12½ per cent of the bank's net profit for the year.

10. (1) No bank shall pay any dividend on its shares until it has completely recovered all its capitalised expenditure.

Declaration or payments of dividends.

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

(3) No bank shall declare or pay any dividend on its shares in any year if the level of capital adequacy of the bank is less than that prescribed under section 8 (1) of this Law.

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(4) Where a bank declares or pays any dividend in contravention of subsection (1) or (3) of this section every director of the bank shall be liable to pay to the Bank of Ghana a penalty of not less than one hundred thousand cedis—

Provided that no such director shall be liable to pay the penalty if he proves that the contravention was committed without his consent or connivance by a person other than himself and that he exercised all due diligence to prevent the commission of the contravention having regard to all the circumstances.

Loans,
advances and
other facilities.

11. (1) No bank shall grant any advance, credit or undertake any financial guarantee or indemnity to or in respect of any one person or group of persons or carry out any other transactions for any one person or group of persons which constitutes in the aggregate a liability to the bank amounting to more than twenty-five per cent of the net-worth of the bank except that in the case of an unsecured advance, credit, financial guarantee or indemnity, the bank shall not grant any advance, credit or undertake any such guarantee or indemnity amounting in the aggregate to more than ten per cent of the net-worth of the bank.

(2) The provisions of subsection (1) of this section shall not apply to transactions between banks.

Advances,
etc. secured
by bank's
own shares.

12. (1) No bank shall grant—

(a) any advance or credit facility against the security of its own shares; or

(b) any loan or credit facility in excess of, in the aggregate and outstanding at any one time, two per cent of the bank's net worth to any firm or company or group of firms or companies in which any of the bank's directors or officials is interested as a partner a guarantor or is one of the principal shareholders; except that in the case of unsecured loan or credit facility the bank shall not grant such loan or credit facility in an amount which in the aggregate exceeds one-third of such percentage.

(2) For the purpose of subsection (1) "principal shareholder" means a person owning not less than such percentage as may be determined by the Bank of Ghana of the capital of the firm or company concerned.

Advances,
etc. to bank's
own personnel.

13. No bank shall grant to any of its directors, officials and employees any unsecured advances or unsecured credit facilities which constitute a financial liability on the bank amounting in the aggregate in the case of—

(a) a director, to more than such sum as may be determined by the Bank of Ghana; and

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(b) any official or employee, to more than two years' salary of such official or employee.

14. (1) Subject to subsections (2), (3) and (4) of this section, no bank shall 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 any such subsidiary company by the bank shall not exceed fifteen per cent of the net worth of the bank or where the bank has more than one such subsidiary company the equity capital invested in all such 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) of this Section shall not at any one time exceed—
- (a) in the case where the bank owns one subsidiary company, twenty-five per cent of the net worth of the bank; or
- (b) in the case where the bank owns more than one subsidiary company, thirty-five per cent of the net worth of the bank.
- (4) No bank shall build, purchase or take any 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 any immovable property as security for any debt or other liability and may acquire any interest which a bank may lawfully acquire in satisfaction of a debt due to it so however that any interest so acquired shall be disposed of by the bank within one year after such acquisition or within such longer period as may be determined by the Bank of Ghana on application by the bank.
- (6) Nothing in this section shall prevent a bank from letting or subletting a part of any immovable property which is ordinarily used for housing its business where the property is in excess of the immediate requirements of the bank.

Banks not to engage in commercial, agricultural, or industrial activities or hold immovable property.

15. Every bank shall submit to the Bank of Ghana for approval any arrangement or agreement which it proposes to enter into for the sale or disposal by amalgamation or otherwise of its business of banking or any proposal for reconstruction of the bank.

Sale or amalgamation, etc. of bank's business.

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Bank of Ghana to be notified of inability to meet obligation.

16. Where it appears likely in the case of any bank that—

- (a) it cannot meet its obligations to its depositors or other creditors; or
- (b) it may have to suspend payment to its depositors or other creditors;

the bank shall forthwith notify the Bank of Ghana of the full facts of the situation and also provide the Bank of Ghana with such other information as the Bank of Ghana may request.

Bank to submit returns to the Bank of Ghana.

17. Every bank shall submit to the Bank of Ghana—

- (a) not later than twenty-one days after the last day of every month a statement in such form as may be determined by the Bank of Ghana showing the bank's assets and liabilities as at the close of business on such last day;
- (b) not later than twenty-one days after the last day of every month, a statement in such form and detail as may be determined by the Bank of Ghana showing an analysis of loans, advances and overdrafts granted by the bank during and outstanding at the end of every such month;
- (c) in such form and within such time as the Bank of Ghana may specify, such other particulars as the Bank of Ghana may require or as may be prescribed.

PART III—SPECIAL FUNCTIONS OF THE BANK OF GHANA

Supervisory authority of Bank of Ghana.

18. Except as provided in this Law, the Bank of Ghana shall have overall supervisory authority in all matters relating to the business of banking in Ghana.

Liquid assets of banks.

19. (1) The Bank of Ghana may, after consultation with the Secretary prescribe that banks shall hold liquid assets of a specific amount and composition and may fix such amount either as a certain percentage of all its deposit liabilities or in any other manner and may also fix different percentages for different classes of deposits or assets, as may be determined in any particular case.

(2) Any doubt arising as to whether a particular liability of a bank is to be regarded as a deposit shall be resolved by the Bank of Ghana and its decision thereon shall be final.

(3) Every bank shall, at any such time and in respect of any such period as the Bank of Ghana may require, submit to the Bank of Ghana a report on its liquid assets.

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

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20. (1) Any bank which fails to hold liquid assets in accordance with section 19 of this Law commits an offence and shall be liable in addition to any other penalty to pay an interest to the Bank of Ghana, at a rate to be prescribed by the Bank of Ghana in consultation with the Secretary, on the difference between the total amount of liquid assets which it is required to hold and the total amount of liquid assets held by it, in respect of any period during which such a difference exists and the Bank of Ghana may direct that during a period specified in the direction such bank shall discontinue or limit in a manner specified in the direction the granting of credit or the making of investments and shall not distribute dividends to its shareholders.

Offences in connection with holding of liquid assets.

(2) Any bank which, without the approval of the Bank of Ghana makes, during the existence of any deficiency in the amount of its specified liquid assets, any fresh advance to any person commits an offence.

(3) Any bank which contravenes any provisions of this section shall in addition be liable to pay to the Bank of Ghana—

- (a) in the case of any contravention of subsection (1) of this section, a penalty in respect of each day during which deficiency continues, of an amount calculated as one half per mille of the deficiency which exists on that day; and
- (b) in the case of any contravention of subsection (2) a penalty of not less than one hundred thousand cedis for each day that the contravention continues.

(4) The Bank of Ghana may from time to time require any bank operating in Ghana to furnish by a specified date such information and in such form as it may deem necessary to ensure compliance with the requirements of this section; and any bank which fails to furnish the information required under this subsection within the period specified shall be liable to pay to the Bank of Ghana a penalty of not less than one hundred thousand cedis for every day during which the default continues.

21. (1) Every bank shall furnish, at the request of the Bank of Ghana, particulars of any advances, loans or other credit facilities (whether or not secured) which the bank granted to any person in whose activities or enterprise the bank or any of its directors, officers or employees is interested as director, agent, guarantor or principal shareholder as defined in section 12 of this Law.

Bank of Ghana may request particulars of loans, etc. granted by banks.

(2) The Bank of Ghana may, if satisfied that any such advance, loan or credit facility is not in the best interest of the bank's depositors, in writing prohibit the bank from granting any further advance, loan or credit facility or permit any such grant to

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be made only subject to such terms and conditions as the Bank of Ghana may impose or the Bank of Ghana may direct the bank in writing to ensure the repayment of any advance, loan or credit facility so granted within such time and to such extent as the bank of Ghana may specify in the direction, and any such bank shall comply with any prohibition, terms, conditions or direction imposed or given by the Bank of Ghana under this subsection.

Special
powers of
Bank of
Ghana.

22. (1) Where the Bank of Ghana is—

- (a) satisfied that a bank is not carrying on the business of banking in the interest of its depositors and creditors;
- (b) satisfied that a bank has insufficient assets to cover its liabilities; or
- (c) notified under section 16 by a bank of its inability to meet its obligations to depositors or creditors or of the likelihood of the bank suspending payment,

the Bank of Ghana may in consultation with the Secretary do all or any of the following—

- (i) direct the bank to take such steps as the Bank of Ghana may consider necessary for dealing with the situation;
- (ii) prohibit the receipt by the bank of any fresh deposits;
- (iii) appoint suitable persons to advise the bank on the proper conduct of the bank's business of banking;
- (iv) assume control of, and carry on the bank's business of banking either directly or by an approved agent;
- (v) revoke the bank's licence; or
- (vi) present a petition to the High Court for the winding up of the bank's business of banking.

(2) A bank may within one month of any such action being taken by the Bank of Ghana under subsection (1) (i) to (v) of this section petition the Secretary against such action, and the Secretary shall decide the matter as he considers just but without prejudice to any legal rights of either the Bank of Ghana or the petitioning bank.

Assumption
of control
of banking
business by
the Bank of
Ghana.

23. (1) The Bank of Ghana shall—

- (a) carry on any business of banking of which it has assumed control under this Law in the name and on behalf of the bank concerned for such time as the Secretary may determine;
- (b) furnish the Secretary with a report on its conduct of such business at intervals of fourteen days during the first six months after it has assumed control of business and thereafter at intervals not exceeding six months until it relinquishes its control of the business;

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- (c) publish in the *Gazette* and a daily newspaper circulating in Ghana a notice of the assumption or relinquishment of its control of any such business.

(2) The Bank of Ghana shall be entitled to be paid by any bank whose business is carried on by it under this Law all expenses reasonably incurred by it in connection with the carrying on of the business, and without prejudice to any other remedy of the Bank of Ghana against that bank the Bank of Ghana shall, while it is in control of that business have the right to pay itself in respect of any such expenses out of the funds of the bank, provided that the remuneration for the staff shall be fixed by the Bank of Ghana in consultation with the representatives of the bank concerned.

24. (1) The Bank of Ghana shall, where it considers that the public interest so requires lay down policies to be followed by the banks generally or by any particular banks with respect to the granting of advances, credit or other facilities.

Bank of Ghana's power to issue policy guidelines on advance credits, etc.

(2) Every bank shall comply with any policy laid down or conditions imposed by the Bank of Ghana under this section as these are applicable to it and the existence of which has been brought to its notice by the Bank of Ghana.

25. (1) Without derogation from Bank of Ghana's functions under this Law, the Bank of Ghana may in particular by notice make rules not inconsistent with this Law with respect to the following—

Bank of Ghana's power to make rules.

- (a) the borrowing and lending rates, commissions and other charges of banks; and
- (b) such other matters as may be necessary or incidental to the discharge of the functions of Bank of Ghana under this Law.

(2) Every bank shall comply with rules made under subsection (1) of this section.

26. (1) The Bank of Ghana shall, not later than 90 days after the end of its financial year, submit to the Secretary a report on the trend and progress of the business of banking in Ghana.

Annual report of Bank of Ghana.

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

PART IV—APPOINTMENTS, DUTIES AND POWERS OF THE HEAD OF
BANKING SUPERVISION

27. The Head of Banking Supervision shall be appointed by the Bank of Ghana.

Appointment of Head of Banking Supervision.

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Functions of
Head of
Banking
Supervision.

28. (1) The Head of Banking Supervision or a person duly authorised by him in writing shall have power to examine the affairs of any bank or any branch or agency thereof.

(2) Every such examination shall be conducted under conditions of strict secrecy.

(3) The Head of Banking Supervision shall not less frequently than once in every year examine the affairs of every bank to ascertain whether the provisions of this Law or regulations made thereunder or notices issued by the Bank of Ghana or any other relevant enactment are being duly complied with and whether the financial standing of the bank is sound.

(4) The Head of Banking Supervision shall at the conclusion of his examination under subsection (3) submit a detailed report thereon to the Governor of the Bank of Ghana.

Rights of
access to and
demand for
information.

29. (1) The Head of Banking Supervision or a person duly authorised by him in writing, shall have the right of access to the accounting records, credit files, minutes book and other records and documents and the cash and securities of any bank and shall be entitled to request any director, auditor, officer or other employee of the bank to furnish him with such information and explanation as he may consider necessary for the proper performance of his duties under this Law.

(2) Every bank shall comply with a request of the Head of Banking Supervision under subsection (1).

Reports of
Head of
Banking
Supervision.

30. (1) Every report of the Head of Banking Supervision and information obtained by him in the course of the examination of the business of any bank shall be the property of the Bank of Ghana.

(2) Except as provided in subsection (3) of this section under no circumstances shall the Bank of Ghana, its officers or employees disclose or publish in any manner such reports or information or any part thereof, except when required to do so by a court of competent jurisdiction or by the Secretary in the exercise of any powers conferred on him by this Law.

(3) Nothing in subsection (2) of this section shall prevent the Governor of the Bank of Ghana from furnishing any bank with copies of the report of the Head of Banking Supervision or extracts therefrom which relate to that bank.

PART V—ACCOUNTS AND AUDIT

Accounting
records.

31. (1) Every bank shall keep proper accounting records of all transactions of the bank.

(2) Such accounting records shall be so kept by the bank as to give an accurate and reliable account of the transactions of the bank

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and the accounts prepared therefrom shall give a true and fair view of the state of affairs of the bank and its results for the period under review.

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

32. Every bank shall—

(a) exhibit at every one of its branches or agencies in a conspicuous place throughout the year a copy of the last audited balance sheet and profit and loss account in respect of all operations of the bank;

Banks to exhibit balance sheets and profit and loss accounts.

(b) not later than three months after the end of its financial year—

(i) furnish the Bank of Ghana with a copy of its audited balance sheet and its profit and loss account; and

(ii) cause such balance sheet and profit and loss account to be published in a daily newspaper circulating in Ghana.

33. The accounting records of every bank shall be audited at least once in every year by an auditor appointed in accordance with this Law.

Audit of bank's books.

34. (1) An auditor of a bank shall, except as provided in subsection (2) of this section and subsection (2) of section 35, be appointed at an annual general meeting of the bank.

Auditors of banks.

(2) The directors of a bank may—

(a) appoint the first auditor of the bank; or

(b) depute an auditor to act in place of any auditor who is for any reason unable or unwilling to act until a new auditor is appointed at an annual general meeting or until the Bank of Ghana appoints an auditor under section 35 (2) whichever is earlier.

(3) No person shall be appointed auditor of a bank unless—

(a) he is a member of the Institute of Chartered Accountants under the Chartered Accountants Act, 1963 (Act 170); or

(b) he is a practising accountant within the meaning of that Act; and

(c) he is resident in Ghana or, if not so resident, his residence outside Ghana has been specifically approved in writing by the Bank of Ghana in consultation with the Secretary; and

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- (d) he is not disqualified by any law in force in Ghana or in any other country from being appointed as auditor of a body corporate.

Bank of Ghana may appoint auditors in certain cases.

35. (1) Every bank which for a continuous period of three months is without an auditor shall forthwith notify this fact to the Bank of Ghana.

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

Termination of auditor's appointment.

36. (1) An auditor of a bank shall cease to act as such auditor if--

- (a) the Bank of Ghana in writing requests the bank concerned to revoke his appointment; or
- (b) the auditor or any member of the auditor's firm or establishment becomes a director of the bank; or
- (c) he resigns his office by notice in writing to the bank;
- (d) he ceases to qualify under section 34 (3) for appointment as auditor of a bank; or
- (e) he is otherwise removed by a decision taken at an annual general meeting of the bank.

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

Auditor's remuneration.

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

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

Auditor's right of access to and demand for information.

38. (1) An auditor of a bank shall have--

- (a) a right of access to the accounting records, minutes book, files and other relevant documentary evidence, cash and securities of the bank; and
- (b) a right to request such information and explanation from the directors, management, staff and appointed agents of the bank as he may consider necessary for the efficient performance of his duties as auditor of the bank.

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

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39. (1) At least once in every year, the auditor of a bank shall submit to the bank a statutory audit report and a long form audit report. Auditor's report.

(2) The bank shall submit to the Bank of Ghana, within such time as the Bank of Ghana shall decide, copies of the auditor's reports submitted to the bank under subsection (1) of this section.

(3) The auditor shall state in his statutory report whether or not—

- (a) the accounts give a true and fair view of the state of affairs of the bank and its results for the period under review;
- (b) he was able to obtain all the information and explanation required by him for the efficient performance of his duties;
- (c) the bank's transactions are within the powers of the bank; and
- (d) the bank has complied with the relevant provisions of this Law.

(4) The auditor shall submit a long form audit report on the account and the affairs of the bank generally, and in addition his comments in respect of the matters specified in the Second Schedule to this Law.

(5) The Bank of Ghana may from time to time by notice amend the Second Schedule to this Law.

(6) The Bank of Ghana may at any time at the expense of the bank—

- (a) require the auditor to undertake such further audit or provide such additional information or both as the Bank of Ghana may consider necessary;
- (b) engage an independent auditor to audit either in whole or in part the accounts of the bank.

PART VI.—MISCELLANEOUS AND SUPPLEMENTAL PROVISIONS

40. (1) Subject to subsection (2) of this section, no person other than a bank shall, except with the written consent of the Bank of Ghana, use or assume in relation to the whole or part of any business carried on by such person the word "bank" or any of its derivatives or any other word (in whatever language) indicating the carrying on of the business of banking. Use of the word "bank"

(2) Subsection (1) of this section shall not apply to any association of banks or of employees of banks formed for the promotion of the mutual interests of the members of such association.

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Disqualifi-
cation of
directors
and officers
of banks.

41. Subject to any law for the time being in force, every director, manager, secretary or other officer concerned in the management of a bank shall cease to hold office in the bank and shall be disqualified from holding office in any other bank if—

- (a) he is certified by not less than two medical practitioners to be a person suffering from mental disorder; or
- (b) he is adjudged to be bankrupt; or
- (c) he suspends payments to, or compounds with, his creditors; or
- (d) he is convicted by a court of competent jurisdiction of any offence involving fraud, dishonesty or moral turpitude.

(2) Except with the express authority of the Bank of Ghana no person who has been concerned in the management of any bank (whether or not as a director) which has been wound up pursuant to an order of a court of competent jurisdiction shall be directly concerned in the management of any other bank.

False and
misleading
information.

42. Any person who knowingly or recklessly provides the Bank of Ghana with any information which is false or misleading in any material particular shall be guilty of an offence and liable on conviction to a fine not exceeding one million cedis or to imprisonment for a term not exceeding three years or to both.

Regulations.

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

Information
relating to
banks and
customers
disclosed.

44. (1) No director, officer or other employee of the Bank of Ghana shall disclose any information relating to the affairs of any bank which he acquired in the performance of his duties except as required by law or by any court of competent jurisdiction.

(2) No director, officer or other employee of a bank shall disclose any information relating to the affairs of any customer with the bank which is acquired by him in the course of his duty; except where the disclosure of any such information is required by law or by a court of competent jurisdiction or is authorised by the customer or is in the interest of the bank.

Protection
for officers
of the Bank
of Ghana,
etc.

45. (1) No director, officer or other employee of the Bank of Ghana or other public officer shall be subject to any action, claim or liability in respect of any act done by him in good faith in pursuance of any power or duty conferred or imposed upon him by or under this Law.

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(2) No action or claim shall be brought against a director, an officer or other employee of a bank in respect of any act done in good faith by him in the course of his duty and within the scope of his employment:

Provided that this section shall not apply where the action or claim arises out of the negligence or wrongful act of the director, officer or employee of the bank.

46. (1) Except as otherwise provided any person who contravenes any provision of this Law commits an offence and is liable on conviction to a fine not exceeding one million cedis or to imprisonment for a term not exceeding three years or to both. Offences.

(2) Any such person shall in the case of a continuing offence be also liable on conviction to a fine not exceeding ₵200,000.00 for every day during which the offence continues.

(3) Where an offence under this Law is committed by a body of persons then—

(a) in the case of a body corporate other than a partnership every director and officer of that body shall also be deemed to be guilty of the offence; and

(b) in the case of a partnership, every partner shall also be deemed to be guilty of the offence:

Provided that no person shall be deemed to be guilty of an offence by virtue of this subsection if he proves that the offence was committed without his consent or connivance by a person other than himself and that he exercised all due diligence to prevent the commission of the offence having regard to all the circumstances.

(4) No prosecution of an offence shall be instituted under this Law without the consent in writing of the Attorney-General.

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

48. In this Law unless the context otherwise requires—

“bank” means any body corporate (whether foreign or Ghanaian) which is issued with a licence;

“business of banking” means—

(i) the acceptance of deposits of money from the public repayable on demand and withdrawable by cheques, drafts, orders or by other means; or

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(ii) the financing, whether in whole or in part or by way of short, medium or long term loans or advances, of trade, industry, commerce or agriculture;

“equity share capital” in the case of an enterprise the capital of which is not divided into shares means, the capital investment in that enterprise by the proprietors;

“foreign bank” or foreign banking business” means any bank or banking business incorporated in Ghana in which less than 60 per cent of the equity share capital is held by Ghanaians;

“Ghanaian bank” or Ghanaian banking business” means any bank or banking business incorporated in Ghana in which 60 per cent or more of the equity share capital is held by Ghanaians;

“licence” means a licence issued to a body corporate in accordance with this Law to carry out the business of banking;

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

“net worth” means shareholders’ funds including stated capital and all reserves as well as capital surplus from revaluation of assets;

“person” and “public officer” have the meanings respectively assigned to them by section 32 of the Interpretation Act, 1960 (C.A. 4);

“prescribed” means prescribed by regulations made under section 43.

“Secretary” means the Provisional National Defence Council Secretary responsible for Finance;

Repeals.

49. (1) The Banking Act, 1970 (Act 339) and the Banking and Financial Institutions (Request for Information) Decree, 1979 (AFRCD 17) are hereby repealed.

(2) Notwithstanding the repeal of the Banking Act, 1970 (Act 339) all regulations made thereunder shall continue in force subject to the provisions of this Law until amended or revoked.

Validity of existing licences.

50. All banks established under the Banking Act, 1970 (Act 339) or any other enactment and in existence before the commencement of this Law shall continue in existence subject to the provisions of this Law.

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FIRST SCHEDULE (SECTION 8)

CAPITAL ADEQUACY

1. (i) For the purpose of section 8 of this Law, capital base shall comprise primary capital and secondary capital as indicated hereunder. Capital Base.
- (ii) The sum of primary and secondary capital as indicated in paragraph 2 shall not be less than 6 per cent of the adjusted asset base subject to the total of secondary capital being limited to a maximum of 50 per cent of the total primary capital, and not more than one-half of the total of secondary capital shall be in subordinated term debt as defined in paragraph 2 (c).
- (iii) Deductions from—
- (a) primary capital shall be goodwill, other intangible assets, fixed assets, revaluation surpluses and anticipated losses not yet provided for;
 - (b) total (primary plus secondary) capital shall be—
 - (i) investments in unconsolidated subsidiaries and associates;
 - (ii) investments in the capital of other banks and financial institutions;
 - (iii) connected lending of a capital nature.
2. (a) 'Adjusted Asset Base' means total assets plus off-balance sheet items less— Definition.
- (i) Cash;
 - (ii) Balances with Bank of Ghana;
 - (iii) Ghana Government treasury bills;
 - (iv) Ghana Government stocks;
 - (v) Overnight money with Discount Houses in Ghana;
 - (vi) Investments in unconsolidated subsidiaries and associates;
 - (vii) Investments in the capital of other banks and financial institutions;
 - (viii) connected lending of a capital nature;
 - (ix) goodwill and other intangibles;
 - (x) fixed assets (inclusive of revaluation surpluses relating thereto);
 - (xi) anticipated losses not yet provided for.

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(b) "Primary capital" includes permanent shareholders equity (issued and fully paid ordinary shares), disclosed reserves (created or increased by appropriation of retained earnings or other surplus profits, and other distributable and legal reserves);

(c) "Secondary capital" includes—

(i) hybrid (debt/equity) capital instruments, which are—

(a) unsecured, subordinated and fully paid up;

(b) not redeemable at the initiative of the holder or without the prior consent of the supervisory authority;

(c) available to absorb losses without the bank being obliged to cease trading; and

(ii) subordinated term debt, which includes conventional unsecured subordinated debt, capital instrument with a fixed term to maturity and limited life redeemable preference shares in excess of five years and which are not normally available to absorb the losses of a bank which continues trading.

*SECOND SCHEDULE (SECTION 39)***MATTERS TO BE INCLUDED IN THE LONG FORM
AUDIT REPORT****1. *Accounting, management information and internal controls***

(a) the accuracy and reliability of the accounting system in general;

(b) the effectiveness of the management information system;

(c) the effectiveness and enforcement of internal controls;

(d) the accuracy and reliability of completion of the prudential returns to Banking Supervision Department.

*BANKING LAW, 1989***2. Comments on the financial accounts**

- (a) the financial performance of the bank during the period under review including—
 - (i) the reliability and composition of reported earnings;
 - (ii) the breakdown and analysis of operating costs;
 - (iii) the liquidity and capital adequacy ratios;
- (b) the accounting policies and valuation criteria applied in the preparation of the accounts;
- (c) the adequacy of provisions made—
 - (i) against the advances portfolio, investments and other asset accounts;
 - (ii) against off-balance sheet items;
 - (iii) for credits, accruals and other liabilities.
- (d) re-classifications and other adjustments made by the auditors to the accounts originally submitted for audit;
- (e) details of any adjustments not made to the accounts because they are not considered to be material;
- (f) details of any areas where the Manual of Accounting for Banks issued by the Bank of Ghana has not been complied with;
- (g) the full accounts of the bank for the period under review.

3. Audit work

- (a) the adequacy of work undertaken by the bank's internal audit department. The extent to which the external auditors have relied on the internal audit department's work when performing their own duties;
- (b) the amount of audit work undertaken in particular areas including scope of the tests, sampling criteria, coverage achieved, extended work, confirmation exercise with third parties;
- (c) the results of audit work undertaken;
- (d) the effectiveness and timeliness of remedial action taken following the previous year's management letter and/or long form audit report from the external auditors;

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(e) details of any areas where the Manual of Auditing for External Auditors issued by the Bank of Ghana has not been complied with.

Made this 1st day of August, 1989.

FLT.-LT. JERRY JOHN RAWLINGS

Chairman of the Provisional National Defence Council

Date of Gazette notification: 22nd December, 1989.