

BANKING (CAPITAL, AUDIT AND PRUDENTIAL REQUIREMENTS) REGULATIONS, 1988 (LI 1389).

IN exercise of the powers conferred on the Secretary responsible for Finance by sections 3 (4) and 40 of the Banking Act, 1970 (Act 339) and after consultation with the Bank of Ghana these Regulations are made this 23rd day of December, 1988.

Regulation 1—Minimum Capital for Licence.

No person shall qualify 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 not less than three hundred million cedis shall be brought into Ghana in convertible currency; or
- (c) in the case of any other banking business, the bank shall maintain such minimum capital as the Bank of Ghana may determine .

Regulation 2—Capital Adequacy of Banks.

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

- (a) by the Bank of Ghana with respect to any particular bank; or
- (b) generally with respect to the banks by the Bank of Ghana with the prior approval of the Secretary;

and for such periods as the Bank may determine.

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

(3) Any bank which fails to maintain the level of capital adequacy provided for or determined under these Regulations shall be liable to pay to the Bank of Ghana on each day on which the deficiency continues as penalty one half per mille of the difference between the capital adequacy that the bank should have maintained and the 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.

Regulation 3—Payment of Dividends.

(1) No bank shall declare or pay any dividends on its shares in any one year if the level of capital adequacy of the bank is less than prescribed under these Regulations.

(2) Where a bank declares or pays any dividend in contravention of subregulation (1) of this Regulation 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.

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

(4) For the purposes of sub-regulation (3) of this Regulation "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.

(5) No director shall be liable to pay a penalty under sub-regulation (2) of this Regulation 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.

Regulation 4—Credit Control.

(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:

Provided 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) Subregulation (1) shall not apply to transactions between banks.

Regulation 5—Auditor's Report.

(1) For the purposes of effective supervision of banks by the Bank, the auditor of a bank shall at least once every year submit to the bank a statutory audit report and a long form audit report.

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

(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 the Banking Act, 1970 (Act 339) and any regulations for the time being in force

(4) The auditor shall submit a long form audit report on the accounts and the affairs of the bank generally, and provide his comments in respect of the matters specified in the Second Schedule to these Regulations.

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

(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 may consider necessary;

(b) engage an auditor to audit either in whole or part the accounts of the bank.

Regulation 6—Interpretation.

In these Regulations unless the context otherwise requires—

"Bank" means the Bank of Ghana; "bank" has the meaning assigned to it under section 47 of the Banking Act, 1970 (Act 339).

SCHEDULES

FIRST SCHEDULE

(Regulation 2)

CAPITAL ADEQUACY

1. Capital Base.

(i) For the purposes of subregulation (2) of Regulation 2 of these Regulations, capital base shall comprise primary capital and secondary capital as indicated hereunder;

(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. Definitions.

(a) "Adjusted Asset Base" means total assets plus off-balance sheet items less—

- (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.

(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 instruments 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

(Regulation 5)

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.

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

DR. KWESI BOTCHWEY

P.N.D.C. Secretary for Finance and Economic
Planning

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