

BANKS AND SPECIALISED DEPOSIT-TAKING INSTITUTIONS ACT, 2016 (ACT930)

ARRANGEMENT OF SECTIONS

Section

1.Application of this Act

2.Application of Act 179

3.Role of the Bank of Ghana

Licensing of Banks and Specialised Deposit- Taking Institutions

4 Deposit-taking business

5 Licensing authority of Bank of Ghana

6 Requirement of a licence

7 Application for licence

8 Types of licences

9 Pre-requisites for a licence

10 Provisional approval

11 Invitation to public to subscribe to shares

12 Final approval and issuance of banking or specialised deposit taking institution licence

13 Non transferability or assignment of licence

14 Conditions for issuance of licence

15 Refusal of licence

16 Revocation of licence

17 Central Register

18 Permissible activities

19 Restrictions on commercial, agricultural or industrial activities and immovable property

20 Powers regarding unauthorised deposit-taking business

21 Repayment of moneys by unauthorised persons

22 Penalties for unauthorised deposit-taking business

23 Use of the word "bank"

24 Display of licence

25 Places of business to be licensed

26 Representative offices

27 Change of Company Regulations and other instruments of banks or specialised deposit-taking institutions

Capital and Reserves

28. Minimum paid-up capital

29. Capital adequacy and other capital requirements

30. Additional capital in respect of special risks

31. Capital adequacy requirements on a consolidated basis

32. Notifying non-compliance with capital requirements

33. Penalty for non-compliance with capital requirements

34. Reserve Fund

35. Restrictions on declaration and payment of dividend

Liquidity

36. Liquidity requirements

37. Maintenance of liquid assets on a consolidated basis

38. Additional liquidity requirement for additional risk

39. Notification of non-compliance with minimum liquidity requirements

40. Penalties for non-compliance with liquidity requirements

41.Maintenance of Net Open Position

Ownership and Control

42.Reporting of group structures

43.Registration requirement for financial holding companies

44.Application for registration

45.Display of certificate of registration

46.Restriction on activities of financial holding companies

47.Power to require restructuring of ownership

48.Withdrawal of registration by Bank of Ghana

49.Transfer of shares affecting significant shareholdings

50.Disapproval of transfer of shares

51.Restriction of cap on ownership

52.Sale of businesses, mergers, amalgamations and reconstructions

53.Consideration of application

54.Review of applications for approval of sale of businesses, mergers, amalgamations, or reconstructions

55.Penalties for non-compliance

Corporate governance

56.Duty of directors to report

57.Disqualification of a director and key management personnel

58.Disclosure of interest

59.Intervention of the Bank of Ghana in appointments

Restrictions on Lending and Investments

61.Prohibition of an advance against security of own shares

- 62.Limits on financial exposure
- 63.Financial exposure limits on a consolidated basis
- 64.Restrictions on transactions with an affiliate
- 65.Restriction on purchase or transfer of certain assets from an affiliate and insider
- 66.Restrictions on inter-institutional placements and loans
- 67.Restrictions on financial exposures to an insider
- 68.Limits on financial exposures to related parties on a consolidated basis
- 69.Restrictions on lending to staff
- 70.Requirements for lending to insiders and their related interests
- 71.Restriction on establishment of a subsidiary company
- 72.Limits on investment by banks or specialised deposit-take institutions in respect of a subsidiary company
- 73.Limits on investment by banks or specialised deposit taking institutions in respect of non-subsidiary institutions
- 74.Reporting of exposures
- 75.Asset classification, provisioning and write-offs
- 76.Limits on a foreign exchange business
- 77.Powers to impose stricter prudential limits

Accounts and Audit

- 78.Guidelines on accounting standards and disclosures in financial statements
- 79.Accounting records
- 80.Financial statements
- 81.Appointment of auditors
- 82.Power of the Bank of Ghana to appoint auditors

- 83. Remuneration of auditor
- 84. Right of auditor to access information
- 85. Report of auditor
- 86. Meetings with auditors
- 87. Duties of auditor to the Bank of Ghana
- 88. Special audit and additional information
- 89. Termination of appointment of auditor
- 90. Display of financial statements

Powers of Supervision and Control

- 91. Powers of regulation and supervision
- 92. Directives
- 93. Information and periodic returns
- 94. Examination
- 95. Investigation or scrutiny
- 96. Power of examiners
- 97. Taking custody of records
- 98. Verification of information
- 99. Examination reports
- 100. Follow-up action on examination and other supervisory reports
- 101. Appointment of advisor
- 102. Remedial measures for banks, specialised deposit-taking institutions or financial holding companies
- 103. Remedial measures for directors, key management personnel, and significant shareholders

104.Prompt corrective action for adequately capitalised banks, specialised deposit-taking institutions, or financial holding companies suffering material losses

105.Prompt corrective action for undercapitalised banks, specialised deposit-taking institutions or financial holding companies

106.Prompt corrective action for significantly undercapitalised banks, specialised deposit-taking institutions or financial holding companies

Official Administration

107.Grounds for appointing an official administrator

108.General powers of the official administrator

109.Oversight of official administrator by the Bank of Ghana

110.Suspension of dividends

111.Moratorium and effect of official administration on proceedings

112.Suspension of rights of termination

113.Control of the bank or specialised deposit-taking institution by official administrator

114.Inventory and plan of action to resolve the bank or specialised deposit-taking institution

115.Capital increase by existing shareholders

116.Recapitalisation by new shareholders

117.Mergers, sales and other restructurings

118.Mandatory restructuring of liabilities

119.Removal of directors and key management personnel

120.Misconduct by significant shareholders, directors, key management personnel and others

121.Expenses of the official administration

122.Termination of official administration

Receivership and Liquidation

123.Mandatory revocation of licence and initiation of receivership

124. Qualifications and compensation for receiver
125. Notice and registration of receivership
126. Oversight of Bank of Ghana over receiver
127. General powers of receiver
128. Effects of receivership
129. Control of the bank or specialised deposit-taking institution by receiver
130. Inventory of assets and new financial position
131. Repudiation of contracts
132. Setting aside of pre-receivership transactions
133. Determination of claims
134. Claims relating to eligible financial contracts
135. Priorities in payment of claims
136. Termination of receivership and final reporting to the Bank of Ghana
137. Miscellaneous receivership provisions
138. Relationship with other enactments
139. Voluntary winding-up

Miscellaneous Provisions

140. Review of decisions of the Bank of Ghana on licensing
141. Review of decision of Bank of Ghana on official administration, liquidation and receivership by arbitration
142. Review of decisions through arbitration
- 143 . Unclaimed balances
143. Prohibition of floating charge

144. Confidentiality obligations of officials and employees of the Bank of Ghana
146. Secrecy of customer information
147. Agreements for exchange of information
148. Disclosure of information relating to banks or specialised deposit-taking institutions or financial holding companies
149. Submission of reports on trend and progress
150. Protection from liability and indemnification
151. Collection of civil penalties
152. Prosecution of offences and penalties
153. Joinder of offences
154. General penalty
155. Regulations
156. Interpretation
157. Repeal and savings
158. Validity of existing licence
159. Transitional provisions
160. Moratorium for transition

SCHEDULES

FIRST SCHEDULE

Oath of Confidentiality

SECOND SCHEDULE

Oath of Confidentiality

REPUBLIC OF GHANA

ACT

OF THE PARLIAMENT OF THE REPUBLIC OF GHANA

ENTITLED

BANKS AND SPECIALISED DEPOSIT-TAKING INSTITUTIONS ACT, 2016

An ACT to amend and consolidate the laws relating to deposit-taking; to regulate institutions which carry on deposit-taking business, and to provide for related matters.

DATE OF ASSENT:

PASSED by Parliament and assented to by the President:

Preliminary Matters

Application of this Act

1. (1) This Act applies to

(a) banks,

(b) specialised deposit-taking institutions,

(c) financial holding companies, and

(d) affiliates of banks, specialised deposit-taking institutions and financial holding companies.

(2) This Act does not apply to credit unions which are subject to licensing and supervision under the Non-Bank Financial Institutions Act, 2008 (Act 774).

Application of Act 179

2. (1) This Act shall be read together with the Companies Act, 1963 (Act 179) and shall not except as otherwise provided in this Act derogate from the provisions of that Act.

(2) Where there is a conflict or inconsistency between the Companies Act, 1963 (Act 179) and this Act, this Act shall prevail.

Role of the Bank of Ghana

3. (1) The Bank of Ghana shall have overall supervisory and regulatory authority in all matters relating to deposit-taking business.

(2) For the purpose of subsection (1), the Bank of Ghana is responsible for

(a) promoting the safety and soundness of banks and specialised deposit-taking institutions;

- (b) considering and proposing reforms of enactments relating to deposit-taking business;
 - (c) ensuring the soundness and stability of the financial system and the protection of depositors in the country through the regulation and supervision of financial institutions;
 - (d) developing appropriate consumer protection measures to ensure that the interests of clients of the banks and the specialised deposit-taking institutions are adequately protected; and
 - (e) dealing with unlawful or improper practices of banks and specialised deposit-taking institutions.
- (3) The supervisory functions of the Bank of Ghana under this Act shall be carried out through the supervisory structures established by the Bank of Ghana. ~
- (4) The Bank of Ghana may authorise the heads of the supervisory structures or any other person to exercise a power and do an act that the Bank of Ghana considers appropriate in order to discharge the responsibilities of the Bank of Ghana under this Act.
- (5) In accordance with the Bank of Ghana Act, 2002, (Act 612), the Bank of Ghana may appoint an authorised agent to carry out specified activities of a particular tier or category or class of specialised deposit-taking institutions on behalf of the Bank of Ghana.
- (6) For the purpose of this section, "authorised agent" includes an apex body, network, industrial association, self-regulatory organisation or any other person recognised by the Bank of Ghana.

Licensing of Banks and Specialised Deposit-Taking Institutions

Deposit-taking business

4. (1) Subject to this Act, a person shall not carry on a deposit-taking business in or from within the country unless that person is a body corporate formed under the laws of this country.
- (2) A person that is not a body corporate formed under the laws of the country may, with the prior written approval of the Bank of Ghana, carry out a deposit-taking business in or from within the country.
- (3) A person shall not propose to be a shareholder of a deposit-taking microfinance institution unless that person is a citizen.
- (4) The Bank of Ghana shall issue directives to govern the operations of persons exempted under subsection (2).
- (5) For the purpose of this Act, deposit-taking business means the business of
- (a) taking money on deposit and making loans or other advances of money; and

(b) financial activities prescribed by the Bank of Ghana for purposes of this definition.

Licensing authority of Bank of Ghana

5. The Bank of Ghana shall have the sole responsibility for

(a) the issuance of licences to banks and specialised deposit-taking institutions;

(b) granting approval to foreign banks with respect to the establishment of representative offices;
and

(c) the registration of financial holding companies.

Requirement of a licence

6. (1) A person shall not accept a deposit from the general public or carry on a deposit-taking business in or from within the country without a licence issued in accordance with this Act.

(2) The Bank of Ghana may prescribe classes of liabilities that constitute deposits.

(3) Where it is uncertain in a particular case whether a particular liability of a bank or specialised deposit-taking institution is to be regarded as a deposit, the Bank of Ghana shall determine whether that liability is a deposit.

(4) A person shall not use a licence under this Act for a purpose other than that for which the licence is issued.

Application for licence

7. (1) A person who seeks to carry on a deposit-taking business shall apply in writing to the Bank of Ghana for a licence.

(2) An application for a licence under subsection (1) shall be accompanied with the following:

(a) a certified true copy of the Company Regulations or other relevant instrument relating to the proposed bank or specialised deposit-taking institution under which the person proposing to carry on a deposit-taking business was established;

(b) the names, addresses, occupations, business and professional history, certified financial positions, and corporate affiliations of the significant shareholders and the respective values of the shares;

(c) where the bank or specialised deposit-taking institution is a member of a corporate group,

(i) a complete organisational structure including a diagram of the group;

(ii) direct and indirect affiliates and associates of the bank or specialised deposit-taking institution, and

(iii) the nature of the relationship to the group;

(d) the particulars of the proposed directors and key management personnel concerned with the management of the deposit-taking business, including

(i) their qualifications and experience,

(ii) business and professional history for the preceding ten years or a longer period that the Bank of Ghana may determine,

(iii) certified financial position,

(iv) business interests, and

(v) the performance of the business concerns under their control or management;

(6) For the purpose of this section, "authorised agent" includes an apex body, network, industrial association, self-regulatory organisation or any other person recognised by the Bank of Ghana.

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(c) where the bank or specialised deposit-taking institution is a member of a corporate group,

(i) a complete organisational structure including a diagram of the group;

(ii) direct and indirect affiliates and associates of the bank or specialised deposit-taking institution, and

(iii) the nature of the relationship to the group;

(d) the particulars of the proposed directors and key management personnel concerned with the management of the deposit-taking business, including

(i) their qualifications and experience,

(ii) business and professional history for the preceding ten years or a longer period that the Bank of Ghana may determine,

(iii) certified financial position,

(iv) business interests, and

(v) the performance of the business concerns under their control or management;

(e) feasibility report including a business plan and financial projections for the first five years and the area of activity intended;

(f) documentary evidence of the capital of the proposed bank or specialised deposit-taking institution, including the original sources of funds and any other source of funds;

(g) in the case of a foreign applicant

(i) an authenticated copy of the certificate of incorporation and the Company Regulations or other relevant instrument and by-laws or similar documents, and

(ii) a written confirmation from the supervisory authority in the country of incorporation of the applicant or head office, if different, that the supervisory authority has no objection to the proposal of the applicant to carry on a deposit-taking business in the country and that that supervisory authority exercises global consolidated supervision over that bank or specialised deposit-taking institution;

(h) a statement on measures and structures that the applicant intends to adopt to ensure that business is conducted in accordance with sound corporate governance principles;

(i) a statutory declaration for each proposed director, key management personnel and significant shareholder of the proposed bank or specialised deposit-taking institution, disclosing, where applicable,

(i) a conviction for an offence by a court of competent jurisdiction,

(ii) a personal bankruptcy filing,

(iii) a disqualification from practising a profession, or

(iv) a past or present involvement in a managerial

function of a body corporate or other undertaking that is subject to insolvency or liquidation proceedings;

(j) the processing fee that the Bank of Ghana may by notice specify; and

(k) any other particulars that the Bank of Ghana may require.

(3) An application for a licence shall indicate clearly the type of licence that is being applied for.

(4) The Bank of Ghana may, for the purpose of verifying the particulars submitted under subsection (2),

(a) interview a promoter, proposed director or key management personnel in the course of the verification, and

(b) inspect the books, records and premises intended for use by the bank or specialised deposit-taking institution.

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

(6) The Bank of Ghana may require that information supplied to the Bank of Ghana be verified, certified or otherwise authenticated in the manner that the Bank of Ghana may prescribe.

(7) The Bank of Ghana shall

(a) within ten working days of the receipt of an application acknowledge in writing the receipt of the application; and

(b) within six months after the receipt of an application communicate its decision in writing to the applicant.

(8) Despite paragraph (b) of subsection (7), where the Bank of Ghana is of the opinion that further investigation or information is required to process the application, the Bank of Ghana shall within a reasonable period after the six month period specified under paragraph

(b) of subsection (7), notify the applicant and subsequently inform the applicant in writing of the decision of the Bank of Ghana.

Types of licences

8. (1) A licence issued under this Act shall be issued subject to the terms and conditions that the Bank of Ghana may impose.

(2) The terms and conditions of a licence may be stated in the notice of approval of a licence and shall be considered to form part of the licence for purposes of this Act.

(3) A licence shall be designated either as a banking licence or a specialised deposit-taking institution licence.

(4) A specialised deposit-taking institution licence shall be issued to an applicant whose primary activities are limited to deposit-taking business.

(5) The name of a specialised deposit-taking institution shall clearly designate which category of specialised deposit-taking institution licence that institution operates under, in accordance with rules prescribed by the Bank of Ghana.

(6) For purposes of this Act, the Bank of Ghana shall by notice published in the *Gazette* or in at least two daily newspapers of national circulation indicate the designation of a licence issued to a company before the coming into force of this Act.

Pre-requisites for a licence

9. The Bank of Ghana shall not issue a licence to an applicant unless the Bank of Ghana is satisfied that

(a) the feasibility report submitted by the applicant under section 7 is based on sound analysis under reasonable assumptions;

(b) the proposed directors and key management personnel of the applicant are fit and proper persons;

(c) the significant shareholders are suitable and the ownership structure of the proposed bank or specialised deposit-taking institution will not hinder effective supervision, including supervision on a consolidated basis;

(d) the paid-up capital of the applicant is adequate and the original sources of capital are acceptable and do not include borrowed funds;

(e) the arrangements for governance, including accounting, risk management, and internal control systems and records of the applicant are adequate;

(f) the applicant is not a shell company; and

(g) the applicant has complied with this Act, the Regulations, directives, and other legally-binding instruments made under this Act and any conditions that the Bank of Ghana may impose.

Provisional approval

10. (1) Without limiting section 9, the Bank of Ghana may issue a provisional approval of a licence for a subsidiary of a foreign bank or specialised deposit-taking institution if the Bank of Ghana is satisfied that

(a) the foreign bank or specialised deposit-taking institution is adequately supervised on a global consolidated basis by the home country supervisor of that bank or specialised deposit-taking institution, and

(b) arrangements for cooperation, coordination, and information-sharing with the home country supervisor are in place.

(2) The Bank of Ghana may issue a provisional approval for a specified licence to an applicant on the terms and conditions that the Bank of Ghana considers appropriate, if the Bank of Ghana is satisfied that

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

(b) the applicant has and will maintain an unimpaired paid up capital as specified in section 28 and holds a licence of the specified type as required; and

(c) where the applicant is a subsidiary of a foreign company, the applicant will maintain within the country the required capital in the form of funds transferred from abroad together with other funds that may be determined by the Bank of Ghana.

(3) The Bank of Ghana may vary the requirements under paragraph (b) of subsection (2), in the case of a rural or community bank or any other specialised deposit-taking institution that the Bank of Ghana may determine.

(4) Where the bank or specialised deposit-taking institution fails to comply with the terms and conditions of the provisional approval within one year of the provisional approval, the provisional approval shall lapse.

(5) Despite the issuance of a provisional approval under subsection (1), the Bank of Ghana may in writing withdraw the provisional approval if additional information subsequently made available to the Bank of Ghana justifies the withdrawal.

Invitation to public to subscribe to shares

11. (1) An application for a licence under section 7 shall not include an invitation to raise capital through a public issue of shares for the purpose of the proposed deposit-taking business until the applicant concerned obtains a final approval in accordance with section 12.

(2) The Bank of Ghana may for stated reasons vary the requirement under subsection (1), in respect of rural or community banks.

(3) An applicant who contravenes subsection (1), is liable to pay to the Bank of Ghana an administrative penalty of five thousand penalty units.

Final approval and issuance of banking or specialised deposit-taking institution licence

12. (1) The Bank of Ghana may grant the applicant a final approval and issue a licence to carry on a deposit-taking business of a specified type, where the Bank of Ghana is satisfied

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

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

(c) that the prerequisites of a licence specified in section 9 have been met.

(2) The holder of a licence issued under this Act shall in addition to the processing fee for the application of a licence, pay to the Bank of Ghana

(a) an initial licence fee, and

(b) the annual licence fee,

that the Bank of Ghana may by notice specify.

(3) The Bank of Ghana shall notify the institution responsible for deposit protection of the issuance of a licence to a bank or specialised deposit-taking institution.

Non transferability or assignment of licence

13. (1) A licence issued by the Bank of Ghana shall not be transferred or assigned.

(2) A person who transfers or assigns a licence issued by the Bank of Ghana commits an offence and is liable on summary conviction to a fine of not less than two thousand penalty units and not more than four thousand penalty units.

Conditions for issuance of licence

14. (1) A licence issued under this Act shall be subject to the conditions that the Bank of Ghana may impose, including

(a) membership of the Ghana Deposit Protection Scheme, and

(b) the activities in which the bank or specialised deposit-taking institution is permitted to engage in.

(2) The Bank of Ghana may amend or vary a condition attached to a licence issued to a bank or specialised deposit-taking institution.

(3) The Bank of Ghana shall before taking an action under subsection (2) notify the bank or specialised deposit-taking institution concerned in writing.

(4) Where a bank or specialised deposit-taking institution is dissatisfied with the decision of the Bank of Ghana, that bank or specialised deposit-taking institution may, within seven days of receipt of the notice, make a representation in writing to the Bank of Ghana.

(5) The Bank of Ghana shall, after considering the representation made by the bank or specialised deposit-taking institution, take a decision and notify the bank or specialised deposit-taking institution concerned of the decision made.

Refusal of licence

15. (1) The Bank of Ghana may refuse an application for a licence to carry on deposit-taking business where in view of the prevailing conditions in the banking and specialised deposit-taking institution sector or in keeping with the policy on banks and specialised deposit-taking institutions, the Bank of Ghana is not satisfied with the merits of the application.

(2) Where the Bank of Ghana refuses an application under subsection (1), the Bank of Ghana may give reasons in writing for the refusal of the application.

Revocation of licence

16. (1) The Bank of Ghana may revoke a licence issued under section 12, where

(a) the Bank of Ghana is satisfied that an applicant provided false, misleading or inaccurate information in connection with the application for a licence or suppressed material information;

(b) the bank or specialised deposit-taking institution fails to commence business within one year from the date the licence was issued;

(c) the bank or specialised deposit-taking institution fails to fulfill or comply with the terms and conditions stipulated in the licence;

(d) the bank or specialised deposit-taking institution carries on business in a manner which is contrary or detrimental to the interests of depositors or the public;

(e) the bank or specialised deposit-taking institution has been convicted by a domestic court or any other court of competent jurisdiction of a crime related to money laundering or terrorist financing or is an affiliate or subsidiary of a parent or holding company which has been so convicted;

(f) in the judgment of the Bank of Ghana, the bank or specialised deposit-taking institution engages in unsafe or unsound practices; or

(g) the bank or specialised deposit-taking institution persistently contravenes this Act, the Regulations, directives or orders made under this Act.

(2) Subsection (1) does not limit the power of the Bank of Ghana to take any other remedial or penal action against a bank or specialised deposit-taking institution.

(3) Where the Bank of Ghana proposes to revoke the licence of a bank or specialised deposit-taking institution under subsection (1), the Bank of Ghana shall

(a) give notice in writing to the bank or specialised deposit-taking institution,

(b) specify the proposed action and the grounds on which the action is proposed to be taken, and

(c) give the bank or specialised deposit-taking institution an opportunity to make a written representation within thirty days of the service of the notice.

(4) After the expiry of the notice period and considering any representations made by the bank or specialised deposit-taking institution, the Bank of Ghana may

(a) decide whether to take the proposed action; or

(b) vary the proposed action as the Bank of Ghana considers appropriate; and

(c) communicate the decision of the Bank of Ghana to the bank or specialised deposit-taking institution.

(5) Where the Bank of Ghana revokes the licence of a bank or specialised deposit-taking institution, that bank or specialised deposit-taking institution shall cease to carry on the deposit-taking business if the bank or specialised deposit-taking institution has already commenced business and shall surrender the licence.

(6) A revocation of the licence of a bank or specialised deposit-taking institution shall have immediate effect.

(7) Despite subsections (3) and (4), the Bank of Ghana may in cases of emergency, or in the public interest revoke the licence of a bank or specialised deposit-taking institution without notice.

(8) Where a licence is revoked under this section, the Bank of Ghana shall immediately initiate a receivership as provided in sections 123 to 139 and notify the institution responsible for deposit protection.

Central Register

17. (1) There is established by this Act a register to be known as the "Central Register".

(2) The Bank of Ghana shall keep and maintain the Central Register in which shall be recorded

(a) the name, head office and branch office addresses of the licensed banks or specialised deposit-taking institutions;

(b) licences which have been revoked; and

(c) any other information that the Bank of Ghana may determine.

(3) The Bank of Ghana shall publish details of the Central Register on the website of the Bank of Ghana or in any other media that the Bank of Ghana considers fit.

Permissible activities

18. (1) A bank or specialised deposit-taking institution shall not carry on a 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 of means of payment including credit cards, travellers cheques, bankers' drafts and electronic money;

(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) keeping and administration of securities;

(m) credit reference services;

(n) safe custody of valuables;

(o) electronic banking;

(p) payment and collection services;

(q) bancassurance;

(r) non interest banking services; and

(s) any other services that the Bank of Ghana may determine.

(2) Despite subsection (1), a specialised deposit-taking institution shall not engage in the trading of foreign exchange or offer services denominated in a foreign currency.

(3) A bank or specialised deposit-taking institution that is engaged in activities that are subject to the Securities Industry Act, 1993 (PNDCL 333), Foreign Exchange Act, 2006 (Act 723), the Credit Reporting Act, 2007 (Act 726), the Insurance Act, 2006 (Act 724) or any other relevant enactment shall comply with the requirements of that enactment, including any registration, licensing or other authorisation requirements.

(4) The Bank of Ghana may, by directive, restrict the permissible activities of banks or specialised deposit-taking institutions in general, or a class of specialised deposit-taking institutions or remove a restriction imposed as the Bank of Ghana considers appropriate.

(5) A bank or a specialised deposit-taking institution shall seek the prior written approval of the Bank of Ghana to introduce products that are derived from the permissible activities specified under subsection (1).

(6) In pursuance of its permissible activities and in introducing new products, a bank or specialised deposit-taking institution shall ensure that any material, publication or advert relating to the activities and products do not contain false or misleading information.

Restrictions on commercial, agricultural or industrial activities and immovable property

19. (1) Subject to subsection (2), a bank, specialised deposit-taking institution or financial holding company shall not engage directly in a commercial, agricultural or industrial undertaking.

(2) Subject to the limits that the Bank of Ghana may prescribe, a bank, specialised deposit-taking institution or financial holding company shall not build, purchase or take a lease of immovable property except

(a) for the provision of business premises, or for the purpose of housing the staff of the bank or specialised deposit-taking institution; or

(b) for the provision of amenities for staff.

(3) Despite subsection (2), a bank, specialised deposit-taking institution or financial holding company may accept immovable property as collateral security for a debt or other liability and may acquire an interest which a bank, specialised deposit-taking institution or financial holding company may lawfully acquire in the satisfaction of a debt due that bank, specialised deposit-taking institution or financial holding company.

(4) An interest acquired under subsection (3) shall be disposed of by the bank, specialised deposit-taking institution or financial holding company 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, specialised deposit-taking institution or financial holding company.

(5) Subject to the limits that the Bank of Ghana may prescribe, a bank, specialised deposit-taking institution or financial holding company may let or sublet a part of immovable property which is ordinarily used for business where the property is in excess of the immediate requirements of the bank, specialised deposit-taking institution or financial holding company.

(6) A bank, specialised deposit-taking institution or financial holding company which contravenes a provision of this section is liable to pay to the Bank of Ghana an administrative penalty of one thousand five hundred penalty units and for each day that the contravention continues, an additional penalty of two hundred penalty units.

Powers regarding unauthorised deposit-taking business

20. (1) Where the Bank of Ghana has sufficient reason to believe that a person is transacting or carrying on a deposit-taking business or taking deposits in contravention of section 6, the Bank of Ghana may, in writing authorise an officer of the Bank of Ghana to perform the functions under subsections (2) and (3).

(2) An authorised officer may

(a) enter any premises or property which the Bank of Ghana has reason to believe is occupied or used by a person for a purpose in contravention of section 6;

(b) search for a book, record, statement, document or any other item used or which is believed to be used, in contravention of section 6;

(c) seize or make a copy of a book, record, statement, document or any other item referred to in paragraph (b), or seize any money or negotiable instrument found on the premises;

(d) question a person who is found on the premises or an auditor, director, member or partner of a person conducting business on the premises, in connection with the conduct of the business on the premises;

(e) direct that the premises of the business or any part of it or anything on the premises, be secured and left undisturbed for as long as is necessary to search the premises for a book, record, statement, document or item under paragraph (b);

(f) examine a book, record, statement, document or any other item referred to in paragraph (b) and may require from a person referred to in paragraph (d) an explanation regarding any entry in the book, record, statement, document or other item; and

(g) close down the business of a person referred to in subsection (1).

(3) An authorised officer may by notice in writing

(a) addressed and delivered to a person who has control over or custody of a book, record, statement, document or any other item referred to in paragraph (b) of subsection (2), require that person to produce the book, record, statement, document or other item to that authorised officer of the Bank of Ghana at the place, on the date and at the time specified in the notice;

(b) instruct a bank, specialised deposit-taking institution or other entity to freeze an account of a person referred to in this section with the bank, specialised deposit-taking institution or other entity and to retain all moneys in that account, pending further instructions of the Bank of Ghana; and

(c) delivered to a person referred to in this section, direct that the business of that person be summarily suspended, pending investigation by the Bank of Ghana under this section.

(4) Where the authorised officer performs a function under this section in the presence of a person affected by the performance of the function, the authorised officer shall, at the request of the person affected, furnish the person with the written authorisation referred to in subsection (1).

(5) A person shall not

(a) hinder or obstruct an authorised officer of the Bank of Ghana in the performance of the functions of that officer;

(b) refuse or fail to comply with a request made by an authorised officer in the performance of the functions of that authorised officer;

(c) refuse or fail to answer a question which an authorised officer lawfully directs at that person in the performance of the functions of that authorised officer;

(d) knowingly furnish an authorised officer with false or misleading information; or

(e) falsely represent that that person is an authorised officer of the Bank of Ghana.

(6) A person who contravenes paragraph (a), (b), (d) or (e) of sub-section (5), commits an offence and is liable on summary conviction to a fine of not less than five hundred penalty units and not more than one thousand penalty units or a term of imprisonment of not less than two years and not more than four years or both.

(7) A person who contravenes paragraph (c) of subsection (5) commits an offence and is liable on summary conviction to a fine of not less than one hundred and twenty-five penalty units and not more than two hundred and fifty penalty units.

Repayment of moneys by unauthorised persons

21. (1) Where the Bank of Ghana is satisfied that a person has obtained moneys in contravention of section 6, the Bank of Ghana shall, in writing, instruct that person to

(a) repay all the moneys obtained and profits accrued,

(b) return assets acquired as a result of the illegally obtained moneys or deposits, or

(c) pay any interest or other amounts which may be owing by that person in respect of those moneys,

to the respective persons from whom the moneys were obtained.

(2) A person required to comply with the instructions of the Bank of Ghana under subsection (1) shall comply

(a) in the manner determined by the Bank of Ghana; and

(b) within the period determined by the Bank of Ghana and specified in the instruction.

(3) A person who fails to comply with an instruction under sub-sections (1) and (2) shall be deemed bankrupt or unable to pay the debts and the Bank of Ghana may apply to the High Court for the winding-up, or for the sequestration of the estate of that person.

(4) Subsections (1), (2) and (3) do not affect the criminal liability of a person under this Act.

Penalties for unauthorised deposit-taking business

22. (1) A person who carries on a deposit-taking business

(a) in contravention of subsections (1) and (4) of section 6, or

(b) in breach of the conditions of a licence,

commits an offence.

(2) A person who commits an offence under subsection (1) is liable on summary conviction

(a) in the case of a body corporate or other body of persons, to a fine of not less than two thousand five hundred penalty units and not more than five thousand penalty units;

(b) in the case of a director of a body corporate or other body of persons, to a fine of not less than one thousand five hundred penalty units and not more than three thousand penalty units or to a term of imprisonment of not less than two years and not more than four years; and

(c) in the case of an individual, to a fine of not less than one thousand five hundred penalty units and not more than three thousand penalty units or to a term of imprisonment of not less than two years and not more than four years.

Use of the word "bank"

23. (1) Except as otherwise provided for in this Act, a person, other than a company holding a banking licence, shall not hold itself out as a bank or use the word "bank" or any of its derivatives in any language, or any word that sounds like "bank" in the description or that person is carrying on financial services business in Ghana, or make a representation to this effect in any billhead, letter, paper, notice, advertisement or in any other manner.

(2) The use of the word "bank" in the name of an association of banks or of employees of a bank formed for the promotion of mutual interests of its members shall not be construed as a contravention of subsection (1).

(3) Despite subsection (1), a specialised deposit-taking institution that is licensed as a rural or community bank may use the term "rural bank" or "community bank".

(4) The Bank of Ghana may prescribe similar restrictions on the use of terminology related to other classes of specialised deposit-taking institutions.

(5) A specialised deposit-taking institution shall in all correspondence, publications and advertisement, use the full name of that specialised deposit-taking institution as stated on the licence issued by the Bank of Ghana.

(6) The Bank of Ghana may order a person who contravenes this section to cease using the terminology that caused the contravention and to change the name under which that person operates.

(7) A person who contravenes this section is liable to pay to the Bank of Ghana an administrative penalty of one thousand five hundred penalty units.

Display of licence

24. (1) A bank or specialised deposit-taking institution shall display at the head office, branches and agencies of that bank or specialised deposit-taking institution, copies of the licence for the information of the public.

(2) A bank or specialised deposit-taking institution which fails to comply with subsection (1) is liable to pay to the Bank of Ghana an administrative penalty of one thousand penalty units.

Places of business to be licensed

25. (1) A bank or specialised deposit-taking institution shall not carry on a deposit-taking business at a place other than a place authorised in accordance with this Act.

(2) A bank or specialised deposit-taking institution shall not open,

close or relocate

(a) a branch,

(b) an agency,

(c) a mobilization centre,

(d) the head office, or

(e) any other operational or support centre or office,

for purposes of carrying on a deposit-taking business unless specifically authorised by the Bank of Ghana.

(3) A bank or specialised deposit-taking institution which contravenes this section is liable to pay to the Bank of Ghana an administrative penalty of one thousand penalty units.

(4) In addition to the penalty prescribed in sub-section (3), the Bank of Ghana may suspend the operations of the branch, agency, mobilisation center, head office or other operational or support centre of the bank or specialised deposit-taking institution involved until the bank or specialised deposit-taking institution obtains approval from the Bank of Ghana.

Representative offices

26. (1) A foreign specialised deposit-taking institution shall not establish a representative office in the country.

(2) A foreign bank shall not establish a representative office in the country unless it obtains the prior written approval of the Bank of Ghana.

(3) A foreign bank which seeks to establish a representative office in the country shall apply to the Bank of Ghana with the information and documents that the Bank of Ghana may require, including permission from the supervisor in the country where that bank has its head office or is incorporated.

(4) Where the Bank of Ghana is satisfied that the foreign bank has satisfied the requirements specified under subsection (3), the Bank of Ghana shall issue the foreign bank with a certificate of approval.

(5) A representative office of a foreign bank in the country shall display in a conspicuous place at the premises of that representative office, a copy of the certificate of approval issued under subsection (4) for the information of the public.

(6) A representative office of a foreign bank shall only provide information and perform liaison functions.

(7) A representative office of a foreign bank shall not transact any form of deposit-taking or other business in the country.

(8) The Bank of Ghana may require a director or key management personnel of a representative office to submit information or data relating to the assets, liabilities, income, expenditure or any of the affairs of the representative office.

(9) With respect to a reporting requirement under this section or any other section of this Act, the Bank of Ghana may prescribe

(a) the details of the information that is required,

(b) the form in which the information shall be reported, and

(c) the times or intervals of time at which the reporting is required.

(10) A foreign bank or representative office which fails to comply with this section commits an offence and is liable on summary conviction to a fine of not less than one thousand five hundred penalty units and not more than three thousand penalty units.

Change of Company Regulations and other instruments of banks or specialised deposit - taking institutions

27. (1) A bank or specialised deposit-taking institution shall, before making an amendment to the company name, Company Regulations or other instrument under which that bank or specialised deposit-taking institution was established, furnish the Bank of Ghana with particulars of the proposed amendment for approval.

(2) The bank or specialised deposit-taking institution shall within one month after the amendment is effected file with the Bank of Ghana, a certified copy of the amendment.

(3) A bank or specialised deposit-taking institution which contravenes this section is liable to pay to the Bank of Ghana an administrative penalty of two thousand five hundred penalty units.

Capital and Reserves

Minimum paid-up capital

28. (1) A bank or specialised deposit-taking institution shall ensure that while in operation, it maintains in the country a minimum paid-up capital, unimpaired by losses including accumulating losses or other adjustments, as may be prescribed by the Bank of Ghana for banks and specialised deposit-taking institutions.

(2) The Bank of Ghana may prescribe different requirements under this section for different classes of specialised deposit-taking institutions.

(3) For the purpose of calculating impairment of paid-up capital, losses shall be set off in the following order:

(a) against income surplus and other distributable reserves excluding revaluation reserves; and

(b) against the Reserve Fund established under section 34.

(4) A financial holding company shall maintain at all times a minimum paid up capital, unimpaired by losses or other adjustments, as may be prescribed by the Bank of Ghana.

Capital adequacy and other capital requirements

29. (1) The Bank of Ghana shall, by a directive, prescribe a risk-based capital adequacy requirement, which may be measured as a percentage of the capital of the bank, specialised deposit-taking institution or financial holding company to its assets.

(2) The minimum capital adequacy ratio shall be at least ten percent.

(3) The Bank of Ghana may, having regard to the risk and vulnerability of the financial system,

(a) prescribe a higher capital adequacy ratio percentage, or

(b) prescribe different ratios for different banks, financial holding companies and for different classes of specialised deposit-taking institutions.

(4) The minimum capital adequacy ratio shall be calculated in accordance with the methodology prescribed in the directive issued by the Bank of Ghana.

(5) The Bank of Ghana may, for the purpose of calculating the minimum capital adequacy ratio, define eligible capital, categories of risk assets and appropriate adjustments and additions.

(6) The Bank of Ghana may prescribe one or more capital buffers above that required by the minimum capital adequacy ratio and shall further prescribe whether failure to maintain the required buffer will constitute failure to meet the minimum capital requirements for purposes of sections 91 to 139.

(2) A bank, specialised deposit-taking institution or financial holding company which fails to notify the Bank of Ghana as required under subsection (1) is liable to pay to the Bank of Ghana an administrative penalty of one thousand penalty units.

Penalty for non-compliance with capital requirements

33. (1) A bank, specialised deposit-taking institution or financial holding company which fails to maintain the level of minimum unimpaired paid up capital required under section 28 or the capital adequacy ratio required under sections 29 to 31 is liable to pay to the Bank of Ghana a penalty of one-half per mille of the difference between the capital that the entity should have maintained and the level of capital actually maintained by the entity for each day that the default continues.

(2) A director and the chief executive of a bank or specialised deposit-taking institution which fails to comply with the minimum capital adequacy ratio are personally liable to pay to the Bank of Ghana an administrative penalty of five hundred penalty units.

Reserve Fund

34. (1) A bank or specialised deposit-taking institution shall establish and maintain a Reserve Fund into which shall be transferred out of net profits for each year

(a) where the amount of the Reserve Fund is less than fifty per cent of the paid-up capital of the bank or specialised deposit-taking institution, an amount which is not less than fifty per cent of the net profit for the year;

(b) where the amount of the Reserve Fund is fifty per cent or more but less than one hundred per cent of the paid-up capital of the bank or specialised deposit-taking institution, an amount which is not less than twenty five per cent of the net profit for the year; or

(c) where the amount of the Reserve Fund is equal to one hundred per cent or more of the paid-up capital of the bank or specialised deposit-taking institution, an amount equal to twelve and half per cent of the net profit for the year.

(2) The transfer required under subsection (1) shall be made

(a) before the declaration of interim or final dividends, and

(b) after making provision for tax.

(3) A bank or specialised deposit-taking institution which fails to maintain a Reserve Fund in accordance with subsection (1), is liable to pay to the Bank of Ghana an administrative penalty of two thousand penalty units.

Restrictions on declaration and payment of dividend

35. (1) A bank or specialised deposit-taking institution shall not declare or pay interim or final dividend on the shares of that bank or specialised deposit-taking institution unless the bank or specialised deposit-taking institution has

(a) completely written-off capitalised expenditure,

(b) made the required provision for non-performing loans and other erosions in asset values,

(c) satisfied the prescribed capital requirements,

(d) completely written-off accumulated operating losses from the normal operations of that bank or specialised deposit-taking institution,

(e) made the required transfer to the Reserve Fund under section 34,

(f) satisfied the obligations of that bank or specialised deposit-taking institution under the Ghana Deposit Protection Act, 2015 (Act) and paid any outstanding premium owed the Ghana Deposit Protection Corporation, and

(g) clawed back any dividend paid in contravention of section 34.

(2) Where

(a) the payment of dividend results in the withdrawal of a part of the free reserves due to inadequacy of the profit for the year; or

(b) the statutory report of the auditors on the annual accounts of the bank or specialised deposit-taking institution is not satisfactory,

the bank or specialised deposit-taking institution may declare a dividend on shares only

(3) Where a bank or specialised deposit-taking institution declares or pays a dividend in contravention of subsection (1) or (2) each director of the bank or specialised deposit-taking institution is personally liable to pay to the Bank of Ghana an administrative penalty of five hundred penalty units.

(4) A director is not liable to pay the penalty under subsection (3) if

(a) the contravention was committed without the knowledge or consent of that director; or

(b) the director exercised due diligence to prevent the commission of the contravention having regard to all the circumstances.

(5) A bank or specialised deposit-taking institution which contravenes a provision of this section is liable to pay to the Bank of Ghana an administrative penalty of one thousand penalty units.

(6) For the purposes of this section, "capitalised expenditure" includes preliminary expenses and any other item of expenditure not represented by tangible assets as may be determined by the Bank of Ghana.

Liquidity

Liquidity requirements

36. (1) The Bank of Ghana shall prescribe one or more liquidity requirements for banks, specialised deposit-taking institutions and financial holding companies.

(2) The details of the requirements shall be specified by directive and may specify different liquidity requirements for banks, specialised deposit-taking institutions or classes of specialised deposit-taking institutions and financial holding companies.

(3) The Bank of Ghana may, in addition to subsection (1), prescribe qualitative criteria required for the liquidity risk management policies and procedures of the bank, specialised deposit-taking institution or financial group.

(4) A bank or specialised deposit-taking institution shall, at a time and in respect of a period that the Bank of Ghana may require, submit to the Bank of Ghana a report on the liquid assets of that bank or specialised deposit-taking institution.

(5) A bank or specialised deposit-taking institution which fails to comply with subsection (4) shall pay to the Bank of Ghana the penalty provided under section 93 (3).

(6) A bank or specialised deposit-taking institution that contravenes subsection (4) is, in addition to the penalty specified in subsection (5), liable to pay to the Bank of Ghana an administrative penalty of an amount calculated as one half per mille of the deficiency for each day that the deficiency persists.

Maintenance of liquid assets on a consolidated basis

37. The Bank of Ghana may by directive prescribe liquidity requirements under section 36 that are to be applied on a consolidated basis to

(a) a bank, specialised deposit-taking institution and a subsidiary of a bank or specialised deposit-taking institution, and

(b) a financial holding company and a subsidiary of a financial holding company.

Additional liquidity requirement for additional risk

38. The Bank of Ghana may impose a higher liquidity requirement than that prescribed under section 36 on an individual bank, specialised deposit-taking institution, or financial holding company to address increased liquidity risks in the bank, specialised deposit-taking institution or financial holding company, or in the financial system.

Notification of non-compliance with minimum liquidity requirements

39. (1) A bank or specialised deposit-taking institution which fails to comply with the required liquidity requirements shall promptly notify the Bank of Ghana of the non-compliance and provide the Bank of Ghana with the particulars of the non-compliance, including the reasons for the breach and the measure taken to rectify the breach.

(2) A bank or specialised deposit-taking institution that fails to comply with subsection (1) is liable to pay to the Bank of Ghana an administrative penalty of one thousand penalty units.

Penalties for non-compliance with liquidity requirements

40. (1) A bank, specialised deposit-taking institution or financial holding company which fails to hold liquid assets in accordance with section 36 is liable, in addition to any other penalty, to pay interest to the Bank of Ghana at a rate to be prescribed by the Bank of Ghana on the difference between the total amount of liquid assets which it is required to hold and the total amount of liquid assets actually held, in respect of a period during which a difference exists.

(2) Despite any other action that the Bank of Ghana may take, the Bank of Ghana may issue an order under section 103 requiring that, during a period specified in the order, the bank, specialised deposit-taking institution or financial holding company shall

(a) discontinue or limit in a manner specified, the granting of credit or the making of investments or capital expenditure;

(b) not distribute dividends to shareholders; and

(c) be subject to enhanced reporting.

(3) A bank, specialised deposit-taking institution or financial holding company which makes a fresh advance to a person during the existence of a deficiency in the amount specified of its liquid assets without the approval of the Bank of Ghana is liable to pay to the Bank of Ghana an administrative penalty of five hundred penalty units.

(4) A bank, specialised deposit-taking institution or financial holding company which contravenes subsection (2) is, in addition to the penalty specified in subsection (3), liable to pay to the Bank of Ghana an administrative penalty of forty penalty units for each day that the contravention continues.

(5) To ensure compliance with the requirements of this section, the Bank of Ghana may require a bank, specialised deposit-taking institution or financial holding company to furnish the Bank of Ghana with information by a specified date in a form that the Bank of Ghana considers appropriate.

(6) In addition to the penalty specified in subsections (3) and (4), a director or chief executive of a non-compliant bank, specialised deposit-taking institution or financial holding company is liable to pay to the Bank of Ghana, a penalty in respect of each day during which the deficiency continues of an amount calculated as one half per mille of the deficiency for each day that the deficiency persists.

(7) The Bank of Ghana may waive or postpone the payment of a monetary penalty under this section where

(a) the Bank of Ghana takes some other action to require the bank to remedy the non-compliance, and

(b) in the view of the Bank of Ghana, the imposition of a monetary penalty may worsen the condition of the bank, specialised deposit-taking institution or financial holding company.

Maintenance of Net Open Position

41. (1) A bank shall maintain a Net Open Position as may be prescribed by the Bank of Ghana.

(2) The Bank of Ghana may prescribe different Net Open Position limits for a particular bank or banks.

(3) A bank shall, at a time and in respect of a period that the Bank of Ghana may require, submit to the Bank of Ghana a report on the Net Open Position of the bank.

(4) A bank which fails to comply with this section shall, in addition to any other penalty to which the bank is liable, pay in respect of each day during which the deficiency exists, an amount calculated as one half per mille of the deficiency.

Ownership and Control

Reporting of group structures

42. (1) For purposes of consolidated supervision or any other specialised supervision, a bank or specialised deposit-taking institution that is a member of a corporate group shall at least twice in

each year at times prescribed by the Bank of Ghana, furnish the Bank of Ghana with a complete organisational structure of the group.

(2) The organisational structure shall include

(a) a diagram of the group,

(b) direct and indirect affiliates and associates of the bank or specialised deposit-taking institution,

(c) the nature of the relationship between the affiliates and associates and the group, and

(d) any other information that the Bank of Ghana may require.

(3) Where there is a change to the structure of the corporate group that is not otherwise subject to approval of the Bank of Ghana under this Act, the bank or specialised deposit-taking institution shall report to the Bank of Ghana within the time frame prescribed by the Bank of Ghana.

Registration requirement for financial holding companies

43. (1) A person shall not function as a financial holding company except in accordance with subsection (2), and sections 44 to 47.

(2) An action taken without the prior written approval of the Bank of Ghana which causes

(a) a company to become a financial holding company;

(b) a bank or specialised deposit-taking institution to become a subsidiary of a financial holding company;

(c) a financial holding company to acquire direct or indirect ownership or control of the voting shares of a bank or specialised deposit-taking institution where, after the acquisition, that company will directly or indirectly own or control more than five percent of the voting shares of that bank or specialised deposit-taking institution;

(d) a financial holding company or subsidiary of a financial holding company, other than a bank or specialised deposit-taking institution, to acquire all or substantially all of the assets of a bank or specialised deposit-taking institution; or

(e) a financial holding company to merge or consolidate with any other financial holding company

is unlawful.

(3) The Bank of Ghana may exempt a foreign bank or other foreign company that is subject to regulation and supervision in another jurisdiction

(a) from inclusion in the definition of "financial holding company", or

(b) from the application of one or more of the provisions of this Act applicable to financial holding companies,

where that foreign bank or other foreign company is subject to supervision and regulation that is satisfactory to the Bank of Ghana, including supervision on a consolidated basis, in its home jurisdiction or another host jurisdiction in which it has substantial operations.

(4) An exemption under subsection (3) may be subject to the terms and conditions that the Bank of Ghana considers appropriate having regard to the objectives of consolidated supervision or any other specialised supervision.

Application for registration

44. (1) A person shall not take an action that causes a company to function as a financial holding company unless that company is registered as a financial holding company by the Bank of Ghana.

(2) A person who wishes to be registered as a financial holding company shall

(a) apply in writing to the Bank of Ghana in the form that may be determined by the Bank of Ghana,

(b) pay a non-refundable application fee as may be determined by the Bank of Ghana, and

(c) attach to the application the following information and documents:

(i) the capital resources, including original sources and capital structure of the proposed financial holding company,

(ii) the names, addresses, occupations, business and professional history for the preceding ten years or a longer period that the Bank of Ghana may determine, certified financial positions, and corporate affiliations of persons who will hold or ultimately benefit from significant shareholdings, directly or indirectly, in the proposed financial holding company and the respective values of the shares;

(iii) organisational and managerial structures, including a complete diagram of the group of companies controlled by the proposed financial holding company, identifying the direct and indirect affiliates and associates and the nature of their relationship to the financial holding company;

(iv) the particulars of the directors and key management personnel of the financial holding company, including qualification and experience, business and professional history for the preceding ten years or a longer period that the Bank of Ghana may determine, certified financial position, business interests and performance of the business concerns under their control or management;

(v) the feasibility report, including a business plan and financial projections for the first five years and areas of intended activities;

(vi) audited financial statements for the past three years, if applicable, or for a lesser period that the entity has been in existence if shorter than three years;

(vii) the measures and structures the company intends to adopt to ensure that business is conducted in accordance with sound corporate governance principles;

(viii) for each director, key management personnel or significant shareholder of the proposed financial holding company, a statutory declaration disclosing where applicable, a conviction for offences by a court of competent jurisdiction, personal bankruptcy filings, the disqualifications from practising a profession, or past or present involvement in a managerial function of a body corporate or other undertaking subject to insolvency proceedings; and

(ix) any other particulars that the Bank of Ghana may require.

(3) For the purpose of determining whether to register an applicant as a financial holding company, the Bank of Ghana shall

(a) consider the information referred to in subsection (2), and in particular whether the person controlling the proposed financial holding company is suitable, or may prejudice the interests of depositors and other customers of the bank or specialised deposit-taking institution; and

(b) determine whether ownership of shares by the person controlling the proposed financial holding company, given the corporate affiliations or structure, will hinder effective supervision under this Act or is likely to prejudice the interests of depositors and other customers of the bank or specialised deposit-taking institution.

(4) The Bank of Ghana shall not register an applicant as a financial holding company unless the Bank of Ghana is satisfied that

(a) the feasibility report is based on sound analysis under reasonable assumptions;

(b) key management personnel are fit and proper, and have the integrity, qualification and experience for the positions given the business plan and activities of the proposed bank or specialised deposit-taking institution and taking into account the size, nature and complexity of the proposed financial holding company;

(c) the proposed significant shareholders are suitable and the ownership and managerial structure of the proposed financial holding company will not hinder effective supervision, including supervision on a consolidated basis;

(d) the capital of the applicant is adequate and the original sources of capital are not tainted and do not include borrowed funds;

(e) the arrangements for corporate governance, including accounting, risk management, and internal control systems and records of the applicant are adequate;

(f) the applicant has the capacity to comply with the other conditions that the Bank of Ghana may impose; and

(g) where the applicant is a foreign company,

(i) the Bank of Ghana is satisfied that the foreign bank or specialised deposit-taking institution is adequately supervised on a global consolidated basis by the home country supervisor of that bank or specialised deposit-taking institution, and

(ii) arrangements satisfactory to the Bank of Ghana for cooperation, coordination, and information-sharing with the home country supervisor are in place.

(5) The Bank of Ghana may impose conditions in respect of the registration of a financial holding company under this section, and may vary, remove or add further conditions that the Bank of Ghana considers necessary to carry out the purposes of this Act.

(6) The Bank of Ghana shall

(a) within ten working days of the receipt of an application, acknowledge in writing the receipt of the application;

(b) within six months after the receipt of complete information in respect of an application communicate its decision in writing on the application for registration to the applicant.

(7) Despite paragraph (b) of subsection (6) where the Bank of Ghana is of the opinion that further investigation or information is required to process the application, the Bank of Ghana shall within a reasonable period after the six month period specified under paragraph

(b) of subsection (6) notify the applicant in writing of the decision of the Bank of Ghana.

(8) The Bank of Ghana shall on satisfying itself that the applicant has

(a) paid the application fee, and

(b) satisfied all other preconditions, issue a certificate of registration to the applicant.

(9) Where the Bank of Ghana rejects an application, the Bank of Ghana may provide reasons in writing to the applicant.

Display of certificate of registration

45. (1) A financial holding company shall display at the head office of that financial holding company a copy of the certificate of registration issued to that company for the information of the public.

(2) A financial holding company which fails to comply with subsection (1) is liable to pay to the Bank of Ghana an administrative penalty of not more than one thousand penalty units.

Restriction on activities of financial holding companies

46. (1) A financial holding company shall not

(a) without the prior written approval of the Bank of Ghana, directly or indirectly control any member of another financial group, whether through establishment or acquisition or otherwise; or

(b) directly or indirectly, acquire or hold a share or ownership interest in a commercial, agricultural or industrial company or unincorporated entity.

(2) A financial holding company may invest in a company that engages in activities permissible for banks and specialised deposit-taking institutions under section 18 and any other activities that may be determined by the Bank of Ghana.

(3) For the purpose of subsection (2), the Bank of Ghana may prescribe rules relating to

(a) the maximum percentage of shares of a class or the maximum value of ownership interests that may be acquired or held;

(b) the maximum aggregate value of the shares and ownership interest referred to in paragraph (a); and

(c) any other matter in respect of the activities permissible for banks and specialised deposit-taking institutions.

(4) The Bank of Ghana may exempt a company from the requirement of subsection (1) if that company is

(a) a foreign bank or specialised deposit-taking institution,

(b) a foreign financial institution, or

(c) a foreign financial holding company

and the Bank of Ghana is satisfied that the permitted activities of that bank, specialised deposit-taking institution, foreign financial institution or foreign financial holding company are adequately

regulated and supervised and do not present unacceptable risks to the bank or the specialised deposit-taking institutions in the country.

Power to require restructuring of ownership

47. The Bank of Ghana may require the restructuring of the ownership of a bank or specialised deposit-taking institution where

(a) that bank or specialised deposit-taking institution is controlled by two or more persons acting in concert and those persons also control one or more other companies; or

(b) the Bank of Ghana determines that the structure of a corporate group of which a bank or specialised deposit-taking institution is a member hinders effective supervision on a solo or consolidated basis.

Withdrawal of registration by Bank of Ghana

48. (1) The Bank of Ghana may withdraw the registration of a financial holding company and require divestiture of a bank or specialised deposit-taking institution licensed under this Act, where

(a) the financial holding company persistently fails to comply with the requirements of this Act,

(b) the financial holding company fails to comply with the conditions of registration,

(c) the financial holding company ceases to meet the requirements for registration as a financial holding company,

(d) the Bank of Ghana determines that registration was granted based on false or inaccurate information,

(e) the Bank of Ghana determines that the financial holding company is insolvent or is likely to become insolvent,

(f) the parent company of the financial holding company loses its authorisation to conduct deposit-taking business in its home jurisdiction, or

(g) proceedings for bankruptcy, insolvency or an arrangement with creditors are initiated against that financial holding company.

(2) Where a registration is withdrawn under subsection (1), the Bank of Ghana may

(a) require the divestiture of the bank or specialised deposit-taking institution in the country,

(b) restrict transactions between the bank or specialised deposit-taking institution in the country and the financial holding company and other members of the financial group, or

(c) place the financial holding company in official administration or receivership.

Transfer of shares affecting significant shareholdings

49. (1) At the end of June and December of every year, each bank, specialised deposit-taking institution or financial holding company shall

furnish the Bank of Ghana with a report listing the significant shareholders, including ultimate beneficial owners of shares, whether or not they are the owners on record.

(2) Despite any other enactment, a person shall not without the prior approval in writing of the Bank of Ghana

(a) directly or indirectly, alone or in concert with one or more other persons, acquire shares in a bank, specialised deposit-taking institution or financial holding company which together with any existing direct or indirect holdings of that person, constitute a significant shareholding;

(b) directly or indirectly, alone or in concert with one or more other persons, increase the ownership interest of that person in a bank, specialised deposit-taking institution or financial holding company if the aggregate ownership interest of that person after the increase would exceed one of the supervisory thresholds;

(c) directly or indirectly, alone or in concert with one or more other persons sell or dispose of shares in the bank, specialised deposit-taking institution or financial holding company to any other person if as a result of the transaction, the shareholding will fall below one of the supervisory thresholds or cease to be significant in the case of a person who has a significant shareholding in a bank, specialised deposit-taking institution or financial holding company; or

(d) enter into an agreement or arrangement which will result in a change in the control of a financial holding company.

(3) For the purpose of this section, the supervisory thresholds are five, ten, twenty, thirty, fifty or seventy-five percent of equity.

(4) This section does not apply to a transfer of shares for which an application for registration as a financial holding company under section 43 is required, unless an exemption from registration is granted in accordance with that section.

(5) A person seeking approval of a transaction under subsection (2) shall notify the Bank of Ghana three months before the date of the proposed acquisition or disposal.

(6) An application for the acquisition of equity interest in a bank or specialised deposit-taking institution or increase in holdings of equity interests in a bank or specialised deposit-taking institution shall be in the form prescribed by the Bank of Ghana and shall contain the same

information regarding proposed significant shareholders for a bank or specialised deposit-taking institution that is required under section 7 for licensing a bank.

Disapproval of transfer of shares

50. The Bank of Ghana may disapprove a proposed transfer of shares in the interest of sound and prudent management of a bank or specialised deposit-taking institution and the functioning and stability of the overall financial system by preventing

(a) the acquisition of shares by a person who, in the opinion of the Bank of Ghana, would not be a fit and proper person or who may exercise influence to the detriment of that bank or specialised deposit-taking institution,

(b) the sale or disposal of shares by a promoter, director or a person who has a controlling interest which may be detrimental to that bank or specialised deposit-taking institution, or

(c) a transaction in any other situation in which the Bank of Ghana has reason to believe that the transaction may be detrimental to that bank or specialised deposit-taking institution.

Restriction or cap on ownership

51. Without limiting section 50, the Bank of Ghana may prescribe a cap on the ownership of banks or specialised deposit-taking institutions, in the form of a restriction that ownership of a specific type of specialised deposit-taking institution be limited to ownership by individuals or that ownership be capped at a certain percentage for all or some types of owners.

Sale of businesses, mergers, amalgamations and reconstructions

52. (1) A person shall not enter into an agreement or arrangement

(a) for the sale, disposal or transfer of the whole or a part of the business of a bank, specialised deposit-taking institution or financial holding company;

(b) for the amalgamation or merger of a bank, specialised deposit-taking institution or financial holding company with any other bank, specialised deposit-taking institution or financial holding company or any other institution; or

(c) for the reconstruction of a bank, specialised deposit-taking institution or financial holding company

unless the parties to the agreement or arrangement have submitted an application on the proposed agreement or arrangement and all other relevant information and documents for the approval of the Bank of Ghana.

(2) The Bank of Ghana shall communicate its decision on an application under subsection (1) within six months from the date of receipt of complete information.

Consideration of application

53. (1) For the purpose of sections 49 and 52, the Bank of Ghana may in writing require an applicant or a person who is a director, key management personnel or financial holding company of an applicant to provide additional information or documents.

(2) On receipt of the application and any other information and documents in accordance with subsection (1), the Bank of Ghana may consider the application and refuse or approve the application in accordance with section 50 or 52.

(3) An approval granted by the Bank of Ghana is subject to the modifications, variations or conditions that the Bank of Ghana may prescribe.

Review of applications for approval of sale of businesses, mergers, amalgamations, or reconstructions

54. (1) For the purpose of reviewing an application for approval submitted under section 52, the Bank of Ghana shall take into consideration

(a) the financial and managerial resources and future prospects of the existing and proposed institution, or the surviving or acquiring institutions,

(b) the effect of the proposed transaction on competition,

(c) the convenience and needs of the community to be served,

(d) the risk to the stability of the banking or financial system, and

(e) the effectiveness of the existing bank or specialised deposit-taking institution involved in the proposed transaction in combating money laundering and terrorist financing activities.

(2) A transaction involving a foreign bank shall not be approved unless the home supervisor of the foreign bank indicates that it has no objection to the transaction.

(3) A proposed transaction that has the effect to substantially lessen competition shall not be approved, unless the Bank of Ghana finds that the anti-competitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

(4) The Bank of Ghana may, by directive, specify the procedure for processing applications made under section 52 and this section and the factors that the Bank of Ghana will consider in making a determination.

(5) Despite any procedure required under the Companies Act, 1963 (Act 179) for completion of a merger or other transaction described in section 52, a merger or transaction involving a bank or

specialised deposit-taking institution shall not take effect unless the Bank of Ghana approves the merger or transaction under this Act.

(6) A person who acquires shares of a bank or specialised deposit-taking institution in connection with a takeover, merger or amalgamation of a bank or specialised deposit-taking institution shall meet the requirements of this Act before applying for a review and approval of the takeover, merger or amalgamation under the Securities Industry Act, 1933 (PNDCL 333).

Penalties for non-compliance

55. (1) Where the Bank of Ghana has proof that a person has contravened section 49 or 52, the Bank of Ghana may by order

- (a) annul the transfer, merger, amalgamation or reconstruction;
- (b) prohibit the exercise of voting rights in respect of the shares;
- (c) prohibit the payment of dividend in respect of the shares; or
- (d) prohibit the issue of 'bonus shares' or 'rights issue' in respect of the shares.

(2) An order under subsection (1),

- (a) shall be in writing; and
- (b) is binding on the parties to the share transfer and the bank or specialised deposit-taking institution concerned.

Corporate governance

56. The Bank of Ghana may prescribe rules regarding any matter of corporate governance of a bank, specialised deposit-taking institution or financial holding company that the Bank of Ghana considers necessary or appropriate to ensure prudent operation, including matters relating to

- (a) the scope and nature of the duties of directors of a bank, specialised deposit-taking institution or financial holding company;
- (b) the requirements for audit and other specific committees of the Board;
- (c) the responsibilities of key management personnel;
- (d) risk management;
- (e) internal audit; and
- (f) internal controls and compliance.

Duty of directors to report

57. (1) The board of directors or any director shall report, in writing, to the Bank of Ghana if there is sufficient reason to believe that a bank, specialised deposit-taking institution or financial holding company

(a) may not have the capacity to properly conduct the business of that bank, specialised deposit-taking institution or financial holding company as a going concern;

(b) is not likely to meet the obligations of that bank, specialised deposit-taking institution or financial holding company in the near future;

(c) has suspended or is about to suspend a payment of any kind;

(d) does not or may not meet the capital requirements of that bank, specialised deposit-taking institution or financial holding company as prescribed in this Act;

(e) is engaged in, exposed to or involved in an event which is likely to have a material adverse impact on that bank, specialised deposit-taking institution or financial holding company; or

(f) has contravened or is likely to contravene an enactment.

(2) A director who intends to report a matter referred to in subsection (1), shall make that intention known to the board of directors in writing before reporting to the Bank of Ghana.

(3) Where the board of directors or a director fails, omits or neglects to report to the Bank of Ghana a matter required to be reported under subsection (1), the Bank of Ghana may consider the board of directors or the director concerned no longer fit and proper to perform functions in respect of that office.

(4) Despite subsection (3), the board of directors or a director who contravenes subsection (1), is liable to pay to the Bank of Ghana an administrative penalty of not more than five hundred penalty units.

Disqualification of a director and key management personnel

58. (1) A person shall not be appointed or elected or, accept an appointment or election, as a director or key management personnel of a bank, specialised deposit-taking institution or financial holding company if that person

(a) has been adjudged to be of unsound mind or is detained as a person with a mental disorder under any relevant enactment;

(b) has been declared insolvent or has entered into agreement with another person for payment of the debt of that person and has suspended payment of the debt;

(c) has been convicted of an offence involving fraud, dishonesty or moral turpitude;

(d) has been a director, key management personnel or associated with the management of an institution which is being or has been wound up by a court of competent jurisdiction on account of bankruptcy or an offence committed under an enactment;

(c) has suspended or is about to suspend a payment of any kind;

(d) does not or may not meet the capital requirements of that bank, specialised deposit-taking institution or financial holding company as prescribed in this Act;

(e) is engaged in, exposed to or involved in an event which is likely to have a material adverse impact on that bank, specialised deposit-taking institution or financial holding company; or

(f) has contravened or is likely to contravene an enactment.

(2) A director who intends to report a matter referred to in subsection (1), shall make that intention known to the board of directors in writing before reporting to the Bank of Ghana.

(3) Where the board of directors or a director fails, omits or neglects to report to the Bank of Ghana a matter required to be reported under subsection (1), the Bank of Ghana may consider the board of directors or the director concerned no longer fit and proper to perform functions in respect of that office.

(4) Despite subsection (3), the board of directors or a director who contravenes subsection (1), is liable to pay to the Bank of Ghana an administrative penalty of not more than five hundred penalty units.

Disqualification of a director and key management personnel

58. (1) A person shall not be appointed or elected or, accept an appointment or election, as a director or key management personnel of a bank, specialised deposit-taking institution or financial holding company if that person

(a) has been adjudged to be of unsound mind or is detained as a person with a mental disorder under any relevant enactment;

(b) has been declared insolvent or has entered into agreement with another person for payment of the debt of that person and has suspended payment of the debt;

(c) has been convicted of an offence involving fraud, dishonesty or moral turpitude;

(d) has been a director, key management personnel or associated with the management of an institution which is being or has been wound up by a court of competent jurisdiction on account of bankruptcy or an offence committed under an enactment;

(e) is a director or key management personnel of another bank, specialised deposit-taking institution or financial holding company in the country;

(f) is below the age of eighteen years;

(g) does not have the prior written approval of the Bank of Ghana; or

(h) has defaulted in the repayment of the financial exposure of

that person.

(2) A bank, specialised deposit-taking institution or financial holding company which has knowledge or is aware of a circumstance that subjects a director or key management personnel to disqualification under subsection(1) shall promptly notify the Bank of Ghana.

(3) Where a person becomes disqualified under subsection (1), that person shall immediately cease to hold office as a director or key management personnel and the bank, specialised deposit-taking institution or financial holding company shall immediately terminate the appointment of that person.

(4) A person who contravenes subsection (1) is liable to pay to the Bank of Ghana an administrative penalty of one thousand penalty units.

(5) Subsection (1) (e) does not apply where

(a) a person appointed as a director of the ARB Apex Bank Limited is a director of a rural or community bank;

(b) a person appointed as a director of a rural or community bank is a director of another bank; or

(c) in the opinion of the Bank of Ghana, special circumstances require that the person is appointed as a director of another bank, specialised deposit-taking institution or financial holding company.

Disclosure of interest

59. (1) A person shall, before assuming office as a director or key management personnel of a bank, specialised deposit-taking institution or financial holding company, declare to the board of directors of that bank, specialised deposit-taking institution or financial holding company and the Bank of Ghana

(a) the professional interest of that person or office that person holds as manager, director, trustee or by any other designation; and

(b) the investment or business interest of that person in a firm, company or institution as a significant shareholder, director, partner, proprietor or guarantor

with a view to prevent a conflict of interest with the duties or interests of that person as a director or key management personnel of the bank, specialised deposit-taking institution or financial holding company.

(2) A director or key management personnel of a bank, specialised deposit-taking institution or financial holding company shall

(a) provide an annual declaration of the interests and offices held under subsection (1);

(b) declare to the board of directors of that bank, specialised deposit-taking institution or financial holding company, any material change in business interest or holding of an office when that change occurs.

(3) A director of a bank, specialised deposit-taking institution or financial holding company who has an interest in

(a) a proposed credit facility to be given to a person by that bank or specialised deposit-taking institution, or

(b) a transaction that is proposed to be entered into with any other person shall declare the nature and the extent of that interest to the board of directors and shall not take part in the deliberations and the decision of the board of directors with respect to that request.

(4) A declaration under subsection (3) shall form part of the proceedings of the meeting of the board of directors.

(5) A proposal in which a director has an interest shall be considered and determined by the board of directors.

(6) A person who contravenes a provision of this section ceases to be a director of the bank, specialised deposit-taking institution or financial holding company and an approval granted to that person by the board of directors in respect of a matter in which that person is interested renders the approval unenforceable.

Intervention of the Bank of Ghana in appointments

60. (1) A bank or specialised deposit-taking institution shall seek the prior written approval of the Bank of Ghana before it appoints a Chief Executive or Deputy Chief Executive of that bank or specialised deposit-taking institution.

(2) A Chief Executive or Deputy Chief Executive in respect of whom an approval is sought under subsection (1) shall be ordinarily resident in the country.

(3) Despite sub-clause (2), where the Bank of Ghana is satisfied that exceptional circumstances exist, the Bank of Ghana may approve the appointment of a Chief Executive or Deputy Chief Executive who is not ordinarily resident in the country.

(4) A bank or specialised deposit-taking institution shall not appoint a person as a key management personnel without the prior written approval of the Bank of Ghana.

(5) A bank or specialised deposit-taking institution shall not appoint or elect a director without the prior written notice and subsequent approval of the Bank of Ghana.

(6) The Bank of Ghana shall not grant approval under subsection (1) if, in the opinion of the Bank of Ghana, that person is not a fit and proper person to be appointed as a Chief Executive or Deputy Chief Executive of a bank or specialised deposit-taking institution.

(7) Where the Chief Executive is unable to perform the official functions of a Chief Executive due to illness, or is absent from the country or any other sufficient cause, the Deputy Chief Executive or a designated key management personnel shall act as the Chief Executive,

after notifying the Bank of Ghana as soon as practicable.

(8) A bank or specialised deposit-taking institution shall notify the Bank of Ghana of the changes in the membership of the board of directors and key management personnel of that bank or specialised deposit-taking institution.

(9) Where the Bank of Ghana considers that a director is not a fit and proper person to act as a director of a bank or specialised deposit-taking institution, the Bank of Ghana shall, after hearing representations made by that bank or specialised deposit-taking institution, direct the removal of that director.

(10) Where the Bank of Ghana considers that a director or a member of the key management personnel is not a fit and proper person to hold that position based on a change in circumstances or a notification under subsection (2) of section 58, it shall direct the removal of that director or key management personnel after hearing the representations made by that bank, specialised deposit-taking institution or financial holding company.

(11) A bank, specialised deposit-taking institution or financial holding company shall comply with a directive issued under subsections (9) and (10).

(12) A bank, specialised deposit-taking institution or financial holding company shall not outsource a function to any other person without the written approval of the Bank of Ghana.

(13) A bank, specialised deposit-taking institution or financial holding company which contravenes a provision of this section shall pay to the Bank of Ghana an administrative penalty of one thousand penalty units.

Restrictions on Lending and Investments

Prohibition of an advance against security of own shares

61. (1) A bank or specialised deposit-taking institution shall not grant an advance, loan or credit facility including a guarantee against the security of

(a) the shares of that bank or specialised deposit-taking institution;

(b) the shares of the financial holding company;

(c) the shares of a subsidiary of that bank or specialised deposit-taking institution; or

(d) the shares of a subsidiary of the financial holding company.

(2) A bank or specialised deposit-taking institution shall not issue shares that are paid for by funds borrowed from that bank or specialised deposit-taking institution.

(3) A transaction carried out in contravention of subsections (1) and (2) is void.

(4) A director or key management personnel who contravenes subsection (1) or (2) is personally liable to pay to the Bank of Ghana an administrative penalty of two thousand and five hundred penalty units.

Limits on financial exposure

62. (1) A bank or specialised deposit-taking institution shall not take financial exposure in respect of a person or a group of connected persons which constitutes in the aggregate, a liability amounting to more than twenty-five percent of the net own funds of that bank or specialised deposit-taking institution or a lower percentage that the Bank of Ghana may prescribe.

(2) For purposes of subsection (1), an unsecured financial exposure shall not exceed ten per cent of the net own funds of a bank or specialised deposit-taking institution.

(3) For the purpose of this section, two or more persons constitute a group of connected persons if

(a) a direct or indirect control relationship exists among them;

(b) any other relationship exists to the extent that the financial soundness of any of them may affect the financial soundness of the other person;

(c) the same factors may affect the financial soundness of some persons or the group; or

(d) as a result of the structure of their relationship, the other person is ultimately responsible for or benefits from the financial exposure outstanding.

(4) For the purpose of this section, the Bank of Ghana

(a) may provide guidance for banks and specialised deposit-taking institutions in determining whether a connection exists among a group of persons; and

(b) shall where it is uncertain that a connection exists, determine if a connection exists on an individual basis, based on the facts and circumstances of a group of persons.

(5) The Bank of Ghana may prescribe that a deposit with a bank outside the country solely for correspondent banking purposes

(a) be subject to a higher limit; or

(b) be exempt from the application of subsection (1).

(6) A bank or specialised deposit-taking institution shall within five days

(a) report to the Bank of Ghana a financial exposure that exceeds the limits of this section; and

(b) provide a written plan for remedying the violation as soon as practicable.

(7) The aggregate amount of all large financial exposures of a bank or specialised deposit-taking institution shall not at any time exceed the percentage level of net own funds prescribed by the Bank of Ghana having regard to the risk and vulnerability of the financial system.

(8) For the purpose of this section, in computing the financial exposure the following assets that may be held as collateral shall be deducted:

(a) cash deposit;

(b) lien on term deposit with the bank or specialised deposit-taking institution;

(c) market value of treasury bills, Government securities, bank securities; and

(d) any other security of a similar nature approved by the Bank of Ghana.

(9) A financial exposure shall not be considered as secured unless it is adequately secured by a collateral having a market value of at least one hundred and twenty percent of the outstanding amount of the exposure throughout the term of the financial exposure.

(10) A bank or specialised deposit-taking institution which assumes financial exposure in contravention of this section shall pay to the Bank of Ghana a penalty calculated as the base rate of the bank or specialised deposit-taking institution and a risk premium of five percentage point of the over exposure.

(11) A director or key management personnel who contravenes a provision of this section is personally liable to pay to the Bank of Ghana, an administrative penalty of two thousand five hundred penalty units.

Financial exposure limits on a consolidated basis

63. The financial exposure limits referred to in section 62 shall be applied on a consolidated basis to

(a) a bank or specialised deposit-taking institution and the subsidiaries of that bank or specialised deposit-taking institution; and

(b) a financial holding company and the subsidiaries of that financial holding company.

Restrictions on transactions with an affiliate

64. (1) A bank, specialised deposit-taking institution or financial holding company shall not grant or permit to be outstanding, a financial exposure in respect of an affiliate of that bank, specialised deposit-taking institution or financial holding company except on terms which are non-preferential in all respects including creditworthiness, term, interest rate and the value of the collateral. . .

(2) A bank, specialised deposit-taking institution or financial holding company shall not take a financial exposure in respect of an affiliate if the aggregate of the financial exposures to the affiliates of the bank, specialised deposit-taking institution or financial holding company exceeds twenty-five percent of the net own funds.

(3) Despite subsections (1) and (2), the Bank of Ghana may, by order, set a specific limit on a financial exposure to an affiliate on an individual basis, having regard to the circumstances of the bank, specialised deposit-taking institution or financial holding company.

(4) A bank, specialised deposit-taking institution or financial holding company which contravenes a provision of this section is liable to pay to the Bank of Ghana an administrative penalty of two thousand five hundred penalty units.

(5) A director or key management personnel who contravenes a provision of this section is personally liable to pay to the Bank of Ghana an administrative penalty of two thousand five hundred penalty units.

Restriction on purchase or transfer of certain assets from an affiliate and insider

65. (1) A financial institution shall not purchase or transfer a non-performing or low quality asset from

(a) any of its affiliates and associates,

(b) directors, key management personnel, or shareholders, or

(c) a related person or group of related persons or their related interests

without the written approval of the Bank of Ghana.

(2) A bank or specialised deposit-taking institution which contravenes this section is liable to pay to the Bank of Ghana an administrative penalty of one thousand five hundred penalty units.

(3) A transaction carried out in contravention of subsection (1) is void.

(4) For the purpose of subsection (1), a "non-performing asset" means a financial exposure or asset classified as one according to the directive of the Bank of Ghana on asset classification.

Restrictions on inter-institutional placements and loans

66. (1) A bank, specialised deposit-taking institution or financial holding company which has a capital adequacy ratio of less than the ratio prescribed by the Bank of Ghana under section 29 shall not take an inter-institutional placement or receive a loan or deposit from another bank, specialised deposit-taking institution or financial holding company in the country without the written approval of the Bank of Ghana.

(2) The Bank of Ghana may prescribe an additional restriction on an inter-institutional placement, loan and deposit for a specialised deposit-taking institution or a particular class of specialised deposit-taking institutions.

(3) A placement between an affiliated bank and specialised deposit-taking institution is subject to section 64.

(4) Where the Bank of Ghana finds that a person has contravened a provision of this section, the Bank of Ghana shall

(a) in the case of a bank or specialised deposit-taking institution, order the immediate repayment, by the bank or specialised deposit-taking institution of the excess by which the placement exceeds the limit prescribed in this section and impose an administrative penalty of two hundred and fifty penalty units on the offending bank, specialised deposit-taking institution or financial holding company for each day the contravention continues; or

(b) in the case of an individual, impose an administrative penalty of fifty penalty units for each day the contravention continues and the fine shall be paid personally by each director and key management personnel who authorised the contravention.

Restrictions on financial exposures to an insider

67. (1) A bank, specialised deposit-taking institution or financial holding company shall not grant or permit

(a) an outstanding financial exposure in respect of an insider of that bank, specialised deposit-taking institution or financial holding company, and

(b) the related interest of that insider,

except on terms which are non-preferential in all respects including creditworthiness, term, interest rate and the value of the collateral.

(2) A bank, specialised deposit-taking institution or financial holding company shall not take a financial exposure in respect of an insider and the related interest of that insider if the aggregate of the financial exposure to the insider and its related interests exceeds ten percent of the net own funds of that bank, specialised deposit-taking institution or financial holding company.

(3) For the purpose of subsection (2), an unsecured financial exposure to an insider and the related interests of that insider shall not exceed five per cent of the net own funds of a bank, specialised deposit-taking institution or financial holding company.

(4) Subject to subsection (7) of section 62, a financial exposure shall not be considered as secured unless it is adequately secured by a collateral having a market value of at least one hundred and twenty percent of the outstanding amount of the financial exposure throughout the term of that financial exposure.

(5) A bank, specialised deposit-taking institution or financial holding company shall not take a financial exposure in respect of the related parties and their related interests if the aggregate of the financial exposure exceeds twenty percent of the net own funds of that bank, specialised deposit-taking institution or financial holding company.

(6) The board of directors of a bank or specialised deposit-taking institution is the sole authority to approve or sanction a financial exposure of that bank or specialised deposit-taking institution to a related party of that bank, specialised deposit-taking institution or financial holding company or the related interest of that party.

(7) When calculating capital adequacy, a financial exposure that is in excess of a limit referred to in this section shall be deducted from capital.

(8) Despite subsection (7), a bank or specialised deposit-taking institution which contravenes a provision of this section shall pay to the Bank of Ghana an administrative penalty of one thousand penalty units.

(9) For the purpose of this section,

(a) "related interest" as defined in section 156 includes other related individuals that the Bank of Ghana may determine as appropriate; and

(b) "non-preferential" means terms which are not more favourable than the terms offered under prevailing conditions to a person other than a person referred to under subsection (1).

Limits on financial exposures to related parties on a consolidated basis

68. The limit on a financial exposure to a related party and the related interest of that party under section 67 shall be applied on a consolidated basis to

(a) a bank or specialised deposit-taking institution and a subsidiary of that bank or specialised deposit-taking institution; and

(b) a financial holding company and a subsidiary of that financial holding company.

Restrictions on lending to staff

69. (1) A bank or specialised deposit-taking institution shall not lend on preferential terms to an employee of that bank or specialised deposit-taking institution unless the lending is part of a formally approved employment package or employee benefit plan.

(2) A bank or specialised deposit-taking institution shall not grant to an employee of that bank or specialised deposit-taking institution an unsecured advance or credit facility, the aggregate amount of which exceeds two years' total emoluments of that employee.

(3) The aggregate amount of loans on preferential terms, both secured and unsecured, by a bank or specialised deposit-taking institution to employees shall not exceed twenty percent of the net own funds of that bank or specialised deposit-taking institution.

(4) A bank or specialised deposit-taking institution which grants an advance or credit facility in contravention of this section is liable to pay to the Bank of Ghana,

(a) an amount of money calculated as one-half per mille of the over-exposure for each day that the over-exposure persists; and

(b) an administrative penalty of not more than one thousand penalty units.

(5) For the purpose of calculating capital adequacy, a financial exposure that is in contravention of this section shall be deducted from capital.

(6) For the purpose of this section, the term "employee" includes a key management personnel other than an executive director.

Requirements for lending to insiders and their related interests

70. (1) A bank, specialised deposit-taking institution or financial holding company shall in considering approval of a credit facility under section 67 ensure that

(a) the person to whom the credit facility is given has credit worthiness which is not less than the normal requirements of that bank or specialised deposit-taking institution for any other person to whom a credit facility is given;

(b) a collateral provided will be evaluated on the same terms and procedures normally required by that bank or specialised deposit-taking institution for any other person to whom a credit facility is given;

(c) the terms and conditions of the credit facility are not less favourable to that bank or specialised deposit-taking institution than those normally offered to any other person not related to that bank or specialised deposit-taking institution; and

(d) the offer of the credit facility is in the interest of the bank or specialised deposit-taking institution.

(2) The directors of the bank or specialised deposit-taking institution shall approve the credit facility at a duly constituted meeting of the directors.

(3) The approval of the credit facility shall be recorded to form part of the minutes of the meeting at which not less than three quarters of the directors are present.

(4) The management of a bank or specialised deposit-taking institution shall report to the board of directors and to the Bank of Ghana, an exposure to an insider or the related interests of that insider.

(5) An exposure reported under subsection (4) shall be classified according to the directive on asset classification.

(6) A bank or specialised deposit-taking institution which contravenes subsections (1) or (2) shall pay to the Bank of Ghana an administrative penalty of not more than two thousand penalty units.

Hanks and Specialised Deposit-Taking Institutions Act, 2016

Restriction on establishment of a subsidiary company

71. (1) A bank, specialised deposit-taking institution or financial holding company shall not establish a subsidiary company without the prior written approval of the Bank of Ghana.

(2) A subsidiary company established under subsection (1), may only engage in a permissible activity specified in section 18 in respect of a bank or specialised deposit-taking institution.

(3) A bank or specialised deposit-taking institution which establishes a subsidiary company contrary to subsection (1) is liable to pay to the Bank of Ghana, an administrative penalty of not more than one thousand penalty units.

(4) Despite subsection (3), the Bank of Ghana shall direct a bank or specialised deposit-taking institution which establishes a subsidiary company in contravention of subsection (1) to divest that subsidiary company within a specified period.

(5) The Bank of Ghana may revoke the licence of a bank or specialised deposit-taking institution which does not comply with the directive issued under subsection (4).

Limits on investment by banks or specialised deposit-taking institutions in respect of a subsidiary company

72. (1) The equity capital invested by a bank or specialised deposit-taking institution in a subsidiary company of that bank or specialised deposit-taking institution shall not exceed fifteen per cent of the net own funds of the bank or specialised deposit-taking institution.

(2) Where the bank or specialised deposit-taking institution has more than one subsidiary company, the aggregate of equity capital invested in the subsidiary companies by the bank or specialised deposit-taking institution shall not exceed twenty-five per cent of the net own funds of that bank or specialised deposit-taking institution.

(3) The aggregate amount of a financial exposure including the credit facility which a bank or specialised deposit-taking institution may take in respect of a subsidiary of that bank or specialised deposit-taking institution shall not exceed

(a) in the case of a bank or specialised deposit-taking institution which has only one subsidiary company, twenty-five per cent of the net own funds of that bank or specialised deposit-taking institution; or

(b) in the case of a bank or specialised deposit-taking institution which has more than one subsidiary company, thirty-five per cent of the net own funds of that bank or specialised deposit-taking institution.

(4) A bank or specialised deposit-taking institution which contravenes a provision of this section is liable to pay to the Bank of Ghana an administrative penalty of not more than one thousand penalty units.

Limits on investment by banks or specialised deposit-taking institutions in respect of non-subsidiary institutions

73. (1) A bank or specialised deposit-taking institution shall not invest or hold investments in the share capital of a body corporate other than a subsidiary of that bank or specialised deposit-taking institution if the amount of the investment exceeds ten per cent of the net own funds of the bank or specialised deposit-taking institution.

(2) The aggregate of the investments in the share capital of two or more bodies corporate other than a subsidiary of the bank or specialised deposit-taking institution shall not exceed twenty-five percent of the net own funds of that bank or specialised deposit-taking institution.

(3) A bank or specialised deposit-taking institution shall not invest or hold investments in the share capital of a body corporate other than a subsidiary of that bank or specialised deposit-taking institution that represents more than five percent interest in the body corporate.

(4) Subsection (1) does not apply to

(a) an equity interest that has been acquired by a bank or specialised deposit-taking institution in foreclosure on or in place of repayment of a loan granted by the bank or specialised deposit-taking institution; or

(b) an equity interest held by a bank or specialised deposit-taking institution as an agent or trustee.

(5) A bank or specialised deposit-taking institution shall dispose of an equity interest acquired under subsection (4)

(a) within one year from the date of acquisition; or

(b) within a longer period that the Bank of Ghana may permit.

(6) An equity interest acquired in a company engaged in a permissible activity under section 18 other than a subsidiary of a company may exceed the limit imposed under subsection (1) to the extent permitted by the Bank of Ghana.

(7) A bank or specialised deposit-taking institution which contravenes subsections (1) to (3), is liable to pay to the Bank of Ghana, an administrative penalty of one thousand penalty units.

Reporting of exposures

74. (1) A bank, specialised deposit-taking institution or financial holding company shall report to the Bank of Ghana, the particulars of a large exposure.

(2) A bank, specialised deposit-taking institution or financial holding company shall report to the Bank of Ghana, the particulars of lending to a related party and the related interest of that party.

(3) A bank or specialised deposit-taking institution shall report to the Bank of Ghana on investments undertaken under section 73.

(4) A bank, specialised deposit-taking institution or financial holding company which fails to comply with this section is liable to pay to the Bank of Ghana, an administrative penalty of not more than one thousand penalty units.

Asset classification, provisioning and write-offs

75. (1) A bank or specialised deposit-taking institution shall maintain and implement a proper policy of non-accrual of interest on a non-performing loan and provisioning for a bad debt and any other exposure.

(2) An asset or financial exposure of a bank, specialised deposit-taking institution or financial holding company shall not be written off or waived fully or partially, without the sanction of the board of directors and the prior written approval of the Bank of Ghana.

(3) Despite subsection (2), the Bank of Ghana may prescribe a minimum threshold that permits write-offs of an asset or exposure below a certain size which only requires the approval of the board of directors.

(4) A bank, specialised deposit-taking institution or financial holding company which fails to comply with this section is liable to pay to the Bank of Ghana, an administrative penalty of not more than one thousand penalty units.

Limits on a foreign exchange business

76. (1) The Bank of Ghana may prescribe a restriction on a foreign exchange business of a bank or financial holding company.

(2) A person who fails to comply with a restriction imposed under subsection (1), is liable to pay to the Bank of Ghana, an administrative penalty of not more than one hundred and twenty per cent of the gross income accruing from the business.

Powers to impose stricter prudential limits

77. (1) The Bank of Ghana may, in respect of a prudential limit prescribed under this Act, impose a stricter limit for banks, specialised deposit-taking institutions or financial holding companies or a class of specialised deposit-taking institutions or a particular bank, specialised deposit-taking institution or financial holding company for the period that the Bank of Ghana considers appropriate.

(2) Despite subsection (1), the Bank of Ghana may, by directives, vary any of the limits under sections 62 to 69 and sections 71 to 73 in cases of emergency for the period that the Bank of Ghana considers appropriate.

(3) For the purposes of this section, "a case of emergency" is any situation that may pose a threat to the stability of the financial system.

Accounts and Audit

Guidelines on accounting standards and disclosures in financial statements

78. (1) A bank, specialised deposit-taking institution or financial holding company shall prepare accounts and financial statements in the form and provide details in accordance with

(a) internationally-accepted accounting standards; and

(b) rules or standards based on the Basel Core Principles as prescribed by the Bank of Ghana.

(2) A bank, specialised deposit-taking institution or financial holding company which does not comply with subsection (1) shall pay to the Bank of Ghana, an administrative penalty of not more than one thousand penalty units.

Accounting records

79. (1) A bank, specialised deposit-taking institution or financial holding company shall keep accounting records in a manner that gives an accurate and reliable account of the transactions of that bank, specialised deposit-taking institution or financial holding company.

(2) The accounts prepared from the records of the bank, specialised deposit-taking institution or financial holding company shall give a true and fair view of the state of affairs and results of operations for the accounting period of the bank, specialised deposit-taking institution or financial holding company.

(3) The accounting records of the bank, specialised deposit-taking institution or financial holding company shall be kept at the head office of the bank, specialised deposit-taking institution or financial holding company, in the country for a period of not less than ten years.

(4) A bank, specialised deposit-taking institution or financial holding company which contravenes a provision of this section is liable to pay to the Bank of Ghana, an administrative penalty of not more than one thousand penalty units.

Financial statements

80. (1) Each bank, specialised deposit-taking institution or financial holding company shall prepare, at the expiration of each calendar year, in respect of the business transacted by it with reference to that year, audited financial statements on a solo and a consolidated basis.

(2) The financial statements referred to in subsection (1) and the accounting records of the bank, specialised deposit-taking institution or financial holding company shall be audited by qualified auditors duly appointed in accordance with this Act.

(3) The board of directors of the bank or specialised deposit-taking institution or financial holding company shall approve the financial statements referred to in subsection (1).

(4) The financial statements approved under subsection (3) shall be signed by at least two directors of the bank, specialised deposit-taking institution or financial holding company or as the Bank of Ghana may otherwise direct.

(5) A bank, specialised deposit taking institution or financial holding company which fails to prepare or submit financial statements in accordance with this section is liable to pay to the Bank of Ghana, an administrative penalty of not more than one thousand penalty units.

Appointment of auditors

81. (1) An auditor of a bank or specialised deposit taking- institution shall except as provided in subsection (2) of section 82, be appointed at an annual general meeting of the bank or specialised deposit-taking institution and be approved by the Bank of Ghana in the manner and on the terms that may be prescribed.

(2) The directors of a bank or specialised deposit-taking institution may appoint

(a) the first auditor of the bank or specialised deposit-taking institution; or

(b) an auditor to act in place of the 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 subsection (2) of section 82.

(3) A person shall not be appointed an auditor of a bank or specialised deposit-taking institution unless that person

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

(b) is not disqualified by an enactment in force in this country or in any other country from being appointed as an auditor of a body corporate.

(4) An auditor of a bank or specialised deposit-taking institution shall hold office for a term of not more than six years and is eligible for re-appointment after a cooling off period of not less than five years.

(5) The periods specified in subsection (4) may be varied by the Bank of Ghana.

(6) A bank or specialised deposit-taking institution which engages an auditor contrary to this section is liable to pay to the Bank of Ghana an administrative penalty of not more than two thousand five hundred penalty units.

(5) A bank, specialised deposit taking institution or financial holding company which fails to prepare or submit financial statements in accordance with this section is liable to pay to the Bank of Ghana, an administrative penalty of not more than one thousand penalty units.

Appointment of auditors

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(b) an auditor to act in place of the 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 subsection (2) of section 82.

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(4) An auditor of a bank or specialised deposit-taking institution shall hold office for a term of not more than six years and is eligible for re-appointment after a cooling off period of not less than five years.

(5) The periods specified in subsection (4) may be varied by the Bank of Ghana.

(6) A bank or specialised deposit-taking institution which engages an auditor contrary to this section is liable to pay to the Bank of Ghana an administrative penalty of not more than two thousand five hundred penalty units.

Power of the Bank of Ghana to appoint auditors

82. (1) A bank or specialised deposit-taking institution which for a continuous period of three months is without an auditor shall notify the Bank of Ghana.

(2) The Bank of Ghana shall upon being notified under subsection (1) appoint an auditor for that bank or specialised deposit-taking institution to hold office until the next annual general meeting of that bank or specialised deposit-taking institution.

(3) A bank or specialised deposit-taking institution which fails to notify the Bank of Ghana as required under subsection (1) shall pay to the Bank of Ghana, an administrative penalty of not more than one thousand penalty units.

Remuneration of auditor

83. (1) The remuneration of an auditor of a bank or specialised deposit-taking institution shall be determined in accordance with the Companies Act, 1963 (Act 179).

(2) Where for any reason an auditor is appointed to fill a temporary vacancy in the office of the auditor of a bank or specialised deposit-taking institution, that auditor shall be paid an equitable proportion of the remuneration fixed under subsection (1) as the bank or specialised deposit-taking institution, having regard to all the circumstances of the case, may determine.

Right of auditor to access information

84. (1) An auditor of a bank or specialised deposit-taking institution shall for the purpose of auditing have

(a) a right of access to the accounting records, minutes book, files and other relevant documentary evidence, cash and securities of the bank or specialised deposit-taking institution, and

(b) a right to request information and explanation from the directors, management, staff and appointed agents of the bank or specialised deposit-taking institution requisite for the efficient performance of the duties of the auditor.

(2) For the purpose of subsection (1), "accounting records" include computerised and manual files, vouchers, reports and other transactions of the bank or specialised deposit-taking institution.

Report of auditor

85. (1) An auditor of a bank: or specialised deposit-taking institution shall submit to that bank: or specialised deposit-taking institution and to the Bank: of Ghana at least once every year

(a) not later than 31st March of the ensuing year in the case of a bank:; and

(b) not later than 30th April of the ensuing year in the case of a specialised deposit-taking institution,

a statutory audit report and a long form audit report.

(2) The auditor shall state in the statutory audit report whether or not

(a) the accounts give a true and fair view of the state of affairs of the bank or specialised deposit-taking institution and the results of operations for the period under review;

(b) the auditor was able to obtain all the information and explanation required for the efficient performance of the duties of the auditor;

(c) the transactions of the bank: or specialised deposit-taking institution are within the powers of the bank: or specialised deposit-taking institution;

(d) in the opinion of the auditor, the bank or specialised deposit-taking institution has complied with the provisions of the Anti-Money Laundering Act, 2008 (Act 749), the Anti Terrorism Act, 2008 (Act 762) and the Regulations made under these enactments; and

(e) the bank: or specialised deposit-taking institution has complied with the provisions of this Act.

(3) The auditor shall submit a long form audit report on the accounts and the affairs of the bank: or specialised deposit-taking institution generally and in addition comment on the matters to be specified in directives made by the Bank: of Ghana.

Meetings with auditors

86. (1) The Bank of Ghana may, periodically arrange meetings between the Bank: of Ghana, a bank:, specialised deposit-taking institution, or financial holding company and its auditor to discuss matters relevant to the supervisory responsibilities of the Bank: of Ghana which have arisen in the course of the statutory audit of that bank, specialised deposit-taking institution, or financial holding company, including

- (a) relevant aspects of its business,
- (b) its accounting and internal control systems,
- (c) its annual financial statements, and
- (d) management letter.

(2) The Bank of Ghana may, for the purpose of discussing confidential matters arrange meetings with the auditors of a bank, specialised deposit-taking institution or financial holding company.

Duties of auditor to the Bank of Ghana

87. (1) An auditor appointed under this Act shall inform the Bank of Ghana if there is sufficient reason to believe, any of the following matters:

(a) that the bank, specialised deposit-taking institution, or financial holding company is insolvent or there is a significant risk that the bank, specialised deposit-taking institution or financial holding company will become insolvent;

(b) that material weaknesses exist that threaten the safety and soundness of the bank, specialised deposit-taking institution or financial holding company; or

(c) that the bank, specialised deposit-taking institution or financial holding company has contravened a

- (i) prudential standard;
- (ii) requirement in this Act, the Regulations or directive issued under this Act; or
- (iii) condition imposed on the licence or registration of that bank, specialised deposit-taking institution or financial holding company.

(2) The auditor shall review and report on compliance with anti-money laundering and counter terrorist financing activities.

(3) The auditor shall verify prudential returns and other reports of the bank, specialised deposit-taking institution, or financial holding company which the Bank of Ghana may periodically require to be verified.

(4) The auditor shall submit to the Bank of Ghana a management letter not later than

(a) three months after the end of the financial year in the case of a bank, and

(b) four months after the end of the financial year in the case of a specialised deposit-taking institution.

(5) The management letter under subsection (4) shall disclose the shortcomings or any contravention of the law which may not be sufficiently fundamental to lead to qualification of the accounts.

(6) The auditor shall perform any other functions that the Bank of Ghana may by notice assign the auditor for the purposes of this Act.

Special audit and additional information

88. The Bank of Ghana may, at the expense of a bank or specialised deposit-taking institution,

(a) require the auditor to undertake a further audit or provide additional information or both as the Bank of Ghana considers necessary; or

(b) engage an independent auditor to audit the whole or part of the accounts of the bank or specialised deposit-taking institution.

Termination of appointment of auditor

89. (1) An auditor of a bank or specialised deposit-taking institution shall cease to act as an auditor if

(a) the Bank of Ghana in writing requests that bank or specialised deposit-taking institution to revoke the appointment of that auditor;

(b) that auditor or a member of the firm or establishment of the auditor becomes a director of that bank, specialised deposit-taking institution or financial holding company;

(c) that auditor resigns by notice in writing to the bank or specialised deposit-taking institution;

(d) that auditor ceases to qualify under subsection (3) of section 81 for appointment as auditor of that bank or specialised deposit-taking institution;

(e) that auditor is otherwise removed by a decision taken at an annual general meeting of that bank or specialised deposit-taking institution; or

(f) that auditor has served as auditor for the bank or specialised deposit-taking institution for the preceding six years.

(2) A bank or specialised deposit-taking institution shall comply with a request of the Bank of Ghana to revoke the appointment of an auditor.

(3) An auditor who does not comply with subsection (1), commits an offence and is liable on summary conviction to a fine of not less than one hundred and twenty-five penalty units and not more than two hundred and fifty penalty units or to a term of imprisonment of not less than one year and not more than two years or to both.

(4) The Bank of Ghana, a bank or specialised deposit-taking institution or any other person concerned may report the conduct of the auditor to the Institute of Chartered Accountants (Ghana) or a successor body for disciplinary action.

Display of financial statements

90. (1) A bank or specialised deposit-taking institution shall exhibit at each of its branches or agencies in a conspicuous place throughout the year, a copy of the last audited financial statement in respect of the operations of the bank or specialised deposit-taking institution.

(2) A bank or specialised deposit-taking institutions shall

(a) in the case of a bank not later than three months after the end of its financial year; or

(b) in the case of a specialised deposit-taking institution not

later than four months after the end of each financial year, furnish the Bank of Ghana with a copy of its audited financial statements together with the auditor's statutory and long form audit reports; and cause the financial statements together with the auditors' reports to be published on its website if any and in at least two daily newspapers of national circulation.

(3) A bank or specialised deposit-taking institution which fails to comply with this section is liable to pay to the Bank of Ghana, an administrative penalty of not more than one thousand penalty units.

Powers of regulation and supervision

91. (1) Without limiting section 3, the powers of regulation and supervision of the Bank of Ghana are to regulate and supervise

(a) banks and specialised deposit-taking institutions on a solo basis;

(b) financial holding companies on a solo basis; and

(c) financial groups on a consolidated basis.

(2) Where a financial holding company is part of a wider corporate group, the Bank of Ghana may

(a) obtain information to permit oversight of the impact on a bank, specialised deposit-taking institution, or financial holding company of membership in the wider group; and

(b) take the necessary action to protect against undue risks arising from that relationship.

Directives

92. (1) The Bank may issue directives to banks, specialised deposit-taking institutions or financial holding companies generally or to a class or classes of banks, specialised deposit-taking institutions or financial holding companies where the Bank of Ghana is satisfied that

(a) it is necessary to secure the proper management of a bank, specialised deposit-taking institution or financial holding company generally;

(b) it is necessary to prevent the affairs of banks, specialised deposit-taking institutions or financial holding companies being conducted in a manner detrimental to the interest of depositors and other stakeholders or prejudicial to the interests of the banks or specialised deposit-taking institutions or financial holding companies;

(c) it is necessary to maintain the overall stability of the financial system in the country; or

(d) it is necessary to give full effect to the provisions of this Act.

(2) Without limiting subsection (1) the Bank of Ghana may issue directives

(a) to provide for

(i) the licensing of banks and specialised deposit taking institutions;

(i) the minimum level of capital for banks, specialised deposit-taking institutions and financial holding companies;

(ii) the prescription of prudential norms on asset quality, bad debt and write-offs;

(iii) the liquidity reserve requirements and net open position requirements;

(iv) the computation of on-going capital adequacy requirements for banks, specialised deposit-taking institutions and financial holding companies;

(v) the lending limits on credits extended to insiders;

- (vi) the limitations for advances or credit facilities to a single borrower;
 - (vii) the rules and regulations against the use of banks, specialised deposit-taking institutions and financial holding companies for money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction;
 - (viii) the classification of entities as banks or specialised deposit-taking institutions for the purposes of this Act;
 - (ix) the reporting requirements to the Bank of Ghana;
 - (x) the issue, form and content of advertisements for deposits;
 - (xi) consumer protection principles, rules and requirements and their enforcement; and
 - (xii) anything required under or authorised by this Act to be provided for by directives;
- (b) to address specific characteristics of specialised deposit-taking institutions to modify the application of a provision of this Act to a specialised deposit-taking institution; or
- (c) to exempt a specialised deposit-taking institution or specific categories of specialised deposit-taking institution from the application of a provision of this Act.
- (3) The Bank of Ghana may modify a directive issued under subsections (1) and (2) as it considers fit and a bank, specialised deposit-taking institution or financial holding company shall comply with the modification.
- (4) The Bank of Ghana shall prescribe the procedure for the adoption of directives under subsection (1).
- (5) The Bank of Ghana shall give notice of the proposed directive to the public for the public to comment on the proposed directive in accordance with procedure specified under subsection (4) before the proposed directive is adopted in the final form, unless the Bank of Ghana considers that the notice and procedure are impractical or contrary to public interest.
- (6) A directive shall indicate the specific statutory provision authorising the directive.
- (7) The Bank of Ghana shall consider all material comments received under subsection (5) and provide a written explanation for the comments that were incorporated into the final directive or otherwise.
- (8) **In** addition to any penalty provided under the Anti-Money Laundering Act, 2008 (Act 749) a person who contravenes a directive issued under this section is liable to pay to the Bank of Ghana

an administrative penalty of not less than two thousand penalty units and not more than ten thousand penalty units.

(9) The Bank of Ghana may in addition to the penalty under sub-section (8) impose any other penalty or take any remedial action that the Bank of Ghana considers appropriate.

Information and periodic returns

93. (1) The Bank of Ghana shall, for the purposes of supervision, require a bank, specialised deposit-taking institution, financial holding company, or a member of a financial group to submit any information or data relating to its assets, liabilities, income, expenditure, affairs, or any other matter that the Bank of Ghana may require.

(2) The Bank of Ghana may prescribe the

(a) details of the information required,

(b) form in which the information is to be reported, and

(c) period within which the report is to be returned to the Bank of Ghana.

(3) The Bank of Ghana may impose an administrative penalty of not more than five hundred penalty units on a bank, specialised deposit-taking institution or financial holding company and on the responsible key management personnel for,

(a) non-submission;

(b) incomplete submission;

(c) delayed submission; or

(d) inaccurate submission,

of the required information, data, statements or returns and for each day that the default continues a further penalty of fifty penalty units in respect of the default.

Examination

94. (1) The Bank of Ghana shall carry out examinations of the operations and affairs of each bank, specialised deposit-taking institution and financial holding company.

(2) The examination shall be carried out at the time and frequency that the Bank of Ghana may consider appropriate, taking into account its evaluation of micro-prudential and macro-prudential concerns and the risks posed by the institution.

Investigation or scrutiny

95. (1) Without limiting the power to examine banks, specialised deposit-taking institutions, and the financial holding companies under section 94, the Bank of Ghana may without prior notice carry out investigations or scrutiny into a specific matter or activity or office relating to the affairs of a bank, specialised deposit-taking institution or financial holding company.

(2) A Bank of Ghana may carry out an examination of the operations and affairs of any member of a financial group of which a bank or specialised deposit-taking institution is a member whenever the Bank of Ghana determines that the examination is appropriate to carry out its responsibilities under this Act.

(3) The Bank of Ghana may appoint qualified accountants or other professionals to act as its agent in carrying out investigations under this section.

Power of examiners

96. (1) A person who is authorised by the Bank of Ghana to examine, investigate or for any other purpose, shall have a right of access to the books and records of the bank, specialised deposit-taking institution, financial holding company or any other member of the financial group.

(2) For the purpose of subsection (1), the books and records include documents, minute books, customer files, personnel files, cash and securities and information in an electronic medium.

(3) The bank, specialised deposit-taking institution, financial holding company or any other member of the financial group shall cooperate and assist that person.

(4) A person who is authorised by the Bank of Ghana to examine, investigate or for any other purpose, may call upon,

(a) a director, key management personnel or any other employee of a bank, or specialised deposit-taking institution, or financial holding company;

(b) any other member of the financial group;

(c) an external auditor;

(d) a person whom the relevant entity has outsourced any of its functions; or

(e) a person with information regarding the relevant entity

to promptly furnish that authorised person with any information and explanation which that authorised person may consider necessary.

(5) A person who is requested to provide information or an explanation under subsection (4), shall comply with the request.

(6) A person who is authorised by the Bank of Ghana may, if that person considers it necessary in the course of an examination or investigation, order any person mentioned in subsection (4), orally or in writing, to attend before that authorised person and testify in relation to a matter under examination or investigation and the official or employee shall comply with the order.

(7) A person who fails to comply with a provision of this section is liable to pay to the Bank of Ghana an administrative penalty of not more than one thousand penalty units.

Taking custody of records

97. (1) An official of the Bank of Ghana, who is authorised to carry out an examination or investigation under section 94 or 95 may, if that official considers it necessary, by an order in writing issued to the chief executive of the bank, specialised deposit-taking institution, financial holding company or any other member of the financial group that is the subject of the examination or investigation, take custody of the records, files or any other documents relevant to the examination or investigation after giving to the entity due acknowledgement in writing.

(2) The official of the Bank of Ghana authorised under subsection (1) shall take reasonable care to protect that document in the custody of that official and account for its disposal.

Verification of information

98. (1) The Bank of Ghana may authorise any official of the Bank of Ghana, qualified auditor or other professional to verify any return, information or data furnished to that official, qualified auditor or other professional by a person under this Act and report on its accuracy.

(2) A bank, specialised deposit-taking institution, financial holding company or any other member of the financial group being examined or investigated under section 94 or 95 shall provide prompt access and facilities to the authorised official or auditor to carry out the task of the authorised official or auditor.

(3) A bank, specialised deposit-taking institution, financial holding company or any other member of the financial group which fails to provide prompt access and facilities to the authorised official is liable to pay to the Bank of Ghana an administrative penalty of not more than one thousand penalty units.

Examination reports

99. (1) Where an examination has been conducted by the Bank of Ghana under section 94, the Bank of Ghana shall furnish a copy of the report to the entity examined and call upon the entity to provide within forty-five days from the date of the receipt of the report, a written explanation on the findings contained in the report and action taken, within a specified time.

(2) The board of directors shall consider the report at a meeting convened subsequent to the receipt of the report on the examination conducted by the Bank of Ghana and the Head of the appropriate supervisory structure or the representative may be invited to attend.

(3) The Head of the appropriate supervisory structure may request a meeting with the board of the examined entity to discuss the examination or investigation report.

(4) An entity which fails to submit an explanation under subsection (1) is liable to pay to the Bank of Ghana an administrative penalty of not more than one thousand penalty units.

Follow-up action on examination and other supervisory reports

100. (1) The Bank of Ghana may, after examining an explanation under section 99 or based on other supervisory reports, issue an instruction to the bank, specialised deposit-taking institution, financial holding company or other member of a financial group that was the subject of the examination or supervisory report to take the remedial action that the Bank of Ghana may specify within a stated period of time and the entity concerned shall comply with the instruction.

(2) Where an entity fails to comply with an instruction issued under subsection (1), the Bank of Ghana may take remedial action under section 101.

(3) An entity which fails to comply with an instruction under subsection (1), is liable to pay to the Bank of Ghana, an administrative penalty of not more than two thousand penalty units.

Appointment of advisor

101. (1) The Bank of Ghana may, if it considers it necessary to improve the affairs of a bank, specialised deposit-taking institution or financial holding company, appoint a competent person as advisor to the management of the bank, specialised deposit-taking institution or financial holding company at the expense of that bank, specialised deposit-taking institution or financial holding company.

(2) The Bank of Ghana shall give a hearing to the bank, specialised deposit-taking institution or financial holding company before issuing the order of appointment of an advisor unless it considers that the consequent delay in action would not be in the interest of the bank, specialised deposit-taking institution or financial holding company.

(3) A bank, specialised deposit-taking institution or financial holding company which is served with an order appointing an advisor shall comply with the order and extend full co-operation to the advisor.

(4) An advisor appointed under this section is entitled to attend the meetings of the board of directors of the bank, specialised deposit-taking institution or financial holding company or committees of the bank, specialised deposit-taking institution or financial holding company and to participate in deliberations.

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

(6) An advisor appointed under this section

(a) shall hold office for the period that the Bank of Ghana may specify, and

(b) shall furnish the Bank of Ghana with a status report on the bank, specialised deposit-taking institution or financial holding company as frequently as the Bank of Ghana may determine.

Remedial measures for banks, specialised deposit-taking institutions or financial holding companies

102. (1) Where the Bank of Ghana determines, after an examination under section 94 or 95 or otherwise based on information at its disposal, that a bank, specialised deposit-taking institution or financial holding company

(a) has failed to comply with a provision of this Act, the Regulations or directives issued under this Act;

(b) has been engaging in an unsafe or unsound practice;

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

(d) has violated any condition or restriction attached to a licence or registration issued by the Bank of Ghana,

the Bank of Ghana may take any of the actions specified in subsection (2).

(2) Pursuant to subsection (1), the Bank of Ghana may

(a) issue a written warning to the bank, specialised deposit-taking institution or financial holding company;

(b) issue an order to the bank, specialised deposit-taking institution or financial holding company to take the remedial action that the Bank of Ghana may specify within a stated period and the bank, specialised deposit-taking institution or financial holding company shall comply with the order;

(c) require the bank, specialised deposit-taking institution or financial holding company to cease the violation or unsafe or unsound practice;

(d) take the affirmative action that the Bank of Ghana considers necessary to eliminate the grounds for the order;

(e) conclude a written agreement with the board of directors of the bank, specialised deposit-taking institution or financial holding company to provide for a programme of remedial action;

(f) impose an administrative penalty on the bank, specialised deposit-taking institution or financial holding company of an amount of not more than one hundred penalty units for each day that the violation or unsafe or unsound condition continues;

(g) appoint an advisor for the bank or specialised deposit-taking institution or financial holding company in accordance with section 101; or

(h) revoke the licence of the bank, specialised deposit-taking institution or the registration of the financial holding company.

(3) Remedial actions under subsection (2) may include any of the following:

(a) prohibiting the bank or specialised deposit-taking institution from receiving fresh deposits or renewing the existing deposits;

(b) prohibiting the bank, specialised deposit-taking institution or financial holding company from further lending or taking further financial exposures, including investments, or capital expenditure;

(c) requiring the bank, specialised deposit-taking institution, or financial holding company, or any of the subsidiaries of the bank, specialised deposit-taking institution or financial holding company to suspend for a specified period, alter, reduce, or terminate any activity that the Bank of Ghana determines has caused material losses to the bank or specialised deposit-taking institution or financial holding company;

(d) requiring that the bank, specialised deposit-taking institution, or financial holding company divests itself of or liquidates any subsidiary;

(e) restricting or prohibiting transactions with affiliates;

(f) restricting payment of bonuses or excessive compensation to any director or key management personnel;

(g) prohibiting the bank, specialised deposit-taking institution or financial holding company from paying a dividend on its equity capital or rights issue or bonus shares to shareholders or to any person claiming under their authority;

(h) suspending or removing from office the chief executive of the bank, specialised deposit-taking institution, or financial holding company or restricting the powers of the chief executive officer;

(i) removing any or all of the directors on the board of directors of the bank, specialised deposit-taking institution or financial holding company or key management personnel or restricting their powers;

(j) revoking the licence issued to the bank or specialised deposit-taking institution or the registration of the financial holding company permitting it to control a bank or specialised deposit-taking institution; or

(k) any other action necessary to eliminate the basis for requiring remedial action.

(3) The powers of the Bank of Ghana to take action under this section are in addition to any other administrative penalty, that may be imposed by the Bank of Ghana under this Act.

(4) The Ghana Deposit Protection Corporation shall be notified immediately the Bank of Ghana initiates remedial measures against a bank or specialised deposit-taking institution.

Remedial measures for directors, key management personnel, and significant shareholders

103. (1) Where the Bank of Ghana determines that a relevant person has

(a) contravened a provision of this Act, the Regulations or \directives issued under this Act;

(b) contravened any condition or restriction attached to a licence issued by the Bank of Ghana; or

(c) engaged in an unsafe or unsound practice, the Bank of Ghana may take any of the following actions:

(d) issue an order to the relevant person to take the remedial action as the Bank of Ghana may specify within a stated period and the relevant person shall comply with the order;

(e) impose an administrative penalty of not more than one hundred penalty units on the relevant person for each day that the contravention continues except that the fines shall be of similar amount for entities with comparable total assets for the same type of contravention;

(f) require the relevant person to reimburse the bank, specialised deposit-taking institution, or financial holding company for losses caused by the contravention;

(g) prohibit the relevant person from direct or indirect exercise of voting rights attached to shares of the bank, specialised deposit-taking institution or financial holding company;

(h) suspend the relevant person from office or declare that the relevant person is no longer a fit and proper person; or

(i) prohibit the payment of capital distributions or dividends to the relevant person.

(2) Where the Bank of Ghana determines that a relevant person has

(a) willfully or repeatedly caused a contravention of a provision of this Act, the Regulations or directives issued under this Act following a written warning or an order from the Bank of Ghana under section 102;

(b) been engaging in an unsafe or unsound practice that has resulted in a material loss to the bank, specialised deposit-taking institution or financial holding company or financial gain to that relevant person; or

(c) been conducting its affairs in a manner detrimental to the interests of its depositors and creditors,

the Bank of Ghana may in respect of the actions referred to in subsection (1), issue an order taking any of the following actions:

(d) direct the dismissal of the relevant person from the bank, specialised deposit-taking institution, or financial holding company;

(e) prohibit the relevant person from serving in or engaging in the deposit-taking business for a stated period;

(j) impose an administrative penalty of not more than one hundred penalty units for each day that the contravention continues; or

(g) require the relevant person to dispose of all or any part of the direct or indirect holding or interest in the bank, specialised deposit taking institution, or financial holding company or cease to hold a significant interest in it.

(3) If the relevant person is charged with a criminal offence,

(a) the Bank of Ghana may issue an order temporarily suspending the relevant person from the bank, specialised deposit-taking institution, or financial holding company; and

(b) if applicable, suspend the exercise of voting rights of shares in the bank, specialised deposit-taking institution, or financial holding company by the relevant person, pending the determination of the criminal case.

(4) A dismissal of the criminal case or an acquittal on the merits, shall not preclude the Bank of Ghana from taking any enforcement action authorised by this Act with respect to the relevant person.

(5) A relevant person shall not hold any position in an affiliate of a bank, specialised deposit-taking institution or financial holding company without the prior written approval of the Bank of Ghana, if that relevant person is the subject of a directive or order of the Bank of Ghana

(a) suspending or removing the relevant person from a position in that bank, specialised deposit-taking institution or financial holding company; or

(b) prohibiting the exercise of voting rights in shares of the bank, specialised deposit-taking institution, or financial holding company, or requiring the person to dispose of the holding or interest of that relevant person.

(6) The powers of the Bank of Ghana to take action under this section are in addition to any other specific powers and penalties that may be imposed by the Bank of Ghana under this Act.

(7) For the purpose of this section, "relevant person" means a director, key management personnel or employee or significant share- holder of a bank, specialised deposit-taking institution or financial holding company. Prompt corrective action for adequately capitalised banks, specialised deposit-taking institutions, or financial holding companies suffering material losses

104. (1) Where a bank, specialised deposit-taking institution or financial holding company which complies with the capital requirements prescribed in sections 28 to 31 has incurred or is likely to incur material losses within any financial year, the Bank of Ghana shall take the following actions:

(a) prohibit the bank, specialised deposit-taking institution, or financial holding company from declaring and distributing any dividends which are, in the opinion of the Bank of Ghana, likely to cause it not to comply with the capital requirements prescribed in sections 28 to 31, and

(b) undertake more frequent examination of that bank, specialised deposit-taking institution, or financial holding company.

(2) In addition to the actions prescribed in subsection (1), the Bank of Ghana may require the directors or key management personnel of the bank, specialised deposit-taking institution or financial holding company to provide a written explanation detailing the causes of the losses and the measures to be taken by the bank, specialised deposit-taking institution, or financial holding company to rectify the position and avert future losses.

(3) The Bank of Ghana shall give notice to the Ghana Deposit Protection Corporation immediately the Bank of Ghana initiates corrective action against a bank or specialised deposit-taking institution.

Prompt corrective action for undercapitalised banks, specialised deposit- taking institutions or financial holding companies

105. (1) A bank, specialised deposit-taking institution, or financial holding company is undercapitalised if that bank, specialised deposit- taking institution, or financial holding company does not comply with the capital requirements prescribed in sections 28 to 31.

(2) Where a bank, specialised deposit-taking institution, or financial holding company is undercapitalised, the Bank of Ghana shall take the following actions:

(a) all the actions prescribed in subsection (1) of section 104;

(b) require the bank, specialised deposit-taking institution or financial holding company to submit to the Bank of Ghana within forty-five days, a capital restoration plan acceptable to the Bank of Ghana to restore the bank, specialised deposit-taking institution or financial holding

company to capital adequacy as prescribed in sections 28 to 31 within one hundred and eighty days of making that order; and

(c) prohibit the bank, specialised deposit-taking institution, or financial holding company from awarding any bonuses, or increments in the salary, emoluments and other benefits to all directors and key management personnel.

(3) In addition to the actions prescribed under subsection (2), the Bank of Ghana may appoint a person, suitably qualified and competent in the opinion of the Bank of Ghana, to advise and assist the bank, specialised deposit-taking institution or financial holding company in designing and implementing the capital restoration plan.

(4) The person appointed under subsection (3), shall regularly report to the Bank of Ghana on the progress of the capital restoration plan.

(5) Where a bank specialised deposit-taking institution or a financial holding company has been required by the Bank of Ghana to submit a capital restoration plan or to add more capital, and it fails, refuses or neglects to comply or to implement the capital restoration plan, the Bank of Ghana shall

(a) prohibit the bank or specialised deposit-taking institution from opening new branches;

(b) restrict the bank, specialised deposit-taking institution or financial holding company from engaging in new business;

(c) impose restrictions on growth of assets or liabilities of the bank, specialised deposit-taking institution or financial holding company as it considers fit; or

(d) restrict the rate of interest on all interest earning deposits payable by the bank or specialised deposit-taking institution to the rates that the Bank of Ghana shall determine.

(6) In addition to the actions prescribed in subsection (2) the Bank of Ghana may

(a) direct the removal of officers of the bank, specialised deposit-taking institution or financial holding company responsible for the non-compliance; and

(b) require the bank, specialised deposit-taking institution or financial holding company to take any other action that the Bank of Ghana may deem necessary to rectify the capital deficiency.

(7) The Bank of Ghana shall give notice to the institution responsible for deposit protection immediately the Bank of Ghana initiates corrective action against a bank or specialised deposit-taking institution.

Prompt corrective action for significantly undercapitalised banks, specialised deposit-taking institutions, or financial holding companies

106. (1) Where a bank, specialised deposit taking institution, or financial holding company is significantly undercapitalised, the Bank of Ghana shall immediately take any or all of the following actions

(a) take any of the actions prescribed in section 105; or

(b) enter into an agreement with the board of directors of the bank, specialized deposit-taking institution or financial holding company to require it to rectify the significant undercapitalisation within ninety days, and to restore capital adequacy within one hundred and eighty days or within a shorter period that the Bank of Ghana shall require.

(2) In addition to the actions prescribed in subsection (1), the Bank of Ghana may prohibit the bank, specialised deposit-taking institution or financial holding company from engaging in new "off-balance sheet" transactions.

(3) If at any time,

(a) after the period specified in paragraph (b) of subsection (1), the bank, specialised deposit-taking institution or financial holding company has failed to raise its capital to the levels necessary to rectify its significant undercapitalisation; or

(b) before the end of the period specified in paragraph (b) of subsection (1), the financial position of the bank, specialised deposit-taking institution or financial holding company continues to deteriorate,

the Bank of Ghana shall without having to wait for the expiry of that period, place the bank, specialised deposit-taking institution or financial holding company into official administration in accordance with sections 107 to 122 or revoke its licence or registration and initiate receivership process in accordance with sections 123 to 139.

(4) A "significantly undercapitalised bank, specialised deposit taking institution, or financial holding company" means a bank, specialised deposit taking institution, or financial holding company which does not hold at least fifty percent of any of the capital requirements prescribed in sections 28 to 31.

(5) This section shall not be construed so as to preclude the Bank of Ghana from taking action under any other provision of this Act.

(6) The Bank of Ghana shall give notice to the Ghana Deposit Protection Corporation immediately the Bank of Ghana initiates corrective action against a bank or specialised deposit-taking institution.

Official Administration

Grounds for appointing an official administrator

107. (1) The Bank of Ghana may appoint an official administrator for a bank or a specialised deposit-taking institution where

(a) the Bank of Ghana determines that that bank or specialised deposit-taking institution has

(i) contravened a provision of this Act, the Regulations, directives or orders issued under this Act;

(ii) engaged in any unsafe or unsound practice, in a manner as to weaken the condition of the bank or specialised deposit-taking institution; or

(iii) seriously jeopardised the interest of depositors or dissipated assets of the bank or specialised deposit-taking institution;

(b) the capital adequacy ratio of that bank or specialised deposit-taking institution falls below fifty percent of the minimum required under section 29 or its unimpaired paid up capital falls below fifty percent of the minimum required under section 28;

(c) the Bank of Ghana has reasonable cause to believe that that bank or specialised deposit-taking institution or its directors, key management personnel, or significant shareholders have engaged in or are engaging in illegal activities in a manner likely to jeopardise the interest of depositors;

(d) the Bank of Ghana determines that that bank or specialised deposit-taking institution is in an unsafe or unsound condition to transact business and the bank or specialised deposit-taking institution or its directors or key management personnel are unable to promptly improve the condition;

(e) that bank or specialised deposit-taking institution fails in any manner to cooperate with the Bank of Ghana or its examiners to enable the Bank of Ghana perform its supervisory responsibilities, including through concealment or failure to submit for inspection any of the books, documents or records of the bank or specialised deposit taking institution;

(f) that bank or specialised deposit-taking institution or the directors of that bank, specialised deposit-taking institution, key management personnel, employees, or significant shareholders fail to comply with an order of the Bank of Ghana under sections 102 to 106; or

(g) that bank or specialised deposit-taking institution by a resolution of the directors or shareholders, requests the appointment of an official administrator.

(2) Where the Bank of Ghana takes a decision to appoint an official administrator for a bank or specialised deposit-taking institution, the Bank of Ghana shall, by notice in writing setting out the reasons for the decision, inform that bank or specialised deposit-taking institution of the decision.

(3) A bank or specialised deposit-taking institution may remain in official administration for a period of six months in the first instance; and for two consecutive periods of three months each.

(4) The decision under subsection (2) shall take effect on the date specified in the notice.

(5) The Bank of Ghana may remove the official administrator before the end of the period specified in subsection (3) and appoint a replacement.

(6) The Bank of Ghana shall ensure that the bank or specialised deposit-taking institution remains under the control of the duly appointed official administrator during the period of the official administration.

(7) Section 59 on disclosure of interest applies to an official administrator except that any obligation to report to the board of directors shall mean an obligation to report to the Bank of Ghana.

(8) A transaction involving the bank or specialised deposit-taking institution in official administration in which the official administrator has a material interest or relationship in the matter shall be engaged in only with the prior written approval of the Bank of Ghana.

(9) If the official administrator fails to seek approval under subsection (8), the transaction may be set aside and the Bank of Ghana shall terminate the appointment of that official administrator.

(10) The Bank of Ghana shall immediately notify the institution responsible for deposit protection of the commencement, suspension or cessation of an official administration against a bank or specialised deposit-taking institution.

General powers of the official administrator

108. (1) The powers, functions and responsibilities of the shareholders, directors, and key management personnel of a bank or specialised deposit-taking institution shall be vested in the official administrator.

(2) The official administrator may request the shareholders, directors or key management personnel to carry out any activity under this Act.

(3) An action or decision taken by or on behalf of the bank or specialised deposit-taking institution during an official administration shall be null and void, unless that action or decision is taken by or under the authority of the official administrator.

(4) The official administrator shall have exclusive powers to manage and operate a bank or specialised deposit-taking institution in accordance with the instructions, directives, and guidelines of the Bank of Ghana.

(5) The official administrator may take any action necessary or appropriate to

(a) carry on the business of a bank or specialised deposit-taking institution;

(b) preserve and safeguard the assets and property of a bank or specialised deposit-taking institution; or

(c) implement a plan of action that has been approved by the Bank of Ghana with respect to that bank or specialised deposit-taking institution.

(6) The official administrator may employ, at the expense of the bank or specialised deposit-taking institution in official administration, independent attorneys, accountants and consultants to assist the official administrator, on the terms approved by the Bank of Ghana.

(7) The official administrator may delegate powers or duties to another person in accordance with the instructions issued by the Bank of Ghana.

Oversight of official administrator by the Bank of Ghana

109. The official administrator shall act in accordance with the instructions and guidance given by the Bank of Ghana at any time and shall be accountable only to the Bank of Ghana.

Suspension of dividends

110. The official administrator shall immediately suspend the payment of any dividends or other form of capital distribution to share- holders and any payment to directors other than for salaries or services provided to the bank or specialised deposit-taking institution.

Moratorium and effect of official administration on proceedings

111. (1) The Bank of Ghana may impose a moratorium suspending some or all payments by a bank or specialised deposit-taking institution in official administration, except for payments to central clearing counterparties and to payment, settlement and clearing systems.

(2) A person shall not without the consent of the Bank of Ghana

(a) commence or continue a proceeding in a court against a bank or specialised deposit-taking institution in official administration;

(b) exercise rights under a mortgage, charge, or other security over the property of a bank or specialised deposit-taking institution in official administration; or

(c) issue any execution, attach any debt, or otherwise enforce or seek to enforce any judgment or order obtained in respect of a bank or specialised deposit taking institution in official administration.

(3) The Bank of Ghana may waive the application of subsection (2) to any creditor or class of creditors.

Suspension of rights of termination

112. A right or obligation of a third party under any contract to which a bank or specialised deposit-taking institution in official administration is a party shall not be terminated, accelerated, or

modified solely because of the appointment of the official administrator or any action taken by the official administrator.

Control of the bank or specialised deposit-taking institution by official administrator

113. (1) The official administrator shall on appointment to office secure the properties, offices, assets, books and records of the bank or specialised deposit-taking institution involved, and may take the necessary steps including

(a) changing the locks to the buildings and offices of the bank or specialised deposit-taking institution to prevent unauthorised access;

(b) changing the passwords to the computers of the bank or specialised deposit-taking institutions and granting access only to a limited number of employees; and

(c) issuing to authorised employees a new type of entrance pass to the premises of the bank or specialised deposit-taking institution and controlling the access of other employees to those premises.

(2) The official administrator shall in the course of the official administration have unrestricted access to, and control over the properties, offices, assets and the books of account and other records of the bank or specialised deposit-taking institution.

(3) A law enforcement agency shall, on request, assist the official administrator to gain access to any premises of the bank or specialised deposit-taking institution to gain control over and to secure the properties, offices, assets, books and records of the bank or specialised deposit-taking institution.

(4) The directors, key management personnel and employees of the bank or specialised deposit-taking institution shall

(a) cooperate fully with and assist the official administrator, and

(b) make available to the official administrator all records and documentation pertaining to the bank or specialised deposit-taking institution and any additional information or report requested by the official administrator.

(5) A person who does not comply with subsection (4) or otherwise obstructs the Bank of Ghana or an official administrator in the performance of functions under sections 107 to 122 is liable on summary conviction to a fine of not less than one thousand two hundred and fifty penalty units and not more than two thousand five hundred penalty units or to a term of imprisonment of not less than one year and not more than two years or to both.

Inventory and plan of action to resolve the bank or specialised deposit-taking institution

114. (1) An official administrator shall not later than thirty days after the appointment of that official administrator, prepare and deliver to the Bank of Ghana an inventory of the assets and liabilities of the bank or specialised deposit taking institution involved.

(2) The inventory under subsection (1) shall itemise the assets according to the different risk profiles and classify the non-performing loans.

(3) An official administrator shall not later than ninety days after the appointment of that official administrator, prepare and deliver to the Bank of Ghana a report on the financial condition and future prospects of the bank or specialised deposit-taking institution.

(4) The official administrator shall include in the report under subsection (3)

(a) an assessment of the amount of assets likely to be realised in a liquidation of the bank or specialised deposit-taking institution;

(b) a proposed plan of action to make the bank or specialised deposit-taking institution comply with the law by carrying out a plan of corrective actions that may include

(i) a capital increase; or

(ii) measures that may be taken to minimise disruption to depositors and preserve the stability of the financial system, if the bank or specialised deposit-taking institution cannot be rehabilitated.

(5) The official administrator shall promptly provide any additional report or information requested by the Bank of Ghana.

Capital increase by existing shareholders

115. (1) On the basis of the report produced under section 114 and with the approval of the Bank of Ghana, the official administrator may for the purpose of increasing the capital of the bank or specialised deposit-taking institution through the issuance of new shares to existing shareholders, take the following actions:

(a) determine the extent of losses and prepare the financial statements of the bank or specialised deposit-taking institution covering the amount of the losses, profits, reserves and capital; and

(b) notify existing shareholders of the amount of additional capital needed to bring the capital of the bank or specialised deposit-taking institution into compliance with all capital requirements and allow such shareholders to subscribe and purchase additional shares, by submitting binding commitments equal to the full amount of additional capital needed within five working days of such notification.

(2) Where an existing shareholder of a bank or specialised deposit-taking institution is unable to subscribe and purchase additional

Termination of receivership and final reporting to the Bank of Ghana

136. (1) After the distribution of the proceeds of the sale of assets of a bank or a specialised deposit-taking institution, the receiver shall submit a report to the Bank of Ghana indicating among others

(a) a statement of income and expense; and

(b) sources and uses of funds during the period of receiver- ship.

(2) Where the Bank of Ghana approves the report under subsection (1),

(a) the receivership of the Bank of Ghana terminates; and

(b) the Bank of Ghana and the receiver are relieved of any further responsibility in connection with the receivership of the bank or specialised deposit-taking institution involved.

(3) A receiver may abandon the sale of an asset of a bank or a specialised deposit-taking institution or donate the asset to a charitable institution that promotes public health or education, where

(a) the asset is of an immaterial value;

(b) the receiver is unable to sell the asset; or

(e) the cost of sale of the asset would exceed the amount expected to be received.

(4) The creditor of a bank or a specialised deposit-taking institution does not have a claim against an asset under subsection (3).

Miscellaneous receivership provisions

137. Where a receiver has sufficient reason to believe that shareholders, directors, officers, attorneys, accountants or other professionals have engaged or are engaging in a criminal or fraudulent activity in relation to the business of a bank or a specialised deposit-taking institution, that receiver shall

(a) notify the Bank of Ghana immediately, and

(b) institute a civil action to claim damages and restitution.

Relationship with other enactments

138. The provisions of the Companies Act, 1963 (Act 179), the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180), or any other enactment relating to corporate insolvency or

liquidation shall not apply to the winding up and liquidation of an insolvent bank or specialised deposit-taking institution in the country.

Voluntary winding-up

139. (1) Despite the Companies Act, 1963 (Act 179) or any other relevant enactment, a bank or specialised deposit-taking institution shall not wind up voluntarily unless the Bank of Ghana has certified in writing that that bank or specialised deposit-taking institution would be capable on its voluntary winding up, of meeting the obligations it has in respect of the depositors and creditors as the obligations accrue.

(2) Where the Bank of Ghana, at any stage of the voluntary winding up, considers that that bank or specialised deposit-taking institution which is winding up is unable to meet its obligations to depositors or creditors in full, the Bank of Ghana shall appoint a receiver to wind up the affairs of that bank or the specialised deposit-taking institution and sections 123 to 139 shall apply.

Miscellaneous Provisions

Review of decisions of the Bank of Ghana on licensing

140. (1) Where a person is aggrieved with a decision of the Bank of Ghana in respect of issuance of a licence, that person may, within thirty days of the decision, petition the Bank of Ghana in writing for a review.

(2) Where the person is dissatisfied with the outcome of the review under subsection (1), the person may, within thirty days from the date of the decision, in writing, appeal against the decision to the Adjudicative Panel established under subsection (3),

(3) There is established an Adjudicative Panel consisting of

(a) a chairperson who is a justice of the High Court nominated by the Chief Justice;

(b) one person with knowledge in banking and finance and with not less than ten years experience in banking and finance nominated by the Chartered Institute of Bankers; and

(c) one member of the Institute of Chartered Accountants, Ghana who has been in practice for not less than ten years, nominated by the Institute of Chartered Accountants, Ghana.

(4) The Chief Justice shall appoint members of the Adjudicative Panel.

(5) The Adjudicative Panel shall adopt its own rules of procedure.

(6) The Adjudicative Panel shall communicate its decision to the applicant within thirty days of receipt of the appeal made to it in writing under subsection (2).

(7) A person dissatisfied with the decision of the Adjudicative Panel may appeal to the High Court within thirty days upon receipt of the decision.

(8) The expenses of the Adjudicative Panel including allowances of members of the Adjudicative Panel shall be borne by the Bank of Ghana.

Review of decision of Bank of Ghana on official administration, liquidation and receivership by arbitration

141. (1) Where a person is aggrieved with a decision of the Bank of Ghana in respect of

(a) matters under sections 107 to 122 or sections 123 to 139;

(b) withdrawal of the registration of a financial holding company;

(c) matters which involve the revocation of a licence of a bank or a specialised deposit taking institution; or

(d) an action under sections 102 to 106 and where the Bank of Ghana determines that there is a serious risk to the financial stability or of material loss to that bank or specialised deposit-taking institution or financial holding company

and that person desires redress of such grievances, that person shall resort to arbitration under the rules of the Alternative Dispute Resolution Centre established under the Alternative Dispute Resolution Act, 2010 (Act 798).

Review of decisions through arbitration

142. With respect to an arbitration proceeding against the Bank of Ghana, a member of the decision-making body, a staff of the Bank of Ghana, an agent of the Bank of Ghana, or Arbitration Panel in reaching a decision, may examine whether the defendant acted unlawfully or in an arbitrary or capricious manner having regard to

(a) the peculiar facts,

(b) the provisions of this Act,

(c) a directive of the Bank of Ghana, or

(d) any other enactment.

Unclaimed balances

143. (1) Where a current or savings account has not been operated for a period of two years or a time deposit account has not been operated for a period of two years after the date of maturity of

the deposit, a withdrawal shall not be made on the account except with the permission of two authorised officers of the bank or specialised deposit-taking institution involved.

(2) An account referred to in subsection (1) shall be transferred to a separate register of dormant accounts in the books of the bank or specialised deposit-taking institution and a notice in writing of that action shall be given to the depositor at the last known address of the depositor.

(3) Where an account which is transferable under subsection (2) is subject to a service charge, or is an interest bearing account, the charge may continue to be levied up to the date on which the account was transferred to the register of dormant accounts.

(4) Where an account is transferred to a register of dormant accounts and the account has been on the register for three years, the bank or specialised deposit-taking institution shall advertise in at least two daily newspapers of national circulation the fact that the account has been on the register of dormant accounts for three years.

(5) An account may be transferred out of the register of dormant accounts on a request by the depositor or the legal representative of the depositor where a depositor is dead or incapacitated.

(6) Where an account has been in the register of dormant accounts for a period of three years and that fact has been advertised as required under subsection (4), the balance on the account shall be transferred to an account earmarked for that purpose at the Bank of Ghana.

(7) Where a balance has been transferred under subsection (6), the Bank of Ghana shall, on a request, refund any unclaimed balances to the depositor, or if the depositor is dead, to the legal representative of the depositor.

Prohibition of floating charge

144. (1) A bank or specialised deposit-taking institution shall not create a floating charge on an undertaking or property of the bank or specialised deposit-taking institution or part of the property of the bank or specialised deposit-taking institution.

(2) The Bank of Ghana may prescribe restrictions on other liens or charges in respect of the property of a bank or specialised deposit-taking institution.

(3) A bank or specialised deposit-taking institution which creates a floating charge in contravention of subsection (1), is liable to pay to the Bank of Ghana an administrative penalty of not more than one thousand penalty units.

(4) A key management personnel who fails to comply with this section is liable to pay to the Bank of Ghana an administrative penalty of not more than one thousand penalty units.

Confidentiality obligations of officials and employees of the Bank of Ghana

145. (1) A director, officer or employee of the Bank of Ghana or any person appointed by the Bank of Ghana pursuant to the banking laws shall, before performing a function under the banking laws,

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

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

(2) A director, officer or employee of the Bank of Ghana or any other person appointed by the Bank of Ghana shall not, during or after a relationship with the Bank of Ghana, disclose directly or indirectly to any person any information related to the affairs of the Bank of Ghana, or any other bank, specialised deposit-taking institution or financial holding company or of any of its customers, which the person has acquired in the discharge of duties or the performance of functions except,

(a) for the purposes of

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

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

(b) when lawfully required to do so under this Act or any other enactment; or

(c) by an order of a court of competent jurisdiction.

(3) A person who contravenes a provision of this section, commits an offence and is liable on summary conviction to a fine of not less than five hundred penalty units and not more than one thousand penalty units.

(4) Nothing in this section shall preclude

(a) the exchange or disclosure of information, under conditions of confidentiality between the Bank of Ghana and a foreign regulatory agency performing functions similar to those of the Bank of Ghana under this Act, pursuant to any existing or future Treaty, or any agreement or arrangement entered into by the Bank of Ghana pursuant to section 147;

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

(c) the disclosure of information to the Financial Intelligence Centre established under the Anti-Money Laundering Act, 2008 (Act 749);

(d) the disclosure of information to members of the Financial Sector Regulators Forum; or

(e) the exchange of information between the Bank of Ghana and the institution responsible for deposit protection.

Secrecy of customer information

146. (1) Subject to this Act, a person with access to the books, accounts, records, financial statements or other documents, electronically or otherwise, of a bank or specialized deposit-taking institution shall,

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

(b) in any other case, make a declaration of confidentiality before the chief executive or deputy chief executive of the bank or specialised deposit-taking institution in the form set out in Part II of the Second Schedule,

before the person begins to perform any function under the banking laws.

(2) Except for the purpose of the performance of functions or the exercise of a power under the banking laws or as directed in writing by the Bank of Ghana, a person referred to in subsection (1) shall not, during or after a relationship with the bank or specialised deposit-taking institution, disclose directly or indirectly to any person any information related to the affairs of any of its customers including deposits, borrowings or transactions or other personal, financial or business affairs without the prior written consent of the customer or the personal representative of the customer.

(3) The duty of confidentiality imposed under this section shall not apply to the provision of customer information

(a) to the Bank of Ghana for purposes of carrying out duties and exercising powers under this Act;

(b) to the Ghana Revenue Authority

(i) upon the request of the Ghana Revenue Authority acting in accordance with paragraphs 19 and 20 of the Seventh Schedule of the Income Tax Act, 2015 (Act 896); or

(ii) in accordance with Regulations made under the Income Tax Act, 2015 (Act 896) for the automatic exchange of financial information for tax purposes with the competent authority of another jurisdiction;

(c) to the Financial Intelligence Centre established under the Anti-Money Laundering Act, 2008 (Act 749);

(d) to the Collateral Registry set-up under the Borrowers and Lenders Act, 2008 (Act 773).

(e) in accordance with the provisions of the Credit Reporting Act, 2007 (Act 726);

(f) in accordance with the provisions of the Ghana Deposit Protection Act, 2016 (Act 917); or

(g) to the Securities and Exchange Commission.

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

(a) a customer issued with a credit card or charge card by a bank or specialised deposit-taking institution, has had the card suspended or cancelled by that bank or specialised deposit-taking institution by reason of default in payment, and the bank or specialised deposit-taking institution discloses information related to the name and identity of the customer, the amount of indebtedness and the date of suspension or cancellation of the credit card or charge card to another bank or specialised deposit-taking institution that is issuing credit cards or charge cards in the country;

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

(c) the customer has died, testate or intestate, and the information is required by the appointed personal representative of the deceased or the testamentary executor solely in connection with the succession to the estate;

(d) the express consent of the customer has been obtained;

(e) civil proceedings have been instituted involving the bank or specialised deposit-taking institution and the customer or the account of the customer;

(f) the information is required by an officer in the employment of the same bank or specialised deposit-taking institution in the country or an auditor or legal representative of the bank or specialised deposit-taking institution who requires and is entitled to know the information in the course of professional duties;

(g) the information is required by another bank or specialised deposit-taking institution for the purpose of assessing the credit-worthiness of a customer, if the information is being sought for commercial reasons and is of a general nature;

(h) the bank or specialised deposit-taking institution has been served with a garnishee order attaching moneys in the account of the customer;

(i) a person referred to in subsection (1) is summoned to appear before a judge or a court of competent jurisdiction and the judge or the court orders the disclosure of the information;

(j) where disclosure is required under an enactment; and

(k) the bank or specialised deposit-taking institution is required to make a report or provide additional information on a suspicious transaction to the Financial Intelligence Centre established under the Anti-Money Laundering Act, 2008 (Act 749).

(5) Subject to subsections (7) and (8), information shall be disclosed where the head office of a bank or specialised deposit-taking institution

(a) incorporated outside the country requires information from the subsidiary of that bank or specialised deposit-taking institution in the country in respect of a transaction of the subsidiary; or

(b) incorporated in the country requires information from the subsidiary or branch of that bank or specialised deposit-taking institution outside the country in respect of a transaction of the subsidiary or branch.

(6) Subject to subsections (7) and (8), information shall be disclosed where the parent bank or specialised deposit-taking institution of a subsidiary, which subsidiary is operating in the country under consolidated supervision, requires information from the subsidiary about any of the transactions of the subsidiary.

(7) Where the information which is required under subsection (5) or (6) relates to a transaction with a customer other than a bank or specialised deposit-taking institution, information other than credit facilities granted to or foreign exchange transactions with the customer shall not be disclosed.

(8) Information related to deposits taken from or foreign exchange transactions with a central bank or any other entity or agency, by whatever name called, which performs the functions of a central bank, shall not be disclosed.

(9) Where an officer of a foreign bank or specialised deposit-taking institution or an officer of a central bank or banking regulator in a foreign country or any other entity or agency, by whatever name called, has the responsibility to supervise a bank or specialised deposit-taking institution or perform the functions of a central bank, proposes to

(a) conduct an inquiry, audit or inspection of a branch or a subsidiary of the bank or specialised deposit-taking institution in the country, or

(b) carry out any other action that would involve the duty of confidentiality imposed under this section,

that officer shall obtain the prior written authorisation of the Bank of Ghana.

(10) An officer responsible for carrying out an action that would involve the duty of confidentiality under this section shall be subject to the duty of confidentiality and any other conditions that the Bank of Ghana may impose before information of a confidential nature is made available to the officer.

(11) The Bank of Ghana may disclose to the auditor of a bank or specialised deposit-taking institution any information received under or for the purposes of this Act where the Bank of Ghana considers that disclosing the information would enable or assist the auditor in the discharge of the supervisory duties of the Bank of Ghana.

(12) This section shall not limit

(a) the obligations of the Republic under an international treaty, convention or agreement; and

(b) the obligations of the Bank of Ghana under any agreement or arrangement or under any existing or future memorandum of understanding for cooperation and exchange of information between the Bank of Ghana and any other foreign regulatory agency performing functions similar to those of the Bank of Ghana.

Agreements for exchange of information

147. (1) Where the Bank of Ghana is satisfied that a foreign supervisory institution has the obligation to protect the confidentiality of the information imparted, the Bank of Ghana may enter into an agreement or arrangement for coordination, cooperation, and the exchange of information with that foreign supervisory institution with responsibility to supervise banks or specialised deposit-taking institutions, financial institutions, financial holding companies, or other similar institutions.

(2) The Bank of Ghana may enter into an agreement or arrangement for coordination and the exchange of information with the institution responsible for deposit protection.

Disclosure of information relating to banks or specialised deposit-taking institutions or financial holding companies

148. Despite the provisions of this Act, the Bank of Ghana may,

(a) in the interest of the public, publish information obtained from the banks, specialised deposit-taking institutions or financial holding companies, in a consolidated form that it considers fit; and

(b) share supervisory information, on a confidential basis, with other official agencies, both domestic and foreign, responsible for the safety and soundness of the financial system, if the information is used only for purposes related to the effective supervision on a solo or consolidated basis of the institutions concerned and their affiliates.

Submission of reports on trend and progress

149. (1) The Bank of Ghana shall, not later than one hundred and eighty days after the end of the financial year, submit to the Minister a report on the trend and progress of the business of deposit-taking in the country.

(2) The Bank of Ghana shall include in the report the recommendations that it considers necessary in the interest of the deposit-taking business in the country.

protection from liability and indemnification

150. (1) An action shall not lie against the Attorney-General, the Bank of Ghana, an officer of the Bank of Ghana or any other person acting under the direction of the Bank of Ghana for

(a) anything done or omitted to be done in good faith in the implementation of this Act unless it is proven that the act or omission constitutes intentional wrongful conduct or gross negligence; or

(b) the exercise of a power or a discharge of duty authorised or required under any other enactment.

(2) Subject to subsection (3), the Bank of Ghana shall indemnify

(a) a member of a decision-making body of the Bank of Ghana, or

(b) an employee or official of the Bank of Ghana.

(3) An agent of the Bank of Ghana shall be indemnified against costs incurred in the defence of a legal action instituted against the person in connection with the discharge or purported discharge of an official task within the scope of employment or engagement of the person under this Act.

(4) The Bank of Ghana shall not indemnify a person who has been convicted of a crime arising out of the activities that are covered by the legal action.

Collection of civil penalties

151. An administrative penalty imposed under this Act by the Bank of Ghana shall be a debt due from that person to the Bank of Ghana and shall be recoverable by

(a) in the case of a director, key management personnel, or any other person, be recoverable by personal action against the director, key management personnel, or that other person if the debt is not paid within sixty days after demand;

(b) in the case of a bank, be recoverable by debit to the bank account of that bank with the Bank of Ghana; or

(c) in the case of a specialised deposit-taking institution or financial holding company, be recoverable by an action against the specialised deposit-taking institution or financial holding company if the debt is not paid within sixty days after demand.

Prosecution of offences and penalties

152. (1) The Attorney-General may, by executive instrument, authorise an officer of the rank of Ghana specified in the instrument to prosecute an offence that is set out under this Act.

(2) Where a body or persons is convicted of an offence under this Act,

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

(b) in the case of a partnership, every partner shall be deemed to have committed the offence.

(3) A person shall not be convicted under subsection (2), if that person proves that the offence was committed without the consent or connivance of that person and that due diligence to prevent the commission of the offence was exercised having regard to the circumstances.

Joinder of offences

153. Despite the provisions of any other enactment, where a person is accused of more than one offence under this Act, that person may be charged with and tried at one trial for any number of those offences committed.

General penalty

154. A person who commits an offence under this Act for which a penalty is not provided is liable on summary conviction,

(a) in the case of an individual, to a fine of not less than five hundred penalty units and not more than two thousand penalty units or to a term of imprisonment of not less than six months and not more than two years or to both.

(b) in the case of a corporate body to a fine of not less than five thousand penalty units and not more than ten thousand penalty units; or

(c) in the case of a continuing offence to a further fine of fifty penalty units for each day that the contravention continues.

Regulations

155. (1) The Minister may, in consultation with the Bank of Ghana, by legislative instrument, make Regulations prescribing or making provision for anything which under this Act may be prescribed or provided for by Regulations.

(2) Without limiting subsection (1), the Minister may make regulations to provide

(a) for the payment of fees and charges under this Act; and

(b) generally for the effective implementation of this Act.

interpretation

156. In this Act, unless the context otherwise requires,

"affiliate" of a company means

"applicant" means a body corporate;

"associate" means an entity over which a bank, specialised deposit-taking institution, or financial holding company has power to participate in its financial or operating policy decisions but which does not control or jointly control its policies;

"bank" means a body corporate which engages in the deposit-taking business and is issued with a banking licence in accordance with this Act;

"banking law" means an enactment related to the banking system;

"banking policy" means a policy which is specified by the Bank of Ghana in the interest of the banking system or in the interest of monetary stability or sound economic growth;

"capital adequacy ratio" is the ratio expressed as a percentage of the adjusted capital base to the risk weighted financial exposure;

"Chief Executive" in relation to a body corporate, means a person, by whatever name called, who is responsible, subject to the authority of the board of directors of the body corporate, for the conduct and management of the business of the corporate body;

"Company Regulations" means the Regulations of a company incorporated under the Companies Act, 1963 (Act 179);

"control" means a relationship where a person or a group of persons acting in concert, directly or indirectly

(a) owns twenty five percent or more of the voting rights of a person;

(b) has the power to appoint or remove the majority of the members of the board of directors of the person;

(c) has the ability to exert a significant influence on the management or policies of a person; or

(d) has the ability to direct the activities of the person so as to affect the financial returns on any investment made with the person;

"credit union" means a body corporate established to operate as a co-operative and not for profit but to provide savings, credit and other financial services to members of that body corporate based on a common bond and linkage of association;

"controlling shareholding" means a holding or means of influence exercised by a person or a group of persons acting in concert, directly or indirectly that constitutes control over the bank or specialised deposit-taking institution;

"corporate group" means a company and the affiliates or associates of that company;

"deposit" means a sum of money paid to a person on condition that it is to be repaid by that person, with or without interest or premium either on demand or at an agreed time under the legal and contractual conditions applicable and not referable to the provision of property or services or the giving of security;

"Deposit Protection Scheme" means the Ghana Deposit Protection Scheme established under the Ghana Deposit Protection Act, 2016 (Act)

"deposit-taking business" means the business of

(a) taking money on deposit and making loans or other advances of money; and

(b) financial activities prescribed by the Bank of Ghana for purposes of this definition;

"deposit-taking micro finance institution" means a specialised deposit-taking institution engaged primarily in the provision of deposit-taking and credit services targeted at low income clients and the economically active poor;

"emolument" means salaries and allowances other than performance related earnings;

"employee" means an individual employed by a bank or specialised deposit-taking institution other than a director or key management personnel;

"enhanced reporting" means frequent and detailed reporting;

"examination" includes the carrying out of on-site, off-site, credit reporting and any other examination as may be determined by the Bank of Ghana under the Anti money Laundering Act, 2008 (Act 749) or any other relevant enactment;

"financial exposure" in relation to a bank, specialised deposit-taking institution, or financial holding companies with respect to a person is the aggregate of

(a) the loans, advances, placements, and credit facilities including off-balance sheet obligations given to that person, and

(b) the value of the holdings by that bank, specialised deposit-taking institution, or financial holding company of shares and debentures and other debt securities issued by that person;

"financial group" means a corporate group that includes a bank or a specialised deposit-taking institution and its Oates or associates that the Bank of Ghana determines to be taken into account for purposes of this Act;

"financial holding company" means a company that controls a bank or a specialised deposit-taking institution which is subject to registration requirements under this Act;

"finance house" means a specialised deposit-taking institution engaged primarily in providing consumer credit and business finance;

"financial institution" means a bank or a specialised deposit-taking institution;

"Financial Sector Regulators Forum" means a platform for exchange of information between regulators of the financial system in the country;

"fit and proper person" means a person who is suitable to hold the particular position which that person holds or is to hold as regards

(a) the probity, competence and soundness of judgment of the person for purposes of fulfilling the responsibilities of that person;

(b) the diligence with which that person fulfils or is likely to fulfill those responsibilities;

(c) whether the interest of depositors or potential depositors of the entity are threatened, or likely to be, in any way threatened by the person holding that position; and

(d) that the integrity of the person is established and the qualifications and experience of the person are appropriate for the position in the light of the business plan and activities of the entity which the person serves, or is likely to serve, taking into account the size, nature and complexity of the institution;

"foreign bank" means a foreign company that is authorised to engage in a deposit-taking business in the country where its head office is located;

"foreign company" means a company incorporated under the laws of a country other than Ghana;

"foreign exchange business" means the business of buying, selling, borrowing, lending, receiving or paying foreign exchange;

"holding company" means a company that controls another company or body corporate, whether or not the holding company is a non-operating or operating company;

"insider" with respect to a bank or a specialised deposit-taking institution means a director, an executive director, key management personnel and a significant shareholder other than a financial holding company;

"key management personnel" includes the chief executive, deputy chief executive, chief operating officer, chief finance officer, board secretary, treasurer, chief internal auditor, the chief risk officer, the head of compliance, the anti-money laundering reporting officer, the head of internal control functions, the chief legal officer, the manager of a significant business unit of the bank, a specialised deposit-taking institution, or a financial holding company or any person with similar responsibilities;

"large exposure" means financial exposure to a single borrower or group of connected borrowers that in the aggregate exceeds ten percent of the net own funds of the bank, a specialised deposit-taking institution, or financial holding company;

"law enforcement agency" means the Police, Bureau of National Investigations and officers of the Economic and Organised Crime Office;

"management letter" means a formal letter from the auditor addressed to the financial institution on the weaknesses identified in the operations of a financial institution during the audit;

"micro and small business financing" means the financing of households and small business enterprises;

"minimum paid-up capital" includes

(a) initial funds required to start-up a bank or specialised deposit-taking institution, and

(b) the operational start-up costs as may be prescribed by the Bank of Ghana but excludes expenses incurred in employing capital;

"Minister" means the Minister responsible for Finance;

"net open position" means the sum of the foreign currency exposure of a bank expressed as a percentage of that bank's net own funds taking into consideration the following:

(a) the net position of its total foreign currency assets and liabilities,

(b) the position of spot and forward foreign exchange transactions on the reporting date, and

(c) the sum of all off-balance sheet obligations maturing within two working days of the reporting date or any other period as may be prescribed by the Bank of Ghana;

"net own funds" includes the sum total of share capital that has been paid-up, free reserves but excludes revaluation reserves, on property, plant, and equipment, other non-distributable reserves unless with the approval of the Bank of Ghana, other than the Reserve Fund established under section 34, subject to netting out accumulated losses, goodwill and unwritten off capitalised expenditure including pre-operating expenses and deferred tax;

"non interest banking" means a banking service that does not attract interest;

"off balance sheet transaction" includes contingent assets contingent liabilities in the form of letters of credit, guarantees, bids, bonds and indemnities;

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

"paid-up capital" includes minimum capital, additional fully paid-up shares, and the capitalisation of income surplus;

"person" includes a body corporate, whether corporation, aggregate or corporate sole and unincorporated body of persons as well as an individual;

"prescribed" means prescribed by Regulations or Rules or directives issued by the Bank of Ghana under this Act;

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

"purchase and assumption" means an agreement in which a part or the whole of the assets of the failed bank are purchased and all or some of the liabilities are assumed by an acquiring bank;

"relevant entities" include a bank, a specialised deposit-taking institution, and financial holding company;

"Regulations" means the Regulations made under this Act;

"related interest" in relation to an insider means

(a) a firm or company in which an insider is interested, directly or indirectly as a director or controlling shareholder, partner, proprietor, employee or guarantor; and

(b) a holding company, subsidiary, or affiliate of that company in which an insider is interested, directly or indirectly, as director, key management personnel, controlling shareholder, partner, proprietor, employee or guarantor;

"related persons" in relation to an insider means a spouse, son, daughter, step son, step daughter, brother, sister, father, mother, cousin, nephew, niece, aunt, uncle, step sister and step brother of an insider;

"rural or community bank" means a specialised deposit-taking institution engaged primarily in deposit-taking business within a defined catchment area;

"savings and loans company" means a specialised deposit-taking institution engaged primarily in the deposit-taking business from households and small business enterprises and the provision of credit to the corporate and non-corporate sector, and micro and small business financing;

"shell company" means a company that has no physical presence in the country in which it is incorporated and licensed, and that is unaffiliated with a regulated financial service group that is subject to effective consolidated supervision;

"significant shareholder" means a shareholder who has a direct or indirect holding which represents five percent or more of the capital or of the voting rights;

"significant shareholding" means a direct or indirect holding which represents five percent or more of the capital or of the voting rights;

"specialised deposit-taking institution" means a body corporate which engages in the deposit-taking business and is issued with a licence to engage in the deposit-taking business in accordance with this Act;

"subsidiary" means a company over which another company has control;

"supervisory structures" include units, offices, departments or other outfits within the Bank of Ghana authorised by the Bank of Ghana to supervise banks and specialised deposit-taking institutions;

"time deposit account" means an account held at a bank or specialised deposit-taking institution into which money is deposited for a specified period and out of which money can only be withdrawn before the expiration of the specified period subject to

(a) notification;

(b) re-negotiation; or

(c) upon payment of a penalty; and

"ultimate beneficial owner" means an individual that ultimately derives the benefits of ownership or control of a juridical person.

Repeal and savings

157. (1) The following enactments are repealed:

(a) the Banking Act, 2004 (Act 673); and

(b) the Banking (Amendment) Act, 2007 (Act 738).

(2) Despite the repeal of Act 673 and Act 738, the Regulations, orders, directives, notifications, instructions, exemptions, approvals, decisions, rules and any other executive or administrative act lawfully made, given or done under Act 673 and Act 738 shall, upon the coming into force of this Act, continue in force until amended, reviewed, terminated or revoked in accordance with this Act.

Validity of existing licence

158. A bank or specialised deposit-taking institution licensed under or provided for under the Banking Act, 2004 (Act 673) or established under any other enactment and in existence before the coming into force of this Act shall continue in existence subject to compliance with this Act .

Transitional provisions

159. (1) A person who controls a bank or specialised deposit-taking institution on the coming into force of this Act shall file an application for registration as a financial holding company within ninety days of the coming into force of this Act.

(2) Where the Bank of Ghana rejects an application filed under subsection (1), the Bank of Ghana shall restrict transactions between the bank or specialised deposit-taking institution and the applicant and direct the applicant to divest the bank or a specialised deposit-taking institution in respect of which the applicant is a financial holding company.

(3) Where a divestiture directed under subsection (2) is not accomplished within one year from the date the directive is issued, the Bank of Ghana shall take over the official administration of the bank or specialised deposit-taking institution and may exercise any of the powers available to the Bank of Ghana under this Act in order to change the ownership of the bank or specialised deposit-taking institution.

(4) The Bank of Ghana may exempt a person to which this section applies from a provision of this Act that is applicable to a financial holding company or modify the application of a provision of this Act, where the Bank of Ghana determines that the exemption or modification is not inconsistent with the provisions of this Act.

(5) An application filed in accordance with this section shall not be approved unless the applicant has submitted as an alternative a plan for achieving compliance that is satisfactory to the Bank of Ghana in place of compliance with all applicable provisions of this Act.

(6) Where an applicant fails to implement a plan for compliance, the Bank of Ghana may take action under subsections (2) to (4) and any other action authorised under this Act.

Moratorium for transition

160. (1) A bank or a specialised deposit-taking institution that owns (a) a subsidiary company engaged in agricultural, commercial or industrial activity or

(b) investments, activities or properties

in breach of section 19 shall divest itself of such subsidiaries, investments, activities or properties not later than one year after the coming into force of this Act, or any other period as the Bank of Ghana may prescribe.

(2) A bank and specialised deposit-taking institution in existence before the coming into force of this Act shall, upon the coming into force of this Act, have a grace period of six months or any other period as the Bank of Ghana may determine to ensure full compliance with the provisions of this Act in relation to matters of capital, liquidity, corporate governance, lending and investments.

(3) The Bank of Ghana may

(a) exempt a bank or specialised deposit-taking institution to which this section applies, or

(b) modify the application of this section to a bank or specialised deposit-taking institution,

if the Bank of Ghana determines that the exemption or modification is not inconsistent with the provisions of this Act .

Moratorium for transition

160. (1) A bank or a specialised deposit-taking institution that owns

(a) a subsidiary company engaged in agricultural, commercial or industrial activity or

(b) investments, activities or properties in breach of section 19 shall divest itself of such subsidiaries, investments, activities or properties not later than one year after the coming into force of this Act, or any other period as the Bank of Ghana may prescribe.

(2) A bank and specialised deposit-taking institution in existence before the coming into force of this Act shall, upon the coming into force of this Act, have a grace period of six months or any other periods the Bank of Ghana may determine to ensure full compliance with the provisions of this Act in relation to matters of capital, liquidity, corporate governance, lending and investments.

(3) The Bank of Ghana may

(a) exempt a bank or specialised deposit-taking institution to which this section applies, or

(b) modify the application of this section to a bank or specialised deposit-taking institution,

if the Bank of Ghana determines that the exemption or modification is not inconsistent with the provisions of this Act.

**FIRST SCHEDULE
Part I**

(Section 145 (1) (a))
**Oath of Confidentiality
IN THE HIGH COURT**

I, _____,

_____ having been appointed _____ do hereby swear / solemnly affirm that I shall maintain during or after my relationship with the Bank of Ghana the confidentiality of any matter related to the banking laws which comes to my knowledge and shall not, on any account and at any time, disclose directly or indirectly to any person, any matter or information related to the affairs of the Bank of Ghana or of any other bank, specialised deposit-taking institution or financial holding company or the affairs of any of their customers, otherwise than for the purpose of the performance of my functions or the exercise of my powers under the banking laws or when meeting the requirements of an agreement or understanding reached by the Bank of Ghana with any other relevant supervisory body or when lawfully required to do so by a Judge in chambers or any court of law or under any enactment.

Signature of declarant _____.

Taken before me _____.

The Registrar of the High Court on (date)

Part II

(Section 145 (1) (b))
Declaration of Confidentiality

I, _____ having been appointed _____ do hereby declare that I shall _____ maintain during or after my relationship with the confidentiality of any matter related to the banking laws which come to my knowledge and shall not, on any account and at any time, disclose directly or indirectly to any person, any matter or information related to the affairs

of otherwise than for the purpose of the performance of my functions or the exercise of my powers under the banking laws or when lawfully required to do so by a Judge in chambers or any court of law or under any enactment.

Signature of declarant

Made before me

Name

The Chief Executive (date)

Date of *Gazette* notification: