

DEVELOPMENT FINANCE INSTITUTIONS BILL, 2020

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Declaration of Confidentiality

Development Finance Institutions Bill, 2020

A
BILL

ENTITLED

DEVELOPMENT FINANCE INSTITUTIONS ACT, 2020

AN ACT to provide for the licensing, regulation and supervision of development finance institutions in the country, to promote growth and development in key sectors of the economy and for related matters.

PASSED by Parliament and assented to by the President:

Preliminary Provisions

Application of this Act

1. (1) This Act applies to
 - (a) development finance institutions licensed under this Act;
and
 - (b) any other institution designated as a development finance institution by the Bank of Ghana by notice and published in the *Gazette*.

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(2) Despite subsection (1), this Act shall not apply to a development finance institution governed by a multilateral treaty or under sovereign bilateral agreements operating in the country.

Application of enactments

2. (1) This Act shall be read together with the following enactments and shall not except as otherwise provided in this Act derogate from the provisions of those enactments:

- (a) the Companies Act, 2019 (Act 992);
- (b) the Anti-Money Laundering Act, 2008 (Act 749); and
- (c) the Anti-Terrorism Act, 2008 (Act 762).

(2) Where there is a conflict or inconsistency between the Companies Act, 2019 (Act 992) and this Act, this Act shall prevail.

(3) The Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930) shall not apply to an institution licensed under this Act.

Development finance business

3. (1) Subject to this Act, a person shall not carry on a development finance business in the country unless that person is

- (a) a body corporate registered under the laws of this country; and
- (b) licensed by the Bank of Ghana.

(2) For the purpose of this Act, development finance business means

- (a) the provision of medium to long term funding, short-term funding, guarantees and other credit enhancement structures to key sectors of the economy under a national development policy in a financially sustainable manner; or
- (b) a development finance activity prescribed by the Bank of Ghana.

(3) A development finance institution shall in addition to subsection (2) invest at

- (a) least seventy-five per cent of the loanable funds of the development finance institution in medium and long-term loans for economic development purposes; and
- (b) most twenty-five per cent of the loanable funds of the development finance institution in short term loans.

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(4) The Bank of Ghana may issue directives to vary the thresholds specified in subsection (3).

(5) Despite section 23 of the Banks and Specialised Deposit-Taking Institution Act 2016 (Act 930), a development finance institution may use the word “bank”.

Licensing of Development Finance Institutions

Role of Bank of Ghana

4. (1) The Bank of Ghana shall have overall regulatory and supervisory authority in matters relating to the business of development finance institutions in the country.

- (2) For the purpose of subsection (1), the Bank of Ghana shall
- (a) promote the viability of development finance institutions licensed under this Act;
 - (b) develop appropriate consumer protection measures to ensure that the interests of clients of development finance institutions are protected;
 - (c) deal with unlawful or improper practices of development finance institutions; and
 - (a) take any action necessary for the implementation of this Act.

(3) The supervisory functions of the Bank of Ghana under this Act shall be carried out through 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 perform an act that the Bank of Ghana considers appropriate in order to discharge the responsibilities of the Bank of Ghana under this Act.

Licensing authority of Bank of Ghana

5. The Bank of Ghana shall
- (a) issue a licence to a development finance institution; and
 - (b) grant approval to a foreign development finance institution with respect to the establishment of representative offices in the country.

Requirement for a licence

6. The Bank of Ghana shall issue directives for the licensing requirements for development finance institutions.

Application for a licence

7. (1) A person who seeks to carry on a development finance business shall

- (a) apply in writing to the Bank of Ghana for a licence; and
- (b) indicate, in the application, the objects of the business for the approval of the Bank of Ghana.

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

- (a) a certified true copy of the constitution of the company or other relevant instrument relating to the proposed development finance institution under which the person proposing to carry on a development finance 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 proposed development finance institution is a member of a corporate group,
 - (i) a complete organisational structure of the group including a diagram of the group;
 - (ii) direct and indirect affiliates and associates of the development finance institution; and
 - (iii) the nature of the relationship to the group;
- (a) the particulars of the proposed directors and key management personnel concerned with the management of the development finance business, including
 - (i) 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

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- (v) the performance of the business concerns under the control or management of the proposed directors and key management personnel;
 - (e) feasibility report including a business plan and financial projections for the first five years and the area of activity intended;
 - (j) documentary evidence of the capital of the proposed development finance 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) where applicable, a written confirmation from the relevant supervisor in the country where that institution has its head office or is incorporated;
 - (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 of each proposed director, key management personnel and significant shareholder of the proposed development finance 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) The applicant shall indicate the type of licence that is being applied for in the application
- (4) The Bank of Ghana may, for the purpose of verifying the particulars submitted,
- (a) interview a promoter, proposed director or key management personnel in the course of the verification, and

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(*l*) inspect the books, records and premises intended for use by the development finance 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 the English language.

(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 determine.

(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 the decision of the Bank of Ghana in writing to the applicant.

(8) Despite paragraph (*l*) of subsection (7), where the Bank of Ghana determines that further investigation or information is required to process the application, the Bank of Ghana shall within fourteen days after the six month period specified under paragraph (*l*) 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 is 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 as part of the licence for purposes of this Act.

(3) A licence issued under this Act shall be designated as a

(*a*) Class 1 development finance licence;

(*b*) Class 2 development finance licence;

(*c*) Class 3 development finance licence; or

(*a*) Class 4 development finance licence.

(4) For the purpose of subsection (3),

(*a*) Class 1 development finance licence means wholesale development finance;

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- (b) Class 2 development finance licence means retail development finance;
- (c) Class 3 development finance licence means guarantee development finance; and
- (a) Class 4 development finance licence means a licence authorising the combination of any of the licences specified in paragraphs (a), (b) and (c).

Provisional approval

9. (1) 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 the applicant

- (a) will carry on business with integrity, prudence and the required professional competence; and
- (b) has and will maintain an unimpaired paid up capital as specified in section 20.

(2) 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.

(3) Where the development finance institution fails to comply with the terms and conditions of the provisional approval within one year of the grant of the provisional approval, the provisional approval shall lapse.

Invitation to the public to subscribe to shares

10. (1) An application for a licence under this Act shall not include an invitation to raise capital through a public issue of shares for the purpose of the proposed development finance business until the applicant concerned obtains a final approval from the Bank of Ghana.

(2) An applicant who contravenes subsection (1) is liable to pay to the Bank of Ghana an administrative penalty of not more than five thousand penalty units.

Final approval and issuance of a licence

11. (1) The Bank of Ghana may grant an applicant a final approval and issue a licence to the applicant to carry on a development finance business of a specified class, where the Bank of Ghana is satisfied

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

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- (b) that the applicant has complied with the terms and conditions stipulated in the provisional approval, and
- (c) that the requirements for a licence specified in section 6 and any other directives issued by the Bank of Ghana 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) A development finance institution shall display at the head office, branches and agencies of that development finance institution, copies of the licence for the information of the public.

Non-transferability or assignment of a licence

12. (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 is liable to pay to the Bank of Ghana an administrative penalty of not less than two thousand penalty units and not more than four thousand penalty units, and the Bank of Ghana shall revoke the licence.

Conditions for issuance of a licence

13. (1) A licence issued under this Act is subject to the conditions that the Bank of Ghana may impose.

- (2) The Bank of Ghana may
 - (a) restrict the activities in which a development finance institution is permitted to engage in; or
 - (b) amend or vary a condition attached to a licence issued to a development finance institution.

(3) The Bank of Ghana shall, before taking an action under subsection (2), give notice in writing to the development finance institution concerned.

(4) Where a development finance institution is dissatisfied with the decision of the Bank of Ghana, that development finance institution may, within seven days of receipt of the notice, make a representation in writing to the Bank of Ghana.

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(5) The Bank of Ghana shall, after considering the representation made by the development finance institution, take a decision and within thirty days communicate the decision in writing to the development finance institution concerned, of the decision made.

Refusal of an application for a licence

14. (1) The Bank of Ghana may refuse an application for a licence to carry on development finance business where

- (a) the Bank of Ghana is not satisfied with the merits of the application; or
- (b) in the opinion of the Bank of Ghana, the prevailing conditions in the financial sector do not warrant the issuance of further licences.

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

Revocation of a licence

15. (1) The Bank of Ghana may revoke a licence issued under this Act, where

- (a) the Bank of Ghana is satisfied that an applicant provided information which is false, misleading or inaccurate in connection with the application for a licence or suppressed material information;
 - (b) the development finance institution fails to commence business within one year from the date the licence was issued;
 - (c) the development finance institution fails to fulfil or comply with the terms and conditions stipulated in the licence;
 - (d) the development finance 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;
 - (e) in the judgment of the Bank of Ghana, the development finance institution persistently engages in unsafe or unsound business practices that are inconsistent with the object of this Act or pose a risk to the stability of the financial system;
- or

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(j) the development finance institution persistently contravenes this Act, the Regulations, directives or orders made under this Act.

(2) The Bank of Ghana may take any other remedial or penal action against a development finance institution after revocation of the licence of the development finance institution.

(3) Where the Bank of Ghana decides to revoke the licence of a development finance institution, the Bank of Ghana shall

- (a) give notice in writing to the development finance institution,
- (b) specify the proposed action and the grounds on which the action is proposed to be taken, and
- (c) give the development finance institution an opportunity to make a written representation within thirty days of the service of the notice.

(4) After the expiry of the period specified in the notice and considering any representations made by the development finance 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 development finance institution.

(5) Where the Bank of Ghana revokes the licence of a development finance institution, that development finance institution shall

- (a) cease to carry on the development finance business if the development finance institution has already commenced business; and
- (b) surrender the licence to the Bank of Ghana.

(6) A revocation of the licence of a development finance institution shall take 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 development finance institution without notice.

(8) Where a licence is revoked under this section, the Bank of Ghana shall immediately appoint a liquidator in accordance with section 96.

Permissible activities

16. (1) A development finance institution may carry out only the following activities:

- (a) direct debt or equity financing;
- (b) indirect debt or equity financing;
- (c) refinancing;
- (d) loan syndication;
- (e) provide credit enhancements or other credit de-risking facilities such as guarantees and other contingent liabilities;
- (f) invest in Government of Ghana securities, Bank of Ghana securities or any other financial instruments that the Bank of Ghana may approve;
- (g) borrowing and granting of loans in foreign currency;
- (h) provision of technical assistance to enhance the capacity of borrowers to repay their loans; and
- (i) any other activity determined by notice or a directive by the Bank of Ghana.

(2) A development finance institution shall

- (a) seek the prior written approval of the Bank of Ghana to introduce products that are derived from the permissible activities specified under subsection (1); and
- (b) not engage in the acceptance of demand, savings and time deposits, or any other type of deposits.

Unauthorised development finance activities

17. (1) Where the Bank of Ghana has sufficient reason to believe that a person is transacting or carrying on a development finance business contrary to this Act, the Bank of Ghana may, in writing authorise an officer of the Bank of Ghana to perform the following:

- (a) enter any premises or property which the Bank of Ghana has reason to believe is occupied or used by a person for a development finance business;
- (b) search for a book, record, statement, document or any other item used or which is believed to be used for a development finance business;
- (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;

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- (a) 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 the premises 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;
 - (j) examine a book, record, statement, document or any other item referred to in paragraph (l) and may require from a person referred to in paragraph (a) an explanation regarding any entry in the book, record, statement, document or other item; and
 - (g) close down the business of that person.
- (2) An officer authorised by the Bank of Ghana 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 (l) of subsection (1), 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 financial institution or any other entity to freeze an account of a person referred to in this section with the 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.
- (3) 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).

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- (4) 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.

(5) A person who contravenes paragraph (a), (b), (d) or (e) of subsection (4), 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 or to a term of imprisonment of not less than two years and not more than four years, or to both.

(6) A person who contravenes paragraph (c) of subsection (4) is liable to pay to the Bank of Ghana an administrative penalty of not less than one hundred and twenty-five penalty units and not more than two hundred and fifty penalty units.

Places of business to be licensed

18. (1) A development finance institution shall not carry on a development finance business at a place other than a place authorised in accordance with this Act.

(2) A development finance institution shall not open, close or relocate

- (a) a branch,
- (b) the head office, or
- (c) any other operational or support centre or office,

for purposes of carrying on a development finance business unless specifically authorised by the Bank of Ghana.

(3) A development finance institution which contravenes this section is liable to pay to the Bank of Ghana an administrative penalty of one thousand penalty units.

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(4) In addition to the penalty in subsection (3), the Bank of Ghana may suspend the operations of the branch, head office or other operational or support centre of the development finance institution involved until the development finance institution obtains approval from the Bank of Ghana.

Representative office

19. (1) A foreign development finance institution shall not establish a representative office in the country unless the foreign development finance institution obtains the prior written approval of the Bank of Ghana.

(2) A foreign development finance institution 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 relevant supervisor in the country where the head office of that institution is located or is incorporated.

(3) Where the Bank of Ghana is satisfied that the foreign development finance institution has met the requirements specified under subsection (2), the Bank of Ghana shall issue the foreign development finance institution with a certificate of approval.

(4) A representative office of a foreign development finance institution shall

(a) display in a conspicuous place at the premises of that representative office, a copy of the certificate of approval issued under subsection (3) for the information of the public; and

(b) only provide information and perform liaison functions.

(5) The Bank of Ghana may require a director or a key management personnel of a representative office to submit information or data relating to the affairs of the representative office.

(6) With respect to a reporting requirement under this Act, the Bank of Ghana may determine

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

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

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

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(7) Despite subsections (1) and (2), the Bank of Ghana may waive the requirements for establishing a representative office in the country.

(8) A foreign development finance institution or representative office which fails to comply with

- (a) subsection (1) 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 or to a term of imprisonment of not less than two years and not more than four years, or to both; or
- (b) with subsection (4) or (6) is liable to pay to the Bank of Ghana an administrative penalty of not less than one thousand five hundred penalty units and not more than three thousand penalty units.

Capital and Reserves

Minimum paid-up capital

20. (1) A development finance institution shall ensure that while in operation, the development finance institution maintains a minimum paid-up capital, unimpaired by losses including accumulated losses or other adjustments, prescribed by the Bank of Ghana.

(2) The Bank of Ghana may prescribe different requirements under this section for different classes of development finance 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.

Capital adequacy and other capital requirements

21. (1) The Bank of Ghana shall prescribe for a risk-based capital adequacy and other capital requirements for a class of development finance institutions.

(2) The Bank of Ghana may prescribe leverage or gearing ratio or both and any other form of capital requirement that the Bank of Ghana considers necessary or prudent for development finance institutions or for any class of development finance institutions

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

- (a) a higher capital requirement in subsections (1) and (2); or
- (b) different ratios for different classes of development finance institutions.

(4) The minimum capital requirement as indicated in subsections (1) and (2) shall be calculated in accordance with the methodology specified in a 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

- (a) 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;
- (b) exempt some classes of development finance institutions from meeting any of the capital requirements in this section; and
- (c) prescribe capital requirements that are applied on a consolidated basis to a development finance institution or a subsidiary of a development finance institution.

Additional capital in respect of special risks

22. The Bank of Ghana may require a development finance institution to maintain additional capital that the Bank of Ghana considers appropriate in respect of special risks in the development finance institution or in the financial system.

Notice of non-compliance with capital requirements

23. (1) Where a development finance institution fails to comply with the prescribed minimum capital requirements in section 21, the development finance institution shall

- (a) promptly notify the Bank of Ghana of the non-compliance, and
- (b) provide the Bank of Ghana with the particulars of the non-compliance, including the reasons for the breach and the measures taken to rectify the breach.

(2) A development finance institution 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

24. A development finance institution which fails to maintain

(a) the level of minimum unimpaired paid-up capital required under section 20, or

(b) the capital requirements under sections 21 and 22,

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.

Reserve Fund

25. (1) A development finance institution shall establish and maintain a Reserve Fund into which shall be transferred out of net profits for each year where the amount of the Reserve Fund is

(a) less than fifty per cent of the paid-up capital of the development finance institution an amount which is not less than fifty percent of the net profit for the year;

(b) fifty per cent or more but less than one hundred per cent of the paid-up capital of the development finance institution, an amount which is not less than twenty-five per cent of the net profit for the year; or

(c) equal to one hundred per cent or more of the paid-up capital of the development finance 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 development finance 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

26. (1) A development finance institution shall not declare or pay interim or final dividend on the shares of that development finance institution unless the development finance institution has

(a) completely written-off capitalised expenditure;

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- (*l*) made the required provision for non-performing loans and other erosions in asset values;
- (*c*) satisfied the prescribed capital requirements;
- (*a*) completely written-off accumulated operating losses from the normal operations of that development finance institution; and
- (*e*) made the required transfer to the Reserve Fund under section 25 and clawed back any dividend paid in contravention of section 25.

(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
- (*l*) the statutory report of the auditors on the annual accounts of the development finance institution is not satisfactory,

the development finance institution may declare a dividend on shares only after obtaining the prior written approval of the Bank of Ghana.

(3) Where a development finance institution declares or pays a dividend in contravention of subsection (1) or (2), each director of the development finance 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
- (*l*) the director exercised due diligence to prevent the commission of the contravention having regard to all the circumstances.

(5) For the purpose of this section, “capitalised expenditure” includes preliminary expenses and any other item of expenditure not represented by tangible assets determined by the Bank of Ghana.

Sources of funds

27. (1) A development finance institution may raise funds from any source upon such terms and conditions determined by the Board of Directors of the development finance institution.

(2) The sources of funds for a development finance institution consists of any one or more of the following:

- (*a*) issuance of own shares;

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- (b) reserves;
- (c) long term loans from international finance institutions;
- (a) debentures;
- (e) bonds;
- (j) loans from national and supra-national governments, other development finance institutions and other bodies, including Sovereign Wealth Funds;
- (g) funds from development partners;
- (h) gifts, grants and donations; and
- (i) any other source approved by the Bank of Ghana.

(3) With respect to subordinated term debt, any clause of early redemption shall be at the instance of the issuer and be approved by the Bank of Ghana.

Liquidity

Liquidity requirements

28. (1) The Bank of Ghana may by directives prescribe one or more liquidity requirements for development finance institutions.

(2) The directive may specify different liquidity requirements for different classes of development finance institutions.

(3) A development finance 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 development finance institution.

(4) A development finance institution which fails to comply with subsection (3) shall pay to the Bank of Ghana the penalty provided under subsection (3) of section 85 and for each day that the deficiency persists, is liable to pay to the Bank of Ghana an administrative penalty of an amount calculated as one half per mille of the deficiency.

Notification of non-compliance with minimum liquidity requirements

29. (1) A development finance institution which fails to comply with the required liquidity requirements shall

- (a) promptly notify the Bank of Ghana of the non-compliance; and
- (b) provide the Bank of Ghana with the particulars of the non-compliance including the reasons for the breach and the measures taken to rectify the breach.

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(2) A development finance 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.

Penalty for non-compliance with liquidity requirements

30. A development finance institution which fails to hold liquid assets in accordance with section 28 is liable, in addition to any other penalty, to pay interest to the Bank of Ghana at a rate prescribed by the Bank of Ghana on the difference between the total amount of liquid assets which the development finance institution is required to hold and the total amount of liquid assets actually held, in respect of the period during which a difference exists.

Ownership and Control

Reporting of group structures

31. (1) For the purpose of consolidated supervision or any other specialised supervision, a development finance 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 development finance institution,
- (c) the nature of the relationship between the affiliates and associates and the group, and
- (a) 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 subject to approval of the Bank of Ghana under this Act, the development finance institution shall report to the Bank of Ghana within thirty days of the change.

Transfer of shares affecting significant shareholdings

32. (1) A development finance institution shall, at the end of June and December of every year, 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 development finance institution 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 development finance institution 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 development finance institution 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 development finance institution; or
 - (a) enter into an agreement or arrangement which will result in a change in the control of a development finance institution.

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

(4) 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.

(5) The Bank of Ghana may, in exceptional circumstances, waive the notice specified in subsection (4).

(6) An application for the acquisition of equity interest or increase in the holdings of equity interests in a development finance institution shall

- (a) be in the form prescribed by the Bank of Ghana, and
- (b) contain the same information regarding proposed significant shareholders for a development finance institution that is required under section 7 for licensing a development finance institution.

Disapproval of transfer of shares

33. (1) The Bank of Ghana may disapprove a proposed transfer of shares in the interest of sound and prudent management of a development

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finance 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 development finance 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 development finance 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 development finance institution.

(2) Where the Bank of Ghana is satisfied that a person has contravened subsection (1),

- (a) the Bank of Ghana shall
 - (i) not recognise the transfer and that transfer shall be deemed void; and
 - (ii) direct the reversal of the transfer; and
- (b) that person is liable to pay to the Bank of Ghana an administrative penalty of not less than five thousand penalty units and not more than ten thousand penalty units.

Sale of business, merger, amalgamation or reconstruction

34. (1) A person shall not enter into an agreement or arrangement for the

- (a) sale, disposal or transfer of the whole or a part of the business of a development finance institution,
- (b) amalgamation or merger of a development finance institution with any other development finance institution or any other institution, or
- (c) the reconstruction of a development finance institution,

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 the decision of the Bank of Ghana within six months from the date of receipt of complete information.

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Governance of Development Finance Institutions

Corporate governance

35. The Bank of Ghana shall prescribe rules regarding any matter of corporate governance of a development finance institution that the Bank of Ghana considers necessary.

Board of Directors and key management personnel

36. A development finance institution shall have
- (a) a Board of Directors;
 - (b) a Chief Executive Officer; and
 - (c) such other officers and staff considered necessary.

Responsibility of the Board of Directors

37. (1) The Board of Directors shall have overall responsibility for the development finance institution including

- (a) approving and overseeing the implementation of the strategic objectives,
- (b) risk strategy,
- (c) corporate governance, and
- (a) corporate values.

(2) The responsibilities of the Board of Directors shall be set out in a formal Charter.

(3) The Board of Directors shall

- (a) appoint and have oversight responsibility over the Chief Executive Officer and other key management personnel of the development finance institution; and
- (b) put in place a structured and rigorous system for appointing key management personnel of the development finance institution.

Separation of powers

38. (1) A person shall not, at the same time, occupy the position of the chairperson of the Board of Directors and the Chief Executive Officer of a development finance institution.

(2) Related persons or persons with related interest shall not, at the same time, occupy the positions of a chairperson of the Board of Directors and the Chief Executive Officer of a development finance institution.

Tenure of office of the Board of Directors

39. (1) The chairperson and members of the Board of Directors of a development finance institution may serve for a term of four years and are eligible for re-election for a second term of four years.

(2) The Chief Executive Officer of a development finance institution shall hold office in accordance with the terms of engagement and shall not exceed twelve years.

(3) Despite subsection (1), the tenure of the Chief Executive Officer on the Board of Directors shall be coterminous with the tenure of engagement of the Chief Executive Officer.

Independent director

40. (1) An independent director shall be a non-executive member of the Board of Directors.

(2) An independent director shall not

- (a) directly or indirectly hold more than five per cent equity interest in the development finance institution or in its related companies;
- (b) have been in the employment of the development finance institution or a related company of the development finance institution at least five years prior to the appointment as an independent director;
- (c) have relatives employed by the development finance institution or any of the related companies of the development finance institution as key management personnel in the last five years;
- (d) have engaged in any transaction with the development finance institution within the last five years on terms that were less favourable to the development finance institution than would have normally been offered to other persons;
- (e) have served as a director in the development finance institution for more than two consecutive terms of four years each unless in the opinion of the Bank of Ghana the independence of the independent director has not been impaired;
- (f) be related to persons with significant shareholding in the development finance institution or have any business or employment connections to a significant shareholder;
- (g) be in cross directorship with one or more directors of the

development finance institution on the Board of Directors of some other institution; or

(h) represent an institutional shareholder with significant equity interest on the Board of Directors of the development finance institution.

(3) In the case of a development finance institution which is state-owned, an independent director shall be a person who

(a) is a director appointed by the Government of Ghana in the capacity of the Government as a shareholder;

(b) is in the reasonable opinion of the Bank of Ghana, able to exercise independent judgement in relation to the role as a director of the Board of Directors of the development finance institution;

(c) is not an employee of the development finance institution;

(d) is not a civil or public servant or other government official; and

(e) is not actively engaged in party politics.

Composition and qualification of Board of Directors

41. (1) The Board of Directors of a development finance institution shall be composed of members with diverse and relevant qualifications, skills, professional competencies and expertise.

(2) The Board of Directors of a development finance institution shall consist of at least seven members including the chairperson and a maximum of thirteen members, the majority of whom shall be non-executive members and ordinarily resident in Ghana.

(3) Independent directors shall constitute at least sixty per cent of the composition of the Board of Directors of a development finance institution.

(4) A development finance institution shall not have more than two members who are related persons serving as members of the Board of Directors.

(5) A member of the Board of Directors of a development finance institution shall not hold more than seven directorship positions in other institutions or companies, be they foreign or local, serving as a member of the Board of Directors of the development finance institution.

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(6) Despite subsection (5), the Bank of Ghana may waive the limit placed on the number of directorship positions held by a member of the Board of Directors of a development finance institution.

(7) A member of the Board of Directors of a development finance institution shall obtain annual certification from the National Banking College or any other institution recognised by the Bank of Ghana to the effect that the member has participated in a corporate governance programme and has completed a programme on the responsibilities of directors.

Alternate director

42. A member of the Board of Directors who

(a) may be absent from Ghana, or

(b) unable to perform duties as a director,

for a period not less than six months may with the prior approval from the Bank of Ghana appoint another director or any person, who ordinarily qualifies as a director, to act in the stead of the director as an alternate director subject to approval by ordinary resolution of the Board of Directors.

Meetings of the Board of Directors

43. (1) The Board of Directors of a development finance institution shall hold not less than four meetings, at least once every quarter, in a financial year.

(2) A member of the Board of Directors shall attend not less than fifty per cent of the meetings of the Board of Directors.

(3) The chairperson of the Board of Directors shall recommend for removal by the shareholders a member who is regularly absent from the meetings of the Board of Directors.

(4) A meeting of the Board of Directors may be conducted through teleconferencing or video conferencing, and an electronic copy of the meeting shall be kept by the development finance institution.

(5) The Board of Directors shall discuss the business affairs of the development finance institution through reports as submitted by management in writing.

(6) The reports referred to in subsection (5) shall include

(a) a summary of financial statements and performance review

- of the development finance institution against the approved budget, business plan, peers and industry;
- (*l*) the extent to which the development finance institution is exposed to various risks such as credit, liquidity, interest rate, operational and other risks;
 - (*c*) review of non-performing loans, related party transactions and credit concentration;
 - (*a*) effectiveness of internal control systems and human resource issues;
 - (*e*) outstanding litigations and contingent liabilities; and
 - (*u*) compliance with anti-money laundering and counter financing of terrorism policies and legislation.

Performance evaluation of Board of Directors

44. (1) The Board of Directors shall annually conduct self-evaluation or assessment of the performance of

- (*a*) the Board of Directors,
- (*b*) committees of the Board of Directors, and
- (*c*) individual members of the Board of Directors,

to ascertain the effectiveness of the governance practices and procedures of the Board of Directors.

(2) A copy of the report on the self-evaluation or assessment under subsection (1) shall be submitted to the Bank of Ghana not later than the 30th June of each year.

(3) The Board of Directors shall cause an external person to undertake a comprehensive and rigorous evaluation of the performance of the Board of Directors biennially and submit a copy of the report to the Bank of Ghana within two months after completion of the evaluation.

(4) The Board of Directors shall cause in-house evaluation of compliance with anti-money laundering and countering the financing of terrorism measures and submit copies of the report to the Bank of Ghana and the Financial Intelligence Centre by the 31st March of each year.

Committees of the Board of Directors

45. (1) The Board of Directors may establish specialised committees.

(2) The membership and nature of a specialised committee may depend on

- (*a*) the complexity and risk profile of the development finance institution; and

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(*b*) the size of the Board of Directors.

(3) Despite subsection (1), the Board of Directors shall establish an Audit Committee and a Risk Committee, both of which shall be chaired by independent directors.

(4) The chairperson of the Board of Directors shall

(*a*) not chair a committee of the Board of Directors; and

(*b*) serve as a member on only one committee of the Board of Directors other than the Risk Committee and the Audit Committee.

(5) The Board of Directors shall issue in writing the terms of reference for each committee.

(6) The terms of reference under subsection (5) shall be contained in a Charter that sets out the mandate, the scope and procedures of the committee.

(7) The Board of Directors shall submit a copy of the Charter to the Bank of Ghana.

Audit Committee

46. (1) The Audit Committee shall consist solely of non-executive members of the Board of Directors, the majority of whom are independent directors.

(2) The chairperson of the Audit Committee shall

(*a*) be a qualified chartered accountant;

(*b*) be an independent director; and

(*c*) not be the chair of any other committee of the Board of Directors.

(3) Majority of the members of the Audit Committee shall be knowledgeable in accounting, auditing, finance, information communication technology and cyber security matters.

(4) The Audit Committee shall have oversight over internal and external audit functions of the development finance institution and any other activities assigned by the Board of Directors.

Risk Committee

47. (1) The Risk Committee shall be chaired by an independent director who has knowledge and expertise in risk management, finance, accounting, economics and similar competences.

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- (2) The Risk Committee shall
 - (a) advise the Board of Directors on the overall current and future risk tolerance or appetite and strategy of the development finance institution for various risks including money laundering and terrorist financing risk, and
 - (b) oversee the implementation of the risk strategy by senior management.

Conflict of interest

48. (1) The Board of Directors shall develop a comprehensive written policy on conflicts of interest and a compliance process for implementing the policy.

(2) The policy shall impose a duty on members of the Board of Directors to avoid activities that can create conflicts of interest, and provide

- (a) a review or approval process for members of the Board of Directors;
- (b) for the making of disclosures by directors consistent with section 56;
- (c) for the responsibility of a director to abstain from voting or recuse himself or herself from participating in the deliberations on a matter in which the director may have actual or perceived conflict of interest;
- (d) adequate procedures for transactions with related parties to be made on an arm's - length basis; and
- (e) measures the Board of Directors will adopt to deal with any breach of the policy.

(3) The Board of Directors shall disclose in the annual report of the development finance institution any information on any situation of non-compliance with the policy on conflict of interest in this Act.

(4) The Board of Directors shall maintain an up-to-date register for documenting and managing conflicts of interest situations in the development finance institution.

Duties of senior management

49. Subject to the direction of the Board of Directors, the senior management of a development finance institution shall

- (a) ensure that the business activities of the development finance institution are consistent with the business strategy,

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- risk tolerance or appetite and approved policies of the development financial institution;
- (b) establish a management structure that promotes accountability and transparency;
 - (c) implement appropriate systems for managing both financial and non-financial risks to which the development finance institution is exposed; and
 - (a) engage skilled and competent staff and provide training and development opportunities to sustain the delivery of the business objectives, the risk management framework and protect the reputation of the development finance institution.

Chief Internal Auditor

50. (1) The Board of Directors of a development finance institution shall appoint a Chief Internal Auditor.

(2) A Chief Internal Auditor shall

- (a) be an independent key management personnel who is competent to examine all functions and activities of the development finance institution;
- (b) have the professional competence to collect and analyse financial information, evaluate audit evidence and the ability to communicate with the stakeholders of the internal audit function;
- (c) possess sufficient practise knowledge of the employment of auditing techniques and methodologies in auditing the activities and business lines of a development finance institution; and
- (a) be a member of a relevant recognised professional body.

(3) The Chief Internal Auditor shall have unhindered direct access, and report directly, to the Audit Committee or the Board of Directors.

(4) The interactions between the Board of Directors and the Chief Internal Auditor shall be regular and comprehensively documented.

Chief Risk Officer

51. (1) The Board of Directors of a development finance institution shall appoint a Chief Risk Officer who shall be a key management personnel.

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(2) The Chief Risk Officer shall report directly to the Chief Executive Officer.

Fit and proper

52. A development finance institution shall

- (a) have the primary responsibility of selecting or nominating fit and proper individuals for appointment to the Board of Directors or as key management personnel;
- (b) carry out due diligence and assessment of the members of the Board of Directors, key management personnel and significant shareholders, prior to their appointment and also on an on-going basis;
- (c) conduct similar fit and proper tests for significant shareholder institutions and the directors of the significant shareholder institutions;
- (a) ensure on-going suitability of members of the Board of Directors, key management personnel and significant shareholders, and notify the Bank of Ghana in writing of any change in information that may adversely affect the fitness and propriety of a relevant person;
- (e) at the request of the Bank of Ghana, provide additional information on an appointee or prospective appointee in writing or avail the appointee or prospective appointee for interview by the Bank of Ghana or an authorised representative of the Bank of Ghana; and
- (j) take reasonable steps to verify the information obtained from the relevant person from independent sources and copies of the independent assessment made available to the Bank of Ghana as part of the request for approval.

Minimum assessment criteria for fitness and propriety

53. In assessing the fitness and propriety of a relevant person of a development finance institution, the Bank of Ghana shall have regard to the following:

- (a) experience;
- (b) reputation;

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- (c) conflicts of interest and independence of mind;
- (a) time commitment;
- (e) collective suitability and financial integrity; and
- (j) performance at interviews.

Duty of Board of Directors to report

54. (1) The Board of Directors or a member of the Board of Directors shall report, in writing, to the Bank of Ghana if there is sufficient reason to believe that a development finance institution

- (a) may not have the capacity to properly conduct the business of that development finance institution as a going concern;
- (b) is not likely to meet the obligations of that development finance institution in the near future;
- (c) has suspended or is about to suspend a payment of any kind;
- (a) does not or may not meet the capital requirements of that development finance institution as specified 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 development finance institution; or
- (j) has contravened or is likely to contravene an enactment.

(2) A member of the Board of Directors 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 member of the Board of Directors 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 member of the Board of Directors concerned no longer fit and proper to perform functions in respect of that office.

(4) Despite subsection (3), the Board of Directors or a member of the Board of Directors 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 member of the Board of Directors and key management personnel

55. (1) A person shall not be appointed, elected or, accept an appointment or election, as a member of the Board of Directors or a key management personnel of a development finance institution 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) has been a director, key management personnel or associated with the management of an institution which is being or has been resolved by a regulatory authority on account of insolvency or other regulatory breaches,
- (f) is a director of another development finance institution in the country or a key management personnel in another development finance institution, bank or specialised deposit-taking institution in the country,
- (g) is below the age of eighteen years,
- (h) does not have the prior written approval of the Bank of Ghana, or
- (i) has defaulted in the repayment of the financial exposure of that person,

unless the Bank of Ghana expressly exempts that director or key management personnel.

(2) A development finance institution which has knowledge or is aware of a circumstance that subjects a member of the Board of Directors or a key management personnel to disqualification under subsection (1) shall promptly notify the Bank of Ghana.

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(3) Where a person becomes disqualified under subsection (1), that person shall immediately cease to hold office as a member of the Board of Directors or a key management personnel and the development finance institution 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) Despite paragraph (e) of subsection (1), the Bank of Ghana may approve the appointment after hearing representations made by the appointee.

Disclosure of interest

56. (1) A person shall, before assuming office as a member of the Board of Directors or a key management personnel of a development finance institution, declare to the Board of Directors of that development finance institution 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 a key management personnel of the development finance institution.

(2) A member of the Board of Directors or a key management personnel of a development finance institution shall

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

(b) declare to the Board of Directors of that development finance institution, any material change in business interest or holding of an office when that change occurs.

(3) A member of the Board of Directors of a development finance institution who has an interest in

(a) a proposed credit facility to be given to a person by that development finance institution, or

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(*l*) 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 development finance institution 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

57. (1) A development finance institution shall seek the prior written approval of the Bank of Ghana before the development finance institution appoints a Chief Executive Officer or a Deputy Chief Executive Officer of that development finance institution.

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

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

(4) A development finance institution shall not appoint a person as a key management personnel without the prior written approval of the Bank of Ghana.

(5) A development finance 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 Officer or a Deputy Chief Executive Officer of a development finance institution.

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(7) Where the Chief Executive Officer is unable to perform the official functions of a Chief Executive Officer

- (a) due to illness,
- (b) is absent from the country or
- (c) for any other sufficient cause,

the Deputy Chief Executive Officer or a key management personnel designated by the Board of Directors shall act as the Chief Executive Officer, after notifying the Bank of Ghana as soon as practicable.

(8) A development finance institution shall notify the Bank of Ghana of the changes in the membership of the Board of Directors and key management personnel of that development finance institution.

(9) Where the Bank of Ghana considers that a member of the Board of Directors is not a fit and proper person to act as a member of the Board of Directors of a development finance institution, the Bank of Ghana shall, after hearing representations made by that development finance institution, direct the removal of that person.

(10) Where the Bank of Ghana considers that a member of the Board of 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 55, the Bank of Ghana shall direct the removal of that member or key management personnel after hearing the representations made by that development finance institution.

(11) A development finance institution shall comply with a directive issued under subsections (9) and (10).

(12) A development finance institution shall not outsource a core function to any other person without the written approval of the Bank of Ghana.

(13) A development finance institution 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

58. (1) A development finance institution shall not

- (a) grant an advance, loan or credit facility including a guarantee

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against the security of the shares of that development finance institution or the shares of a subsidiary of that development finance institution; or

(*l*) issue shares that are paid for by funds borrowed from that development finance institution.

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

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

Prohibition of lending and guaranteeing of the same exposure

59. (1) A development finance institution shall not take a financial exposure and guarantee the same financial exposure to a participating financial institution or any other borrower.

(2) A development finance institution which contravenes subsection (1) is liable to pay to the Bank of Ghana an administrative penalty of five thousand penalty units.

Limits on financial exposure

60. (1) A development finance institution shall not take a secured 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 regulatory capital of that development finance institution.

(2) For the purpose of subsection (1), an unsecured financial exposure shall not exceed ten per cent of the regulatory capital of a development finance institution.

(3) Despite subsections (1) and (2), the Bank of Ghana may vary the thresholds set out in subsections (1) and (2) to the extent that the Bank of Ghana is satisfied that there are sufficient mitigants.

(4) 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 the group of connected persons;

(*b*) any other relationship exists to the extent that the financial soundness of any of the connected persons may affect the financial soundness of the other person; or

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- (c) as a result of the structure of the relationship, the other person is ultimately responsible for or benefits from the financial exposure outstanding.
- (5) For the purpose of this section, the Bank of Ghana
 - (a) may provide guidance for development finance institutions in determining whether a connection exists among a group of persons; and
 - (b) shall, where the Bank of Ghana 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.
- (6) A development finance institution shall within five days
 - (a) report to the Bank of Ghana a financial exposure that exceeds the limits imposed by the Bank of Ghana under subsections (1) and (2); and
 - (b) provide a written plan for remedying the violation as soon as practicable.
- (7) For the purpose of this section, in computing the financial exposure the following assets that may be held as collateral shall be deducted:
 - (a) lien on deposits with banks;
 - (b) the market value of Government securities or Bank of Ghana securities; and
 - (c) any other security of a similar nature approved by the Bank of Ghana.
- (8) A financial exposure shall not be considered as secured unless the financial exposure is adequately secured by collateral having a market value of at least one hundred per cent of the outstanding amount of the exposure throughout the term of the financial exposure.
- (9) A development finance institution which assumes financial exposure in contravention of this section is liable to pay to the Bank of Ghana an administrative penalty of not more than five thousand penalty units.
- (10) The financial exposure limits referred to in subsections (1) and (2) shall be applied on a consolidated basis to a development finance institution and the subsidiaries of that development finance institution.

Restrictions on transactions with an affiliate

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

(2) A development finance institution shall not take a financial exposure in respect of an affiliate if the aggregate of the financial exposures to the affiliates of the development finance institution exceeds twenty-five percent of the regulatory capital of the development finance institution.

(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 development finance institution.

(4) A development finance institution which contravenes a provision of this section is liable to pay to the Bank of Ghana an administrative penalty of not more than five thousand penalty units.

(5) A director or a 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

62. (1) A development finance institution shall not purchase, or accept the transfer of, a non-performing asset from

- (a) any of the affiliates and associates of the development finance institution,
- (b) a director, key management personnel or a shareholder of the development finance institution, or
- (c) a related person or group of related persons or the related interests of a related person or group of related persons,

without the written approval of the Bank of Ghana.

(2) A development finance institution which contravenes subsection (1) 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 a non-performing asset in accordance with directives on asset classification issued by the Bank of Ghana.

Restrictions on financial exposure to an insider

63. (1) A development finance institution shall not grant or permit an outstanding financial exposure in respect of an insider or 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 development finance institution 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 per cent of the regulatory capital of that development finance institution.

(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 regulatory capital of a development finance institution.

(4) A financial exposure shall not be considered as secured unless the financial exposure is adequately secured by a collateral having a market value of at least one hundred per cent of the outstanding amount of the financial exposure throughout the term of that financial exposure.

(5) A development finance institution shall not take a financial exposure in respect of the related parties and the related interests related person or group of related persons if the aggregate of the financial exposure exceeds twenty percent of the regulatory capital of that development finance institution.

(6) The Board of Directors of a development finance institution is the sole authority to approve or sanction a financial exposure of that development finance institution to a related party of that development finance institution 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 the capital of the development finance institution.

(8) Despite subsection (7), a development finance institution which contravenes a provision of this section is liable to pay to the Bank of

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Ghana an administrative penalty of not more than five thousand penalty units.

- (9) For the purpose of this section,
- (a) “related interest” as defined in section 117 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).

Restrictions on lending to staff

64. (1) A development finance institution shall not lend on preferential terms to an employee of that development finance institution unless the lending is part of a formally approved employment package or employee benefit plan.

(2) A development finance institution shall not grant to an employee of that development finance 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 development finance institution to employees shall not exceed twenty per cent of the regulatory capital of that development finance institution.

(4) A development finance 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 the capital of the development finance institution.

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

Requirements for lending to insiders and their related interests

65. (1) A development finance institution shall, in considering approval of a credit facility under section 63, 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 development finance 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 development finance 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 development finance institution than those normally offered to any other person not related to that development finance institution; and
- (a) the offer of the credit facility is in the interest of the development finance institution.

(2) The Board of Directors of the development finance institution shall approve the credit facility at a duly constituted meeting of the Board of 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 Board of Directors are present.

(4) The management of a development finance 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 directives on asset classification.

(6) A development finance institution which contravenes subsection (1) or (2) is liable to pay to the Bank of Ghana an administrative penalty of not more than two thousand penalty units.

Restriction on establishment of a subsidiary company

66. (1) A development finance institution shall not establish a subsidiary company without the prior written approval of the Bank of Ghana unless the subsidiary is a financial institution which will be subject to regulation by the appropriate regulatory authority in the country.

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(2) The equity capital invested by a development finance institution in a subsidiary company of that development finance institution shall not exceed fifteen per cent of the regulatory capital of the development finance institution.

(3) Where the development finance institution has more than one subsidiary company, the aggregate of equity capital invested in the subsidiary companies by the development finance institution shall not exceed twenty-five per cent of the regulatory capital of that development finance institution

(4) The aggregate amount of a financial exposure including the credit facility which a development finance institution may take in respect of a subsidiary of that development finance institution shall not,

(a) in the case of a development finance institution which has only one subsidiary company, exceed twenty-five per cent of the regulatory capital of that development finance institution; or

(b) in the case of a development finance institution which has more than one subsidiary company, exceed thirty-five per cent of the regulatory capital of that development finance institution.

(5) A development finance 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 equity investments

67. (1) A development finance institution shall not invest or hold investments in the share capital of a body corporate if the amount of the investment exceeds

(a) fifteen per cent of the paid-up capital of that body corporate, or

(b) ten per cent of the regulatory capital of the development finance institution,

whichever is lower.

(2) The aggregate of the investments in the share capital of two or more bodies corporate shall not exceed twenty-five per cent of the regulatory capital of that development finance institution.

(3) Subsection (1) does not apply to

(a) an equity interest that has been acquired by a development

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finance institution in foreclosure on or in place of repayment of a loan granted by the development finance institution; or

(*l*) an equity interest held by a development finance institution as an agent or trustee.

(4) A development finance institution shall dispose of an equity interest acquired under subsection (3)

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

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

(5) A development finance institution which contravenes subsections (1) or (2) is liable to pay to the Bank of Ghana, an administrative penalty of one thousand penalty units.

Reporting of exposures

68. (1) A development finance institution shall report to the Bank of Ghana,

(*a*) the particulars of a large exposure;

(*b*) the particulars of lending to a related party and the related interest of that party; and

(*c*) on investments undertaken under section 67.

(2) A development finance 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.

Asset classification, provisioning and write-offs

69. (1) A development finance institution shall maintain and implement a 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 development finance institution shall not be written off or waived fully or partially, without the approval 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 value which only requires the approval of the Board of Directors.

(4) A development finance 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.

Power to impose stricter prudential limits

70. (1) The Bank of Ghana may, in respect of a prudential limit prescribed under this Act, impose a stricter limit for different classes of development finance institutions or a particular development finance institution for the period that the Bank of Ghana considers appropriate.

(2) Despite subsection (1), the Bank of Ghana may issue directives to vary any of the limits under sections 60 to 64 and section 67 in cases of emergency for the period that the Bank of Ghana considers appropriate.

(3) For purposes of this section, “a case of emergency” means a 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

71. (1) A development finance institution 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 development finance institution 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.

Accounting records

72. (1) A development finance institution shall keep accounting records in a manner that gives an accurate and reliable account of the transactions of that development finance institution.

(2) The accounts prepared from the records of the development finance institution shall give a true and fair view of the state of affairs and results of operations for the accounting period of the development finance institution.

(3) The accounting records of the development finance institution shall be kept at the head office of the development finance institution in the country for a period of not less than ten years.

(4) A development finance 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.

Financial statements

73. (1) A development finance institution shall prepare, at the expiration of each calendar year, in respect of the business transacted by the development finance institution with reference to that year, audited financial statements.

(2) The financial statements referred to in subsection (1) and the accounting records of the development finance institution shall be audited by qualified auditors duly appointed in accordance with this Act.

(3) The Board of Directors of the development finance institution shall approve the financial statements.

(4) The financial statements approved under subsection (3) shall be signed by at least two members of the Board of Directors of the development finance institution.

Appointment of an auditor

74. (1) An auditor of a development finance institution shall be appointed at an annual general meeting of the development finance institution and be approved by the Bank of Ghana in the manner and on the terms that may be prescribed.

(2) The Board of Directors of a development finance institution may appoint

- (a) the first auditor of the development finance institution; or
- (b) an auditor to act in place of the auditor who is for any reason unable or unwilling to act until
 - (i) a new auditor is appointed at an annual general meeting; or
 - (ii) the Bank of Ghana appoints an auditor.

(3) A person shall not be appointed an auditor of a development finance institution unless that person

- (a) is a member of the Institute of Chartered Accountants (Ghana) under the Chartered Accountants Act, 1963 (Act 170);
- (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;
- (c) is fit and proper; and
- (a) has no related interest in the development finance institution.

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(4) An auditor of a development finance institution shall hold office for a term of not more than five years and is eligible for reappointment after a cooling off period of not less than six years.

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

(6) A development finance 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.

(7) Where a development finance institution fails to appoint an auditor in accordance with subsections (1) and (2) or the Bank of Ghana is not satisfied with the report of an auditor appointed by a development finance institution, the Bank of Ghana may appoint a new auditor and order the submission of a new report.

(8) The remuneration of the auditor appointed by the Bank of Ghana under subsection (7) shall be paid by the development finance institution.

Power of the Bank of Ghana to appoint an auditor

75. (1) A development finance 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 development finance institution to hold office until the next annual general meeting of that development finance institution.

(3) A development finance 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 an auditor

76. (1) The remuneration of an auditor of a development finance institution shall be determined in accordance with the Companies Act, 2019 (Act 992).

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

Right of an auditor to access information

77. (1) An auditor of a development finance 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 development finance institution; and
- (b) a right to request information and explanation from the directors, management, staff and appointed agents of the development finance institution requisite for the efficient discharge of the duties of the auditor.

(2) For purposes of subsection (1), “accounting records” include computerised and manual files, vouchers, reports and other transactions of the development finance institution.

Report of an auditor

78. (1) An auditor of a development finance institution shall submit to that development finance institution and to the Bank of Ghana at least once every year not later than 31st March of the ensuing year 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 development finance 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 discharge of the duties of the auditor;
- (c) the transactions of the development finance institution are within the powers of the development finance institution;
- (a) in the opinion of the auditor, the development finance 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 the enactments; and
- (e) the development finance institution has complied with the provisions of this Act.

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(3) The auditor shall submit a long form audit report on the accounts and the affairs of the development finance institution generally and in addition comment on the matters to be specified in directives made by the Bank of Ghana.

Meetings with auditors

79. (1) The Bank of Ghana may, periodically arrange meetings between

- (a) the Bank of Ghana,
- (b) a development finance institution, and
- (c) the auditors to the development finance institution,

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 development finance institution.

(2) The Bank of Ghana may, for the purpose of discussing confidential matters, arrange meetings with the auditors of a development finance institution.

Duties of an auditor to the Bank of Ghana

80. (1) An auditor appointed under this Act shall inform the Bank of Ghana if there is sufficient reason to believe, that

- (a) that the development finance institution is insolvent or there is a significant risk that the development finance institution will become insolvent;
- (b) that material weaknesses exist that threaten the viability of the development finance institution; or
- (c) the development finance institution has contravened a
 - (i) prudential standard;
 - (ii) requirement in this Act, the Regulations or directive issued under this Act; or
 - (iii) condition imposed in the licence or registration of that development finance institution.

(2) The auditor shall

- (a) review and report on compliance with anti-money laundering and counter terrorist financing activities of the development financial institution;
- (b) verify prudential returns and other reports of the development

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finance institution which the Bank of Ghana may periodically require to be verified; and

- (c) submit to the Bank of Ghana a management letter not later than three months after the end of the financial year.

(3) The management letter submitted under paragraph (c) of subsection (2) shall disclose the shortcomings or any contravention of an enactment which may not be sufficiently fundamental to lead to qualification of the accounts.

(4) 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

81. The Bank of Ghana may, at the expense of a development finance 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 development finance institution.

Termination of appointment of an auditor

82. (1) An auditor of a development finance institution shall cease to act as an auditor if

- (a) the Bank of Ghana in writing requests that development finance 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 development finance institution;
- (c) that auditor resigns by notice in writing to the development finance institution;
- (a) that auditor ceases to qualify under subsection (3) of section 74 for appointment as auditor of that development finance institution;
- (e) that auditor is otherwise removed by a decision taken at an annual general meeting of that development finance institution; or
- (j) that auditor has served as auditor for the development finance institution for the preceding six years.

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(2) A development finance 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 development finance institution or any other person concerned may report the conduct of an auditor to the Institute of Chartered Accountants (Ghana) or a successor body for disciplinary action.

Display of financial statements

83. (1) A development finance institution shall exhibit at each of the branches or agencies of the development finance institution in a conspicuous place throughout the year, a copy of the last audited financial statements in respect of the operations of the development finance institution.

(2) A development finance institution shall not later than three months after the end of the financial year of the development finance institution

(a) furnish the Bank of Ghana with a copy of the audited financial statements together with the statutory and long form audit reports of the auditors; and

(b) cause the financial statements together with the reports of the auditors to be published on the website of the development finance institution if any and in at least two daily newspapers of nationwide circulation.

(3) A development finance 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 Supervision and Control

Directives

84. (1) The Bank of Ghana may issue directives to development finance institutions generally or to a class or classes of development finance institutions where the Bank of Ghana is satisfied that it is necessary to

(a) secure the proper management of a development finance institution generally;

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- (b) prevent the affairs of development finance institutions from being conducted in a manner detrimental to the interest of creditors and other stakeholders or prejudicial to the interests of the development finance institution;
 - (c) maintain the overall stability of the financial system in the country; and
 - (a) 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 development finance institutions;
 - (ii) the minimum level of capital for development finance institutions;
 - (iii) the prescription of prudential norms on asset quality, bad debt and write-offs;
 - (iv) the liquidity reserve requirements;
 - (v) guarantee development finance;
 - (vi) the computation of on-going capital requirements for development finance institutions;
 - (vii) the lending limits on credits extended to insiders;
 - (viii) the limitations for advances or credit facilities to a single borrower;
 - (ix) the rules and regulations against the use of development finance institutions for money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction;
 - (x) the classification of entities as development finance institutions for the purposes of this Act;
 - (xi) the reporting requirements to the Bank of Ghana;
 - (xii) market conduct, consumer protection principles, rules and requirements and their enforcement;
 - (xiii) an assessment of the development impact of the development finance institutions operations; and
 - (xiv) anything required under or authorised by this Act to be provided for by directives; or
 - (b) where it is necessary to exempt a development finance institution from the application of any of the provisions of this Act having regard to the nature, risk profile and complexity of the development finance institution.

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(3) The Bank of Ghana may modify a directive issued under subsections (1) and (2) as the Bank of Ghana considers appropriate and a development finance institution 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 the 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 subsection (8), impose any other penalty or take any remedial action that the Bank of Ghana considers appropriate.

Information and periodic returns

85. (1) The Bank of Ghana shall, for the purposes of supervision, require a development finance institution to submit any information or data relating to

(a) the assets, liabilities, income, expenditure, affairs of the development finance institution; or

(b) 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

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(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 development finance institution and on the key management personnel responsible for

- (a) non-submission,
- (b) incomplete submission,
- (c) delayed submission, or
- (a) 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.

Examinations

86. The Bank of Ghana shall carry out examinations of the operations and affairs of a development finance institution at the time and frequency that the Bank of Ghana may consider appropriate, taking into account the

- (a) evaluation of the Bank of Ghana of micro-prudential and macro-prudential concerns, and
- (b) risks posed by the development finance institution.

Investigation or scrutiny

87. (1) Without limiting the power to examine development finance institutions under section 86, 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 development finance institution.

(2) The Bank of Ghana may appoint qualified accountants or other professionals to act as agents for the Bank of Ghana in carrying out investigations under subsection (1).

Power of examiners

88. (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 a development finance institution.

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

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(3) The development finance institution 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 member of the Board of Directors, key management personnel or any other employee of a development finance institution,

(b) an external auditor,

(c) a person whom the relevant entity has outsourced any of the functions of the relevant entity, or

(a) 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 person 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

89. (1) An official of the Bank of Ghana, who is authorised to carry out an examination or investigation under section 86 or 87 may, if that official considers it necessary, by an order in writing issued to the Chief Executive Officer of the development finance institution 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.

(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 the disposal of the document.

Verification of information

- 90.** (1) The Bank of Ghana may authorise
- (a) an official of the Bank of Ghana,
 - (b) a qualified auditor or
 - (c) any 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 the accuracy of the return, information or data.

(2) A development finance institution being examined or investigated under section 86 or 87 shall provide prompt access and facilities to the authorised official, auditor or other professional to carry out the task of the authorised official, auditor or other professional.

(3) A development finance institution which fails to provide prompt access and facilities to the authorised official, auditor or other professional is liable to pay to the Bank of Ghana an administrative penalty of not more than one thousand penalty units.

Examination reports

91. (1) Where an examination has been conducted by the Bank of Ghana under section 86, the Bank of Ghana shall

- (a) furnish a copy of the report to the entity examined, and
- (b) 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 Directors 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

92. (1) The Bank of Ghana may, after examining an explanation under section 91 or based on other supervisory reports, issue an instruction to a development finance institution 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 sections 93 to 95.

(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.

Remedial measures

93. (1) Where the Bank of Ghana determines, after an examination or otherwise based on information at the disposal of the Bank of Ghana, that a development finance institution has

- (a) failed to comply with a provision of this Act, the Regulations or directives issued under this Act;
- (b) been engaging in an unsafe or unsound practice;
- (c) been conducting the affairs of the development finance institution in a manner detrimental to the interests of the creditors of the development finance institution; or
- (a) violated any condition or restriction attached to the licence 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 development finance institution;
 - (b) issue an order to the development finance institution to take a remedial action that the Bank of Ghana may specify within a stated period;
 - (c) require the development finance institution to cease the violation or unsafe or unsound practice;
 - (a) take the affirmative action that the Bank of Ghana considers necessary to eliminate the grounds for the order;

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- (*ε*) conclude a written agreement with the Board of Directors of the development finance institution to provide for a programme of remedial action;
 - (*υ*) impose an administrative penalty on the development finance institution 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 development finance institution in accordance with this Act; or
 - (*h*) revoke the licence of the development finance institution.
- (3) A remedial action under paragraph (*l*) of subsection (2) may include any of the following:
- (*a*) prohibit the development finance institution from further lending or taking further finance exposures, including investments or capital expenditure;
 - (*b*) require the development finance institution or any of the subsidiaries of the development finance institution to suspend for a specified period, alter, reduce, or terminate any activity that the Bank of Ghana determines has caused material losses to the development finance institution;
 - (*c*) require that the development finance institution divests itself or liquidates a subsidiary of the development financial institution;
 - (*a*) restrict or prohibit transactions with affiliates;
 - (*ε*) restrict payment of bonuses or excessive compensation to a director or key management personnel;
 - (*υ*) prohibit the development finance institution from paying a dividend on its equity capital or rights issue or bonus shares to shareholders or to a person claiming under their authority;
 - (*g*) suspend or remove from office the Chief Executive Officer of the development finance institution or restricting the powers of the Chief Executive Officer;
 - (*h*) remove any or all of the members of the Board of Directors of the development finance institution, or key management personnel or restricting their powers;

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- (i) revoke the licence issued to the development finance institution; or
- (j) undertake any other action necessary to eliminate the basis for requiring remedial action.

(4) 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.

Remedial measures for relevant persons

- 94.** (1) Where the Bank of Ghana determines that a relevant person has
- (a) contravened a provision of this Act or the directives,
 - (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:
- (a) 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 administrative penalty shall be of similar amount for entities with comparable total assets for the same type of contravention;
 - (j) require the relevant person to reimburse the development finance institution;
 - (g) prohibit the relevant person from direct or indirect exercise of voting rights attached to shares of the development finance institution;
 - (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.
- (2) Where the Bank of Ghana determines that a relevant person has
- (a) wilfully 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 93,

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- (b) been engaging in an unsafe or unsound practice that has resulted in a material loss to the development finance institution or financial gain to that relevant person; or
- (c) been conducting the affairs of the development finance institution in a manner detrimental to the interests of creditors of the development finance institution,

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

- (a) direct the dismissal of the relevant person from the development finance institution;
 - (e) prohibit the relevant person from serving in or engaging in the development finance 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 development finance institution or cease to hold a significant interest in the development finance institution.
- (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 development finance institution; and
 - (b) if applicable, suspend the exercise of voting rights of shares in the development finance institution 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 development finance institution 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.

(6) The Bank of Ghana may take the following actions if a relevant person contravenes subsection (5):

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- (a) suspend or remove the relevant person from a position in that development finance institution;
- (b) prohibit the exercise of voting rights in shares of the development finance institution; or
- (c) require the person to dispose of the holding or interest of that relevant person in the development finance institution.

(7) The power 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.

Appointment of advisor

95. (1) Where the Bank of Ghana considers it necessary to improve the affairs of a development finance institution, the Bank of Ghana may appoint a competent person as advisor to the management of the development finance institution at the expense of that development finance institution.

(2) The Bank of Ghana shall give a hearing to the development finance institution before issuing the order of appointment of an advisor unless the Bank of Ghana considers that the consequent delay in action would not be in the interest of the development finance institution.

(3) A development finance institution 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 development finance institution or committees of Board of Directors of the development finance institution and to participate in deliberations.

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

- (6) An advisor appointed under this section shall
- (a) hold office for the period that the Bank of Ghana may specify, and
 - (b) furnish the Bank of Ghana with a status report on the development finance institution as frequently as the Bank of Ghana may determine.

Liquidation

96. (1) Where the Bank of Ghana determines that the development finance institution is insolvent or is likely to become insolvent within a period determined by the Bank of Ghana, the Bank of Ghana shall

- (a) revoke the licence of the development finance institution; and
- (b) appoint a liquidator to wind up the affairs of the insolvent development finance institution, despite the provisions of the Corporate Insolvency and Restructuring Act, 2020 (Act 1015) or any other enactment.

(2) An appointment under paragraph (b) of subsection (1) has the same effect as the appointment of a liquidator by the Court.

(3) A person dissatisfied with the decision of the Bank of Ghana under subsection (1) may apply to the High Court for redress.

Voluntary winding-up

97. (1) Despite anything to the contrary in the Companies Act, 2019 (Act 992) or any other enactment, a development finance institution shall not voluntarily wind up the operations of the development finance institution unless the Bank of Ghana has certified in writing that the development finance institution is able to meet the obligations of the development finance institution in full to the creditors as the obligations accrue.

(2) Where the Bank of Ghana, at any stage of the voluntary winding up, considers that the development finance institution which is being wound up is unable to meet the obligations of the development financial institution in full to creditors, the Bank of Ghana shall appoint a liquidator to wind up the affairs of the development financial institution and the provisions of section 96 shall apply.

Review of Decisions

Review of decisions of the Bank of Ghana on licensing

98. (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 a person is dissatisfied with the outcome of a review under subsection (1), that person may, within thirty days from the date of the decision, in writing, appeal against the decision to the Adjudicative Panel established under section 99.

Adjudicative Panel

- 99.** (1) There is established by this Act, an Adjudicative Panel.
- (2) The Adjudicative Panel consists 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.
- (3) The Chief Justice shall appoint members of the Adjudicative Panel.

Functions of the Adjudicative Panel

100. An Adjudicative Panel shall hear and determine an appeal against decision of the Bank of Ghana in respect of issuance of a licence under this Act.

Procedure of the Adjudicative Panel

101. The Adjudicative Panel shall adopt its own rules of procedure.

Decisions of the Adjudicative Panel

- 102.** The Adjudicative Panel shall
- (a) deliver the decision of the Adjudicative Panel in writing at the end of a hearing; and
 - (b) communicate the decision of the Adjudicative Panel to the applicant, within thirty days of receipt of the appeal.

Expenses of the Adjudicative Panel

103. The expenses of the Adjudicative Panel including allowances of members of the Adjudicative Panel shall be borne by the Bank of Ghana.

Appeal to the High Court

104. Where a person is dissatisfied with the decision of the Adjudicative Panel, the person may within thirty days from the date of the decision, appeal to the High Court for redress.

Miscellaneous Provisions

Prohibition of floating charge

105. (1) A development finance institution shall not create a floating charge on an undertaking or property of the development finance institution or part of the property of the development finance institution.

(2) The Bank of Ghana may prescribe restrictions on other liens or charges in respect of the property of a development finance institution.

(3) A development finance 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

106. (1) A director, an officer or an 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 One of the First Schedule; and

(b) in any other case, make a declaration of confidentiality before the chairperson of the Board of Directors in the form set out in Part Two of the First Schedule.

(2) A director, an officer or an 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 development finance institution or of any of the customers of the development finance institution, 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

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- (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 under section 108;
 - (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); or
 - (a) the disclosure of information to members of the Financial Stability Council.

Confidentiality of customer information

- 107.** (1) Subject to this Act, a person with access to the books, accounts, records, financial statements or other documents, electronically or otherwise, of a development finance institution shall,
- (a) in the case of a director or a key management personnel, take an oath of confidentiality in the form set out in Part One of the Second Schedule; or
 - (b) in any other case, make a declaration of confidentiality before the Chief Executive Officer or Deputy Chief Executive Officer of the development finance institution in the form set out in Part Two of the Second Schedule, before the person begins to perform any function under the banking laws.

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(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 development finance institution, disclose directly or indirectly to any person any information related to the affairs of a customer of a development finance institution including 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 established under the Borrowers and Lenders Act, 2008 (Act 773);

(e) in accordance with the provisions of the Credit Reporting Act, 2007 (Act 726);

(f) to the Securities and Exchange Commission established under the Securities Industry Act, 2016 (Act 929); or

(g) to any other recognised regulatory bodies.

(4) The duty of confidentiality imposed under this section shall not apply where

(a) the customer is declared bankrupt or insolvent in Ghana or, in the case of a company, is being wound up;

(b) 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;

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- (c) the express consent of the customer has been obtained;
 - (a) civil proceedings have been instituted involving the development finance institution and the customer or the account of the customer;
 - (e) the information is required by an officer in the employment of the same development finance institution in the country or an auditor or legal representative of a development finance institution who requires and is entitled to know the information in the course of professional duties;
 - (j) the information is required by another development finance institution, 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;
 - (g) 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; or
 - (h) where disclosure is required under an enactment and the development finance 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 (6) and (7), information shall be disclosed where
- (a) the head office of a development finance institution incorporated outside the country requires information from the subsidiary of that development finance institution in the country in respect of a transaction of the subsidiary; or
 - (b) the parent development finance 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.
- (6) Where an officer of a foreign development finance 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 development finance institution or perform the functions of a central bank, proposes to

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- (a) conduct an inquiry, audit or inspection of a subsidiary of the development finance 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.

(7) An officer responsible for carrying out an action that involves 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.

(8) The Bank of Ghana may disclose to an auditor of a development finance 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.

(9) 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

108. 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 development finance institutions or other similar institutions.

Disclosure of information relating to development finance institutions

109. Despite the provisions of this Act, the Bank of Ghana may,

- (a) in the interest of the public, publish information obtained from the development finance institution in a consolidated form that the Bank of Ghana considers fit; and

- (*l*) 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 the affiliates of the institutions.

Submission of reports on trend and progress

110. (1) The Bank of Ghana shall, not later than one hundred and twenty days after the end of the financial year, submit to the Minister a report on the trend and progress of development finance business in the country.

(2) The Bank of Ghana shall include in the report the recommendations that the Bank of Ghana considers necessary in the interest of the development finance business in the country.

Protection from liability and indemnification

111. (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.

Administrative penalties

112. (1) The Bank of Ghana shall, for the purpose of imposing an administrative penalty and which is not fixed, under this Act, take into account the

- (a) gravity of the contravention; and
- (b) impact of the contravention.

(2) 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

- (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; or
- (b) in the case of a development finance institution, be recoverable
 - (i) by debit to the bank account of that development finance institution with the Bank of Ghana; or
 - (ii) by an action against the development finance institution if the debt is not paid within sixty days after the demand.

Prosecution of offences

113. (1) The Attorney-General may, by executive instrument, authorise an officer of the Bank of Ghana specified in the instrument to prosecute an offence that arises under this Act.

(2) Where a body corporate is convicted of an offence under this Act, every director and officer of that body corporate 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

114. 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.

General penalty

115. 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 body corporate, 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

116. 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.

Interpretation

117. In this Act, unless the context otherwise requires,

“affiliate” of a company means

- (a) a body corporate of which the company is a subsidiary, or
- (b) a body corporate that is under a common control with the company;

“amalgamation” means a merger of businesses or any part of the businesses of two or more companies;

“applicant” means a body corporate;

“associate” means an entity over which a development finance institution 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 deposit taking business and is issued with a banking licence in accordance with the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930);

“banking law” means an enactment related to the banking system;

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“beneficial owner” means an individual

- (a) who directly or indirectly ultimately owns or exercises substantial control over a person or company;
- (b) who has a substantial economic interest in or receives substantial economic benefits from a company whether acting alone or together with other persons; or
- (c) who exercises significant control or influence over a legal person or legal arrangement through a formal or informal agreement;

“borrowing” means a contractual arrangement with a third party to raise funds with a tenor of not less than twelve months where the Bank of Ghana sets a minimum threshold from time to time;

“capital adequacy ratio” means the ratio expressed as a percentage of the adjusted capital base to the risk weighted financial exposure;

“Chief Executive Officer” 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 body corporate;

“Company Regulations” means the Regulations of a company incorporated under the Companies Act, 2019 (Act 992);

“control” means a relationship where a person or a group of persons acting in concert, directly or indirectly

- (a) owns twenty-five per cent 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

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- (a) has the ability to direct the activities of the person so as to affect the financial returns on any investment made with the person;
- “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 the sum of money 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;
- “development finance institution” means an institution licenced under this Act to carry out development finance business;
- “direct debt or equity” means the provision of loans or equity by a development finance institution directly to a body corporate or business;
- “emolument” means salaries and allowances other than performance related earnings;
- “employee” means an individual employed by a development finance institution other than a director or a key management personnel;
- “equity financing or investment” means buying or holding investments in the share capital of a body corporate;
- “examination” includes the carrying out of on-site, off-site, credit reporting and any other examination 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 development finance institution with respect to a person means the aggregate of

 - (a) the loans, advances, placements, and credit facilities including off-balance sheet obligations given to that person, and

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- (*l*) the value of the holdings by that development finance institution of shares and debentures and other debt securities issued by that person;
- “financial institution” means a bank or a specialised deposit-taking institution or any other institution as determined by the Bank of Ghana from time to time;
- “Financial Stability Council” means the 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 fulfil those responsibilities;
 - (*c*) whether the interest of creditors of the entity are threatened, or likely to be, in any way threatened by the person holding that position; and
 - (*a*) 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 development finance institution” means a foreign institution that is authorised to engage in development finance business where the head office of the foreign institution is located;
- “guarantee development finance” means the provision of risk-bearing, risk-mitigating or de-risking facilities to support investments, including foreign direct investment and domestic investment, into strategic

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- sectors of an economy that are considered risky for commercial banks;
- “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;
- “indirect debt or equity” means the provision of loans or equity by development finance institution to a body corporate or business through a participating financial institution;
- “insider” with respect to a development finance institution means a director, an executive director, key management personnel and a significant shareholder;
- “key management personnel” includes
- (a) the Chief Executive Officer,
 - (b) the Deputy Chief Executive Officer,
 - (c) the Chief Operating Officer,
 - (d) the Chief Finance Officer,
 - (e) the Board Secretary,
 - (f) the Treasurer,
 - (g) the Chief Internal Auditor,
 - (h) the Chief Risk Officer,
 - (i) the Head of Compliance,
 - (j) the Anti-Money Laundering Reporting Officer,
 - (k) the Head of Internal Control Functions,
 - (l) the Chief Legal Officer,
 - (m) the Manager of a significant business unit of a development finance institution, or
 - (n) any person with similar responsibilities;
- “key sector” means a sector that is vital to the economy of the country such as the agriculture, in particular processing and storage, manufacturing, high value services and Information Communication Technology enabled technology services sectors;
- “large exposure” means financial exposure to a single borrower or group of connected borrowers that in

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- the aggregate exceeds ten per cent of the regulatory capital of the development finance institution;
- “loanable funds” means the total loan portfolio of a development finance institution;
- “long-term” means a period of more than seven years;
- “management letter” means a formal letter from the auditor addressed to the development finance institution on the weaknesses identified in the operations of a development finance institution during the audit;
- “medium-term” means a period between three years and seven years;
- “minimum paid-up capital” includes
- (a) initial funds required to start-up a development finance 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;
- “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;
- “prescribed” means prescribed by Regulations, Rules or directives issued by the Bank of Ghana under this Act;
- “prudential limit” means the limit to mitigate risk set by the Bank of Ghana in respect of the business of a development finance institution;
- “public interest” includes a right or advantage which ensures or is intended to enure to the general benefit of the people of this country;

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“regulatory capital” includes the sum total of Tier 1 Capital and Tier 2 Capital;

“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 party” in relation to transactions means a company or entity in which

- (a) the development finance institution, a director or a key management personnel of a development finance institution has an equity interest of at least five per cent;
- (b) a director of the development finance institution also serves as a director of the company or entity; or
- (c) a director or a key management personnel of the development finance institution has influence in the company or entity;

“related person” in relation to an insider means a spouse, son, daughter, step son, step daughter, brother, sister, father, mother, cousin, nephew, niece, aunt, uncle, stepsister and stepbrother of an insider;

“relevant person” means a member of the Board of Directors, key management person or significant shareholder of a development finance institution;

“relevant supervisor” means the supervisory authority of a development finance institution in a country other than Ghana;

“retail development finance” means lending or providing direct equity investment to enterprises and organisations in identified sectors where the risk is borne by the development finance institution;

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- “secured financial exposure” means an exposure with a collateral that has a market value of at least one hundred per cent of the outstanding amount of the exposure throughout the term of the financial exposure;
- “senior management” means members of the Executive Management Committee of a development finance institution and any other key management personnel determined by the development finance Institution;
- “shell company” means a company that has no physical presence in the country in which the company is incorporated and licensed, and that is unaffiliated with a regulated financial service group that is subject to effective consolidated supervision;
- “short term” means a period of less than three years;
- “significant shareholder” means a shareholder who has a direct or indirect holding which represents five per cent or more of the capital or of the voting rights;
- “significant shareholding” means a direct or indirect holding which represents five per cent 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 the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930);
- “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 development finance institutions;
- “ultimate beneficial owner” means an individual that ultimately derives the benefits of ownership or control of a juridical person; and
- “wholesale development finance” means providing wholesale funds to participating financial institutions for on-lending to identified sectors.

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Transitional provision

118. A development finance institution in existence immediately before the coming into force of this Act shall apply to the Bank of Ghana within six months after the coming into force of this Act, for a licence under this Act on terms and conditions prescribed by the Bank of Ghana.

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FIRST SCHEDULE

Part One

(section 106 (1) (a))

Oath of Confidentiality

IN THE HIGH COURT

I,

being 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 this Act 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 development finance institutions 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)

Development Finance Institutions Bill, 2020

Part Two
(section 106 (1) (t,))

Declaration of Confidentiality

I.....being appointeddo 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 Development Finance Institutions Act, 2020 (Act) 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 Officer

on.....(date)

Development Finance Institutions Bill, 2020

SECOND SCHEDULE

Part One

(section 107 (1) (a),)

Oath of Confidentiality

IN THE HIGH COURT

I.....being appointed.....do hereby swear/ solemnly affirm that I shall maintain during or after my relationship withthe confidentiality of any matter related this Act which come to my knowledge and shall not, on any account and at anytime, 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 function or the exercise of my powers under the Development Finance Institutions Act, 2020 (Act) 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)

Development Finance Institutions Bill, 2020

Part Two
(section 107 (1) (l,))

Declaration of Confidentiality

I.....
being appointeddo hereby
declare that I shall maintain during or after my relationship
with.....the confidentiality of any
matter related to this Act 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
Development Finance Institutions Act, 2020 (Act) 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 Officer

on(date)

Date of *Gazette* notification: 2nd July, 2020.

DEVELOPMENT FINANCE INSTITUTIONS BILL, 2020

MEMORANDUM

The purpose of the Bill is to provide for the licensing, regulation and supervision of development finance institutions in the country to promote growth and development in key sectors of the economy.

The financial system of the country has recently undergone significant transformation. The ranges of financial services offered by financial intermediaries and their corporate structures have also become broader and more complex. However, a major shortcoming of the financial landscape, largely comprising banks and specialised deposit-taking institutions, is the focus on short-term financing for commercial purposes with little support for long-term financing needed to accelerate economic development and transformation. Available data clearly shows that only a very small share of lending goes to key sectors such as agriculture and manufacturing. Therefore, there is the need for the establishment of modern market-oriented development finance institutions which will focus on providing medium to long term financing as well as short term funding, guarantees and other credit enhancement structures to support key sectors of the economy.

Experiences from countries that have successfully transformed their economies indicate that development finance institutions can play a key role provided the development finance are well-structured, insulated from political interferences in operational decisions and are professionally managed along sound principles that balance development objectives with market realities. It should be noted that the role of development finance institutions in this context is not to replace or compete with banks and specialised deposit-taking institutions but to complement them by enabling them reach more clients, particularly with longer term loans and also provide support directly to potentially viable clients that banks and specialised deposit-taking institutions shy away from financing.

The transformation of key sectors in the economy requires the availability of affordable working capital and long-term investment financing. Financial depth remains low in Ghana, constraining private sector development, particularly of micro, small, and medium-sized enterprises. These micro, small, and medium-sized enterprises face

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severely constrained access to and high cost of financing, particularly medium and long-term credit. In addition, the agriculture and manufacturing sectors receive relatively lower shares of credit from the financial sector compared to their shares in Gross Domestic Product and employment. The lack of access to long-term finance and the high borrowing costs faced by most Ghanaian firms make investment in long gestation projects non-viable.

In a bid to address this shortfall in the financing structure, Government intends to facilitate the establishment of development finance institutions that will help unlock private financing to key business sectors and accelerate the much-needed transformation of the economy. It is expected that these development finance institutions will help contribute to address the market failures in the Ghanaian credit markets, thereby helping businesses invest long-term, and promote economic growth and job creation.

Moreover, the current legal and regulatory framework of the banks and specialised deposit-taking institutions industry is governed by two Acts, namely the Banks and Specialised Deposit-Taking Institutions Act, 2016, (Act 930) and the Non-Bank Financial Institutions Act, 2008 (Act 774). Act 930 specifically regulates only banks and deposit-taking institutions and does not provide for the licensing, regulation and supervision of development finance institutions which will be non-deposit-taking, Act 774, although suited for non-deposit taking financial institutions, lacks detailed provisions on corporate governance, remedial measures, capital ratios and concentration risks that will be required for the effective regulation and supervision of development finance institutions. Thus, the existing regulatory framework does not fit the establishment of development finance institutions.

The Bill therefore seeks to regulate development finance institutions which will be non-deposit taking to provide medium to long-term financing as well as short-term funding enhancement structures to promote economic growth and transformation. The Bill seeks to provide adequate regulation and supervision by the Bank of Ghana aimed at

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ensuring that the failure of a development finance institution will not have a systemic impact on the financial system as a whole, while at the same time providing additional comfort to potential investors who may wish to invest in the sector,

Preliminary matters are dealt with in *clauses 1 to 3*. The Bill, in *clause 1*, applies to development finance institutions licensed under the Bill and any other institution designated as a development finance institution by the Bank of Ghana by notice and published in the *Gazette*. The Bill however does not apply to a development finance institution governed by a multilateral treaty or under sovereign bilateral agreements operating in the country.

Clause 2 provides for the Bill to be read together with the Companies Act, 2019 (Act 992), the Anti-Money Laundering Act, 2008 (Act 749) and the Anti-Terrorism Act, 2008 (Act 762). It should be noted that where there is a conflict or inconsistency between the Companies Act, 2019 (Act 992) and the Bill, the provisions of the Bill is to prevail. *Subclause (5)* categorically provides for the non-applicability of the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930) to an institution licensed under the Bill.

Clause 3 of the Bill deals with development finance business. The Bill prohibits a person from carrying on a development finance business in the country unless that person is a body corporate registered under the laws of this country and licensed by the Bank of Ghana. For the purpose of the Bill, development finance business is defined to include the provision of medium to long-term funding, short-term funding, guarantees and other credit enhancement structures to key sectors of the economy under a national development policy in a financially sustainable manner or development finance activities prescribed by the Bank of Ghana.

Provisions on licensing of development finance institutions are captured in *clauses 4 to 19* of the Bill. *Clause 4* mandates the Bank of Ghana to have the overall regulatory and supervisory authority in all matters

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relating to the business of development finance in the country. The exercise of such powers may be carried out through the supervisory structures established by the Bank of Ghana. In addition, the Bank of Ghana may delegate some powers to a person it considers appropriate to carry out those supervisory functions.

Clause 5 places an obligation on the Bank of Ghana to issue licences to development finance institutions and grant approval to foreign development finance institutions with respect to the establishment of representative offices in the country.

The requirement for a licence is provided for in *clause 6*. A person who seeks to carry on a development finance business is to apply in writing to the Bank of Ghana for a licence, *clause 7*. An applicant is to indicate, in the application for a licence, the objects of the business for the approval of the Bank of Ghana as well as provide the necessary documentation in support of the application. An application for a licence is to also indicate the type of licence that is being applied for.

The types of licences to be issued by the Bank of Ghana is detailed in *clause 8*. The types of licences to be issued under the Bill are a Class 1 development finance licence for wholesale development finance, a Class 2 development finance licence for retail development finance, a Class 3 development finance licence means guarantee development finance and a Class 4 development finance licence which is a combination of all the three categories of licences.

The Bank of Ghana, in *clause 9*, 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 the applicant will carry on business with integrity, prudence and the required professional competence, and has and will maintain an unimpaired paid-up capital as specified in the Bill.

An application for a licence under the Bill is not to include an invitation to raise capital through a public issue of shares for the purpose

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of the proposed development finance business until the applicant concerned obtains a final approval, *clause 10*.

Final approval and issuance of development finance institution licence is provided for in *clause 11*. The Bank of Ghana may grant an applicant a final approval and issue a licence to carry on a development finance business of a specified class, where the Bank of Ghana is satisfied with the organisational and infrastructural arrangements made by the applicant, the applicant has complied with the terms and conditions stipulated in the provisional approval, as well as the requirements for a licence specified in the Bill and any other directives issued by the Bank of Ghana have been met by the applicant. A development finance institution is to display at the head office, branches and agencies of that development finance institution, copies of the licence for the information of the public.

A licence issued by the Bank of Ghana is not to be transferred or assigned, *clause 12*. A person who transfers or assigns a licence issued by the Bank of Ghana is liable to pay to the Bank of Ghana an administrative penalty of not less than two thousand penalty units and not more than four thousand penalty units. In addition, the licence of the person is to be revoked by the Bank of Ghana.

Conditions for issuance of a licence by the Bank of Ghana are provided for in *clause 13*. A licence issued under the Bill is subject to the conditions that the Bank of Ghana may impose.

In addition, the Bank of Ghana may also restrict the activities in which a development finance institution is permitted to engage in. A condition attached to a licence issued to a development finance institution may be varied or amended provided the Bank of Ghana before taking an action to restrict, vary or amend the licence, give notice in writing to the development finance institution concerned.

Clause 14 provides for the refusal of an application for a licence by the Bank of Ghana. The Bank of Ghana may refuse an application for a licence to carry on development finance business if the Bank of Ghana is

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not satisfied with the merits of the application or in the opinion of the Bank of Ghana, the prevailing conditions in the financial sector do not warrant the issuance of further licences. The Bank of Ghana is to give reasons in writing for the refusal of an application if the Bank of Ghana refuses an application.

Circumstances for the revocation of a licence is provided for in *clause 15*. The Bank of Ghana can revoke a licence if the Bank of Ghana is satisfied that an applicant provided information which is false, misleading or inaccurate in connection with the application for a licence or suppressed material information, the development finance institution fails to commence business within one year from the date the licence was issued, fails to fulfil or comply with the terms and conditions stipulated in the licence or carries on business in a manner which is contrary or detrimental to the interests of the public. The Bank of Ghana can also revoke a licence if the development finance 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 or the judgment of the Bank of Ghana, the development finance institution engages in unsafe or unsound business practices, among others. Where a licence is revoked under this *clause*, the Bank of Ghana is required to immediately appoint a liquidator in accordance with the Bill.

Clause 16 enumerates the permissible activities the development finance institutions may engage in. The permissible activities include direct debt or equity financing, indirect debt or equity financing, refinancing, loan syndication and providing credit enhancements or other credit de-risking facilities such as guarantees and other contingent liabilities. Other activities which a development finance institution is allowed to engage in are investing in Government of Ghana securities, Bank of Ghana securities or any other financial instruments that the Bank of Ghana approves, borrowings and granting of loans in foreign currency, providing technical assistance to enhance the capacity of borrowers to repay their loans and any other activity determined by notice or a directive

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by the Bank of Ghana. A development finance institution is however prohibited from engaging in the acceptance of demand, savings and time deposits, or any other type of deposits.

Clause 17 of the Bill empowers the Bank of Ghana, where the Bank of Ghana has sufficient reason to believe that a person is transacting or carrying on unauthorised development finance activities to, in writing, authorise an officer of the Bank of Ghana to perform a number of actions. These actions include entering any premises or property which the Bank of Ghana has reason to believe is occupied or used by a person for a purpose of contravening the provisions of the Bill, questioning 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 and closing down the business of that person.

A person is not to hinder or obstruct an officer authorised by the Bank of Ghana in the performance of the functions of that officer, refuse or fail to comply with a request made by the authorised officer in the performance of the functions of that authorised officer. A person is also not to 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. In addition, a person is not to knowingly furnish an authorised officer with false or misleading information; or falsely represent that that person is an authorised officer of the Bank of Ghana, *clause 17*.

Clause 18 requires a development finance institution to licence its places of business in accordance with the Bill. A development finance institution is also not to open, close or relocate a branch, the head office, or any other operational or support centre or office, for purposes of carrying on a development finance business unless specifically authorised by the Bank of Ghana. A development finance institution which contravenes this *clause* is liable to pay to the Bank of Ghana an administrative penalty of one thousand penalty units.

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Clause 19 prohibits a foreign development finance institution from establishing a representative office in the country unless the foreign development finance institution obtains the prior written approval of the Bank of Ghana.

Matters on capital and reserves of a development finance institutions are dealt with in *clauses 20 to 27*. A development finance institution is required to ensure that while in operation, the development finance institution maintains a minimum paid-up capital, unimpaired by losses including accumulated losses or other adjustments, prescribed by the Bank of Ghana, *clause 20*. The Bank of Ghana can, in *subclause (2) of clause 20*, prescribe different requirements under this *clause* for different classes of development finance institutions. The *clause* also provides for the methodology for the calculation of unimpaired paid-up capital.

Capital adequacy and other capital requirements are provided in *clause 21*. The Bank of Ghana is to issue directives, to prescribe a risk-based capital adequacy and other capital requirements for a class of development finance institutions. The Bank of Ghana is also to prescribe leverage or gearing ratio or both and any other form of capital requirement that the Bank of Ghana considers necessary or prudent for development finance institutions or for any class of development finance institutions. Some classes of development finance institutions may be exempted by the Bank of Ghana from meeting any of the capital requirements under this *clause*.

The Bank of Ghana may also require a development finance institution to maintain additional capital that the Bank of Ghana considers appropriate in respect of certain risks in the development finance institution or in the financial system, *clause 22*.

Clause 23 places an obligation on a development finance institution to comply with the prescribed minimum capital requirements and to 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 measures taken to rectify the breach. A development finance institution which fails to notify the Bank of Ghana as required is liable to pay to the Bank of Ghana an administrative penalty of one thousand penalty units.

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Clause 24 provides for the penalty for non-compliance with capital requirements. A development finance institution is, in *clause 25*, required to establish and maintain a Reserve Fund. A development finance institution which fails to maintain a Reserve Fund is liable to pay to the Bank of Ghana an administrative penalty of two thousand penalty units.

Clause 26 places restrictions on declaration and payment of dividend by a development finance institution. A development finance institution is not to declare or pay interim or final dividend on the shares of that development finance institution unless the development finance institution has among others completely written-off capitalised expenditure, made the required provision for non-performing loans and other erosions in asset values, satisfied the prescribed capital requirements and made the required transfer to the Reserve Fund as well as clawed back any dividend paid.

The sources of funds of a development finance institution are provided for in *clause 27*. These sources include the issuance of own shares, reserves, long-term loans from international finance institutions and debentures. Bonds, loans from national and supra-national governments, other development finance institutions and other bodies, including Sovereign Wealth Funds, funds from development partners, gifts, grants and donations are also other ways in which a development finance institution may raise funds.

Clauses 28 to 30 provide for liquidity of a development finance institution. In *clause 28*, the Bank of Ghana is to by directives prescribe one or more liquidity requirements for development finance institutions. The directive may specify different liquidity requirements for different classes of development finance institutions.

A development finance institution which fails to comply with the required liquidity requirements is to 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 measures taken to rectify the breach, *clause 29*. The penalty for non-compliance with the liquidity requirements is provided for in *clause 30*.

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Clauses 31 to 34 provide for matters on ownership and control of a development finance institution. A development finance institution that is a member of a corporate group is to provide the Bank of Ghana with information on the complete organisational structure of the group as specified in *clause 31*. The organisational structure is to include a diagram of the group, direct and indirect affiliates and associates of the development finance institution, the nature of the relationship between the affiliates and associates and the group, and any other information that the Bank of Ghana may require.

Transfer of shares affecting significant shareholdings is set out in *clause 32*. A development finance institution is to, at the end of June and December of every year, 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. Furthermore, a person is not without the prior approval in writing of the Bank of Ghana to, among others, directly or indirectly, alone or in concert with one or more other persons, acquire shares in a development finance institution which together with any existing direct or indirect holdings of that person, constitute a significant shareholding, or directly or indirectly, alone or in concert with one or more other persons, increase the ownership interest of that person in a development finance institution if the aggregate ownership interest of that person after the increase would exceed one of the supervisory thresholds. A person is also not to directly or indirectly, alone or in concert with one or more other persons, sell or dispose of shares in the development finance institution 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 development finance institution or enter into an agreement or arrangement which will result in a change in the control of a development finance institution.

The circumstances under which the Bank of Ghana may disapprove a proposed transfer of shares in a development finance institution is provided for in *clause 33*.

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Sale of business, merger, amalgamation and reconstruction of a development finance institution is provided for in *clause 34*. A person is not to enter into an agreement or arrangement for the sale, disposal or transfer of the whole or a part of the business of a development finance institution, amalgamation or merger of a development finance institution with any other development finance institution or any other institution or the reconstruction of a development finance institution, 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.

The Bill, in *clauses 35 to 57*, sets out detailed provisions on the governance of development finance institutions. The Bank of Ghana is empowered to prescribe rules regarding any matter of corporate governance of a development finance institution which the Bank of Ghana consider necessary to ensure prudent operation, *clause 35*.

A development finance institution is required to have a Board of Directors and key management personnel in accordance with *clause 36*. The responsibilities of the Board of Directors are specified in *clause 37*. The Board of Directors is to have overall responsibility for the development finance institution including approving and overseeing the implementation of the strategic objectives, risk strategy, corporate governance, and corporate values. The responsibilities of the Board of Directors are to be set out in a formal Charter.

For the purposes of good governance, a person is not to, at the same time, occupy the position of the chairperson of the Board of Directors and the Chief Executive Officer of a development finance institution. Also, related persons or persons with related interest are not, at the same time, occupy the positions of a chairperson of the Board of Directors and the Chief Executive Officer of a development finance institution, *clause 38*. The tenure of office of the chairperson and members of the Board of Directors of a development finance institution are provided in *clause 39*. Provision is made in *clause 40* for an independent director who is a non-executive member of the Board of Directors.

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Composition and qualification of Board of Directors is provided for in *clause 41*. The Board of Directors of a development finance institution is to be composed of members with diverse and relevant qualifications, skills, professional competencies and expertise. The Board of Directors of a development finance institution is to consist of at least seven members including the chairperson and a maximum of thirteen members. The majority of the Board of Directors are to be non-executive members and ordinarily resident in Ghana. Independent directors are to constitute at least sixty per cent of the composition of the Board of Directors of a development finance institution.

Provision is made in *clause 42* for a director who may be absent from Ghana, or unable to perform duties as a director, for a period not exceeding six months to appoint another director or any person, to act in the stead of the director as an alternate director subject to approval by ordinary resolution of the Board of Directors.

Meetings of the Board of Directors is provided for in *clause 43*. Generally, the Board of Directors of a development finance institution are to hold not less than four meetings, at least once every quarter, in a financial year. A member of the Board of Directors is to attend not less than fifty per cent of the meetings of the Board of Directors. The *clause* also makes provision for a meeting of the Board of Directors to be conducted through teleconferencing or video conferencing and in such cases an electronic copy of the meeting is to be kept by the development finance institution.

Clause 44 provides for performance evaluation of the Board of Directors. The Board of Directors is to annually conduct self-evaluation or assessment of the performance of the Board of Directors including the performance of the committees of the Board of Directors and individual members to ascertain the effectiveness of the governance practices and procedures of the Board of Directors. A copy of the report is to be submitted to the Bank of Ghana not later than the 30th of June of each year.

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The Board of Directors may establish specialised committees, the membership and nature of which depends on the complexity and risk profile of the development finance institution and the size of the Board of Directors, *clause 45*. Furthermore, a development finance institution is to have at least two committees of the Board of Directors including an Audit Committee and a Risk Committee, both of which is to be chaired by independent directors. The terms of reference of a committee of the Board of Directors are to be contained in a Charter that sets out the mandate, the scope and procedures of the committee.

Provision is made in *clauses 46 and 47* for the Audit Committee and Risk Committee, respectively.

The Board of Directors is also obligated to develop a comprehensive written policy on conflicts of interest and an objective compliance process for implementing the policy, *clause 48*.

Duties of senior management are set out in *clause 49*. Subject to the direction of the Board of Directors, the senior management of a development finance institution is to among others, ensure that the business activities of the development finance institution are consistent with the business strategy, risk tolerance or appetite and approved policies of the development financial institution, establish a management structure that promotes accountability and transparency, and implement appropriate systems for managing both financial and non-financial risks to which the development finance institution is exposed.

A development finance institution is to appoint a Chief Internal Auditor and a Chief Risk Officer in accordance with *clauses 50 and 51* respectively.

Clause 52 places an obligation on a development finance institution to, among others, select or nominate fit and proper individuals for appointment to the Board of Directors or as key management personnel, carry out due diligence and assessment of the members of the Board of Directors, key management personnel and significant shareholders, prior

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to their appointment and also on an on-going basis and conduct similar fit and proper tests for significant shareholder institutions and the directors of the significant shareholder institutions. It is also the responsibility of the development finance institution to take reasonable steps to verify the information obtained from the relevant person from independent sources and make copies of the independent assessment available to the Bank of Ghana as part of the request for approval.

The minimum assessment criteria for fitness and propriety to be used by the Bank of Ghana is provided for in *clause 53*. The Bank of Ghana, in assessing the fitness and propriety of a relevant person of a development finance institution, is to have regard to the experience, reputation, conflicts of interest and independence of mind, time commitment, collective suitability and financial integrity, and performance at interviews.

Clause 54 imposes a duty on the Board of Directors or a member of the Board of Directors of a development finance institution to report, in writing, to the Bank of Ghana if the Board of Directors or the member has reason to believe that the development finance institution may not be able to properly conduct its business as a going concern or is not likely, in the near future, to meet the obligations of the development finance institution, among others.

A person is disqualified from being a member of the Board of Directors or a key management personnel of a development finance institution where the conditions set out under *clause 55* exist. The standard provision on disclosure of interest is provided for in *clause 56*.

The Bank of Ghana is given the power to intervene in the appointment of the key management personnel of a development finance institution. Thus, *clause 57* requires a development finance institution to seek the prior written approval of the Bank of Ghana before the development finance institution appoints a Chief Executive Officer or a Deputy Chief Executive Officer of the development finance institution.

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Restrictions on lending and investments are provided in *clauses 58 to 70*. *Clause 58* prohibits a development finance institution from granting advances, loans or credit facilities including guarantees against the security of the shares of the development finance institution, the shares of a subsidiary of that development finance institution or issue shares that are paid by funds borrowed from that development finance institution.

A development finance institution is prohibited from taking a financial exposure and guaranteeing the same financial exposure to a participating financial institution or any other borrower, *clause 59*.

Clause 60 prohibits a development finance institution from taking a secured 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 regulatory capital of that development finance institution.

Clause 61 sets out restrictions on transactions with an affiliate of a development finance institution. A development finance institution is not to grant or permit to be outstanding, a financial exposure in respect of an affiliate of that development finance institution except on terms which are non-preferential in all respects including creditworthiness, term, interest rate and the value of the collateral or take a financial exposure in respect of an affiliate if the aggregate of the financial exposures to the affiliates of the development finance institution exceeds twenty-five percent of the regulatory capital of the development finance institution.

Restrictions on purchase or transfer of certain assets from an affiliate and insider are set out in *clause 62* whilst restrictions on financial exposure to an insider are set out in *clause 63*.

Clause 64 sets out the limits on lending to employees of a development finance institution. A development finance institution is prohibited from lending on preferential terms to an employee of that development finance institution unless the lending is part of a formally approved employment package or employee benefit plan. *Subclause (2) of clause 64* further prohibits a development finance institution from granting to an employee of that

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development finance institution an unsecured advance or credit facility, the aggregate amount of which exceeds two years' total emoluments of that employee.

In lending to insiders and their related interests, a development finance institution is to ensure that the factors listed in *clause 65* are adhered to. *Clause 66* places a limit on investments in respect of a subsidiary company of a development finance institution. The equity capital investment of a development finance institution in a subsidiary is not to exceed fifteen per cent of the regulatory capital of the development finance institution.

On the other hand, a development finance institution is not to invest or hold investments in the share capital of a body corporate if the amount of the investment would exceed fifteen per cent of the paid-up capital of that body corporate or exceed ten per cent of the regulatory capital of the development finance institution, whichever is lower, *clause 67*.

Clause 68 imposes an obligation on a development finance institution to report to the Bank of Ghana, the particulars of each large exposure, particulars of all lending to related parties and their related interests, and all investments under *clause 67*.

A development finance institution has an obligation under *clause 69* to maintain and implement a policy of non-accrual of interest on non-performing loans and provisioning for bad debts and other exposures.

In furtherance of prudential limits under the Bill, the Bank of Ghana may impose stricter limits for different classes of development finance institutions or a particular development finance institution for the period that the Bank of Ghana considers appropriate, *clause 70*.

Accounts and audit requirement of a development finance institution are spelt out in *clauses 71 to 83*. A development finance institution is required to prepare accounts and financial statements in the form, and provide details, in accordance with internationally-accepted accounting standards and rules or standards based on the Basel Core Principles as prescribed by the Bank of Ghana, *clause 71*.

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Clause 72 stipulates the manner in which the accounting records of a development finance institution is to be kept. The accounts prepared from the records of the development finance institution are to give a true and fair view of the state of affairs and results of operations for the accounting period of the development finance institution. The accounts are to be kept at the head office of the development finance institution in the country for a period of not less than ten years.

Clause 73 places an obligation on a development finance institution to prepare, at the expiration of each calendar year, in respect of the business transacted by the development finance institution with reference to that year, audited financial statements. The financial statements and the accounting records are required to be audited by qualified auditors duly appointed in accordance with the Bill.

Appointment of auditors by a development finance institution is provided for in *clause 74*. An auditor of a development finance institution is to be appointed at an annual general meeting of the development finance institution and subsequently approved by the Bank of Ghana. However, the Bank of Ghana is required under *clause 75* to appoint an auditor for a development finance institution where the development finance institution is without an auditor for a continuous period of three months.

The remuneration of an auditor must be in accordance with the Companies Act, 2019 (Act 992), *clause 76*. For purposes of auditing, an auditor appointed by a development finance institution has a right of access to information necessary for the efficient performance of the duties of the auditor, *clause 77*. The duty of the auditor to submit a report to the development finance institution which appointed the auditor and the Bank of Ghana is set out in *clause 78*.

Clause 79 empowers the Bank of Ghana to periodically arrange meetings between the Bank of Ghana, a development finance institution and the auditors to the development finance institution 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 development finance

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institution. The Bank of Ghana may also arrange meetings with the auditors of a development finance institution for purposes of discussing confidential matters.

The duties of an auditor to the Bank of Ghana are dealt with under *clause 80*. The Bank of Ghana may require an auditor to undertake a special audit or obtain additional information under *clause 81*. The appointment of an auditor may be terminated under the circumstances enumerated in *clause 82*.

A development finance institution is required under *clause 83* to exhibit at each of its branches or agencies in a conspicuous place throughout the year, a copy of the last audited financial statements in respect of the operations of the development finance institution.

Clauses 84 to 97 deal with the powers of the Bank of Ghana in respect of supervision and control. Further to its supervisory role, the Bank of Ghana may issue directives under *clause 84* to development finance institutions generally or to a class or classes of development finance institutions where the Bank of Ghana is satisfied among others that it is necessary to secure the proper management of a development finance institution generally, prevent the affairs of development finance institutions being conducted in a manner detrimental to the interest of creditors and other stakeholders or prejudicial to the interests of the development finance institution or maintain the overall stability of the financial system in the country.

A development finance institution may be required under *clause 85*, for supervision purposes, to submit information or data relating to its assets, liabilities, income, expenditure, affairs or any other matter. The Bank of Ghana is empowered under the *clause* to prescribe the details of the information required, the form in which the information is to be reported, and the period within which the report is to be returned to the Bank of Ghana.

The Bank of Ghana may carry out examinations, investigations or scrutiny into the affairs of a development finance institution under *clauses 86 and 87*. The Bank of Ghana may, under *clauses 86 and 87*, authorise a

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person to examine, investigate and scrutinise the affairs of a development finance institution.

The person authorised under *clauses 86 and 87* has a right of access to the books and records of the development finance institution and may take custody of the records, *clauses 88 and 89* respectively. The information obtained may be verified under *clause 90* and an examination report submitted to the entity examined under *clause 91*.

The Bank of Ghana may issue an instruction to a development finance institution that was the subject of the examination or supervisory report to take the remedial action in order to improve the affairs of the development finance institution, *clause 92*. The Bank of Ghana may specify within a stated period of time within which the development finance institution is to comply.

The remedial measures that Bank of Ghana may take, under *clause 93*, include issuing a written warning to the development finance institution, issuing an order to the development finance institution to take a remedial action that the Bank of Ghana may specify within a stated period, requiring the development finance institution to cease the violation or unsafe or unsound practice or appoint an advisor for the development finance institution in accordance with the Bill. In extreme circumstances, the Bank of Ghana is empowered to revoke the licence of the development finance institution.

Under *clause 94*, the Bank of Ghana may require that a director, key management personnel and a significant shareholder to undertake remedial actions where necessary. The Bank of Ghana may also if the Bank of Ghana considers it necessary to improve the affairs of a development finance institution, appoint a competent person as advisor to the management of the development finance institution at the expense of that development finance institution, *clause 95*. The advisor appointed by the Bank of Ghana is to hold office for the period that the Bank of Ghana may specify, and furnish the Bank of Ghana with a status report on the development finance institution as frequently as the Bank of Ghana may determine.

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Liquidation of a development finance institutions is provided for in *clause 96*. Where the Bank of Ghana determines that the development finance institution is insolvent or is likely to become insolvent within a period determined by the Bank of Ghana, the Bank of Ghana is required to revoke the licence of the development finance institution and appoint a liquidator to wind up the affairs of the insolvent development finance institution. The appointment of a liquidator by the Bank of Ghana is despite the provisions of the Corporate Insolvency and Restructuring Act, 2020 (Act 1015) or any other enactment.

On the issue of voluntary winding up, a development finance institution should not wind up voluntarily unless the Bank of Ghana has certified in writing that that development finance institution would be capable of meeting the obligations it has in respect of the depositors and creditors as the obligations accrue, *clause 97*.

Clauses 98 to 104 provide for review of the decisions of the Bank of Ghana. A person who is aggrieved with a decision of the Bank of Ghana in respect of issuance of a licence may petition the Bank of Ghana for a review under *clause 98*.

For purposes of reviewing the decision, *clause 99* establishes a three-member Adjudicative Panel to be appointed by the Chief Justice, The Adjudicative Panel is to consist of a chairperson who is a Justice of the High Court nominated by the Chief Justice, 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 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.

The main function of the Adjudicative Panel is to hear and determine an appeal against decision of the Bank of Ghana in respect of issuance of a licence under the Bill, *clause 100*. The procedure of the Adjudicative Panel is provided for in *clause 101*. The Adjudicative Panel is to adopt its own rules of procedure.

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Clause 102 deals with the decisions of the Adjudicative Panel. The Adjudicative Panel is to deliver the decision of the Adjudicative Panel in writing at the end of a hearing and communicate the decision of the Adjudicative Panel to the applicant, within thirty days of receipt of the appeal. The expenses of the Adjudicative Panel including allowances of members of the Adjudicative Panel is to be borne by the Bank of Ghana, *clause 103*.

Appeal to the High Court is provided for in *clause 104*. A person who is dissatisfied with the decision of the Adjudicative Panel may, within thirty days from the date of the decision, appeal to the High Court for redress.

Clauses 105 to 118 deal with miscellaneous provisions. A development finance institution is prohibited under *clause 105* from creating a floating charge on an undertaking or property of the development finance institution. *Clause 106* imposes a duty of confidentiality on the officials and employees of the Bank of Ghana and a person with access to the books, accounts, records, financial statements or other documents, electronically or otherwise, of a development finance institution. Those persons are required to take the oath of confidentiality or a declaration of confidentiality under *clause 107*.

The Bank of Ghana may enter an agreement or arrangement for co-ordination, co-operation, and the exchange of information with that foreign supervisory institution with responsibility to supervise development finance institutions or other similar institutions, *clause 108*. The Bank of Ghana may disclose information relating to a development finance institution under circumstances specified under *clause 109*.

A duty is imposed on the Bank of Ghana under *clause 110* to submit a report to the Minister responsible for Finance on the trend and progress of development finance business in the country. 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 is protected from liability and indemnified under *clause 111*.

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An administrative penalty imposed under the Bill is to be considered as debt due to the Bank of Ghana and is recoverable under *clause 112*. *Clauses 113, 114 and 115* deal with the prosecution of offences, joinder of offences and general penalties respectively.

Clause 116 provides for Regulations to be made by the Minister for anything which is to be prescribed under the Bill. Words and expressions used in the Bill have been interpreted under *clause 117*.

Finally, transitional matters are dealt with in *clause 118*. A development finance institution in existence immediately before the coming into force of the Bill is to apply to the Bank of Ghana within six months after the coming into force of the Bill, for a licence under the Bill on terms and conditions prescribed by the Bank of Ghana.

KEN OFORI-ATTA

Minister responsible for Finance

Date: 1st July, 2020.