

NON-BANK FINANCIAL INSTITUTION ACT, 2008 (ACT 774)

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SCHEDULES



REPUBLIC OF GHANA

THE SEVEN HUNDRED AND SEVENTY-FOURTH

ACT

ENTITLED

NON-BANK FINANCIAL INSTITUTIONS ACT, 2008

AN ACT to provide for the regulation of non-bank financial institutions and for related purposes.

DATE OF ASSENT: 23rd December, 2008.

ENACTED by the President and Parliament:

Application and licensing

Section 1—Application of this Act

This Act applies to non-bank institutions and non-bank financial services as set out in the First Schedule to this Act, but does not apply to

- (a) operators of micro finance services with risk assets which are not more than the amounts prescribed by the Bank of Ghana and whose sources of funds do not include deposits from the public; and
- (b) any other institution or person as the Bank may specify by Notice published in the Gazette.

Section 2—Licence required for Non-Bank Financial Services

- (1) A person shall not provide any of the services specified in the First Schedule unless that person holds a valid licence issued for that purpose under this Act.
- (2) A license issued under this Act shall indicate among other things whether the licensee may engage in all or some of the services specified in the First Schedule.

Section 3—Qualification for a licence

A person shall not be licensed to provide a non-bank financial service unless that person

- (a) is a body incorporated in Ghana under sections 8 and 9 of the Companies Act 1963 (Act 179) with the sole authorised business of carrying on of a non-bank financial service; or

(b) is in the case of a credit union registered and incorporated under sections 5 and 6 of the Co-operative Societies Act, 1968 (NLCD 252); and

has satisfied the minimum capital requirements determined in accordance with section 12 of this Act.

Section 4—Application procedures

(1) An application for a licence to provide a service specified in the First Schedule, shall be

(a) made in writing in the form determined by the Bank for that purpose, and

(b) submitted to the Bank for consideration.

(2) The application shall be accompanied with

(a) certified copies of its regulations or other instruments of incorporation of the applicant;

(b) full particulars of and detailed and clear definition of activities it proposes to carry out;

(c) details of registered place of business, a principal place of business accessible to the public and suitable for the services contemplated and a description of other places where it proposes to do business, and the areas it proposes to serve;

(d) financial data which include financial statements and feasibility reports which contain among others a business plan and financial projections for the first five years of operations;

(e) documentary evidence of sources of funds for the proposed business;

(f) names, addresses, occupations and corporate affiliations of persons who hold or intend to hold significant shareholdings directly or indirectly, in the proposed business and the respective values of their shareholdings or proposed shareholdings;

(g) particulars, including backgrounds and business interests, of directors and key management personnel concerned with the management of the business;

(h) other information that relates to the viability of the business;

(i) information on other matters that the applicant considers relevant to its application;

(j) other additional information which the Bank considers relevant for the determination of the application; and

(k) a non-refundable application fee specified by the Bank.

(3) The application shall be signed by the members of the board of directors or other governing body of the applicant, or by any representatives of the applicant legally authorized to sign the application.

Section 5—Licensing procedures

(1) The Bank in considering an application for a licence under section 4, shall conduct investigations that it considers necessary to ascertain

(a) the validity of the documents submitted under section 4 (1) and (2);

(b) the financial status and history of the applicant;

- (c) the nature of business of the applicant including the range of services and products proposed;
 - (d) the suitability of significant shareholders and directors of the applicant in line with the Bank's "fit and proper person" test as defined in this Act;
 - (e) the competence and integrity of persons proposed to occupy key management positions;
 - (f) the adequacy of the applicant's capital structure, earning prospects, business plans, and financial plans in line with levels specified by the Bank; and
 - (g) any other matter which the Bank may regard as relevant to the application.
- (2) Within ninety days after the receipt of an application, or where additional information or clarification had been sought, after the receipt of the additional information or clarification, the Bank may if it is satisfied that the application is in accordance with this Act, and the specified fee has been paid
- (a) issue a licence to an applicant to carry on business;
 - (b) refuse to issue the licence if not satisfied and inform the applicant of the refusal giving reasons for the refusal; or
 - (c) issue the licence on conditions that it considers necessary.
- (3) Where a licence is issue[sic] on condition, the Bank may vary the condition as it considers appropriate.

Section 6—Display of licence

A licensee shall at all times display the licence or copies of the licence, its name and a statement of the fact that it is licensed to carry on business under this Act, in a conspicuous position on the premises at which it carries on business.

Section 7—Revocation, suspension, or restriction of licence

- (1) The Bank may revoke the licence by notice in writing to the licensee if the licensee
- (a) ceases to satisfy a qualification required under this Act;
 - (b) ceases to carry on business or is wound up or otherwise dissolved;
 - (c) conducts business in a manner detrimental to the interests of depositors or customers;
 - (d) except in the case of a credit union, has without the consent of the Bank been amalgamated with another company or has sold or has otherwise transferred its assets and liabilities to another company;
 - (e) in the case of a credit union has amalgamated or transferred its assets in a manner contrary to section 14 of the Cooperative Societies Act, 1968 (NLCD 1968);
 - (f) has failed to comply with any of the conditions stipulated in its licence;
 - (g) has contravened any provision of this Act or any Regulation, rule, Notice, or other directive issued by the Bank in furtherance of this Act; or

(h) has provided the Bank with false, misleading or inaccurate information, in connection with an application for a licence.

(2) The Bank may suspend or restrict a licence issued under this Act where it finds it necessary to do so.

(3) The Bank shall, before it suspends or revokes a licence under subsection (2), give notice to the affected licensee, specifying the defect, omission or breach for which the licence is liable to suspension or revocation and request the person to remedy the defect

(a) within ninety days after the notice, or

(b) some other period determined by the Bank.

(4) If the defect, omission or breach is remedied within the time specified, the Bank shall by notice in writing to that person restore its licence, otherwise the Bank may suspend or revoke the licence and issue a public notice to that effect.

(5) A licence may be restricted by

(a) the imposition of a limit on its duration that the Bank considers fit;

(b) the imposition of additional conditions that the Bank considers desirable for the protection of depositors or potential depositors;

(c) the prohibition of the licensee from entering into any other transaction or class of transactions;

(d) requiring the removal of a director, manager or other officer of the licensee.

(6) A licensee who fails to comply with a requirement or contravenes any prohibition imposed on it under this section is liable to pay to the Bank, a penalty of not less than two hundred and fifty penalty units.

(7) The Bank shall issue a public notice of any suspension, restriction, or revocation of a licence under this Act.

(8) A person who is dissatisfied with the decision of the Bank to revoke, suspend, or restrict a licence may within thirty days after that person has been informed of the decision, apply to the Bank for a review of the Bank's decision.

(9) The Bank may by notice, publish rules of procedure for

(a) the submission of applications for review under subsection (8), and

(b) hearing and determination of the applications.

(10) A person who is dissatisfied with the decision of the Bank in respect of a review may apply to the High Court for a review of that decision.

Section 8—Notification of change in particulars

A non-bank financial institution shall give notice to the Bank of

(a) an alteration in its regulations or other constitutional document,

(b) a change of a director or member of its governing body, and

(c) an alteration in the nature of its business

within twenty-eight days after the occurrence of the event.

Section 9—Branches and Agencies

(1) A non-bank financial institution shall not open, close, or change a branch, office, sub-office, booth, agency or mobile unit in the country without the prior approval in writing of the Bank obtained at least thirty days before the date of the opening, closing, or change.

(2) Before the closure or change of location of a place of business of a non-bank financial institution, the Bank shall ensure that the institution provides opportunity to depositors who do not want their accounts transferred to another branch or office or the relocated branch to withdraw their funds.

(3) Before approval is granted for the opening of a branch, office, sub-office, booth, agency or mobile unit, the Bank may have regard to the adequacy of the applicant's capital for operating the branch office, sub-office, booth, agency or mobile unit.

Section 10—Prohibited actions

(1) A non-bank financial institution shall not without the written approval of the Bank change its name as contained in its licence.

(2) A non-bank financial institution shall not in furtherance of the business for which it is licensed under this Act, use or refer to itself

(a) by a name other than the name under which it is licensed;

(b) by an abbreviation of that name unless the abbreviation has been approved by the Bank; or

(c) by the word "bank" in its name, advertisement or correspondence.

Capital, liquidity, and other requirements

Section 11—Minimum requirements

(1) A non-bank financial institution licensed under this Act, shall comply with the minimum requirements imposed under this Act and that may be imposed by the Bank regarding core capital, liquidity, loans and advances, based on the Bank's assessment of risks posed by their respective activities.

(2) The Bank may for the purpose of imposing or revising the requirements impose different requirements having regard to the number and types of services provided by the institution or to other relevant considerations, based on the Bank's assessment of risks posed by their activities.

Section 12—Paid-up capital

A non-bank financial institution shall maintain separate and unimpaired minimum paid-up capital and reserves in the amount specified in the Fourth Schedule to this Act or as may be specified by the Bank.

Section 13—Liquid assets

A non-bank financial institution shall maintain the minimum holding of liquid assets of a specific amount and composition as provided in the Fourth Schedule or as the Bank may specify.

Section 14—Single party exposure

(1) A non-bank financial institution shall not

(a) grant an advance or credit or issue financial guarantee or indemnity to or in respect of any person or group of persons;

(b) invest in the equity of any company; or

(c) carry out any other transaction for any person

which constitutes in the aggregate a liability to the institution amounting to more than the proportion of the net worth of the institution as specified in the Fourth Schedule or as may be specified by the Bank.

(2) A non-bank financial institution shall not grant an unsecured advance, credit, or issue any guarantee or indemnity amounting in aggregate to more than the proportion of the net worth of the institution as specified in the Fourth Schedule or as may be specified by the Bank.

Section 15—Related party transactions

(1) A non-bank financial institution shall not assume unsecured financial exposure in respect of

(a) any of its directors or significant shareholders,

(b) a firm or company in which a director or a significant shareholder of that institution is interested as director,

(c) a controlling shareholder, partner, proprietor, employee or guarantor of that institution,

(d) a holding or subsidiary company of that institution in which a director is interested, or

(e) a director's relative or a significant shareholder's relative,

unless the prior written approval of the Bank is obtained in respect of that unsecured exposure.

(2) The aggregate liability to the institution as regards a director or a significant shareholder or other related party indicated in subsection (1), shall not exceed

(a) fifteen per cent of the institution's net own funds where the financial exposure is on a secured basis, or

(b) ten per cent of the institution's net own funds where the financial exposure is on an unsecured basis.

(3) The board of the institution shall be the only authority to approve or sanction any financial exposures of the institution to any of its directors or significant shareholders or related parties.

(4) The financial exposure of the institution to a director, a significant shareholder and other related party shall not be written off or waived fully or partially, without the approval of the institution's board and the approval in writing of the Bank.

(5) A non-bank financial institution which contravenes this section shall pay to the Bank a penalty of one thousand penalty units.

(6) For the purposes of this section "relative" includes spouse, son, daughter, step son, step daughter, brother, sister, father and mother.

Section 16—Requirements for lending to related parties

(1) In considering the approval of credit facilities to any of its directors, executive officers or persons related to them, under section 15, a non-bank financial institution shall satisfy itself that

(a) the person to whom the credit facility is given has credit worthiness which is not less than that normally required by the institution from other persons to whom credit facilities are given;

(b) the terms of the credit facility are not less favourable to the institution than those normally offered to other persons;

(c) the giving of the credit facility is in the interests of the non-bank financial institution;

(d) the credit facility has been approved by all other directors of the institution at a duly constituted meeting of the directors where not less than three quarters of the directors of the institution were present; and

(e) the approval has been recorded in the minutes of that meeting.

(2) A non-bank financial institution which contravenes subsection (1) shall pay to the Bank a penalty of not more than one thousand penalty units or be subject to sanctions that the Bank may determine.

Section 17—Restrictions on lending to staff

(1) A non-bank financial institution shall not grant to any of its officers or employees an unsecured advance or credit facility, the aggregate amount of which exceeds two years' salary of the officer or employee.

(2) The limitations applicable to directors under section 16 apply to advances granted to an executive officer.

(3) A non-bank financial institution which grants unsecured advances or credit facilities in contravention of subsection (1) is liable to pay to the Bank a penalty of not more than one thousand penalty units or be subject to sanctions that the Bank may determine.

Section 18—Dividends

(1) A non-bank financial institution shall not declare or pay dividend on its shares in any year if the level of capital adequacy of the institution is less than that provided for under this Act or specified by the Bank.

(2) A non-bank financial institution shall not pay dividend on its shares unless it has completely recovered all of its capitalized expenditure.

(3) The Bank may suspend or revoke a licence if dividends are declared or paid in contravention of this section.

Ownership and corporate governance

Section 19—Ownership of shares in non-bank financial institution

(1) A person who

(a) has been convicted for felony or who has been adjudged to have participated in illegal financial activities in this country or elsewhere,

(b) is not financially solvent or is incapable of meeting the subscription and payment of allotted shares,

(c) has a non-performing loan in any financial institution in this country,

(d) in the case of a company, subject to subsection (2), has been declared bankrupt by a court,

(e) has been disqualified from operating current accounts,

(f) has been suspended from acting as director, trustee, manager, administrator or proxy in any financial institution, or

(g) has been disqualified by the Bank from acting as internal auditor or other officer in any financial institution

shall not legally or beneficially hold shares in a non-bank financial institution and the Bank shall direct the cancellation of any shares held by that person.

(2) Where a company ceases to be a bankrupt company for at least ten years and has within that period re-establish itself as a financially sound and responsible company, the Bank may, subject to conditions that the Bank may determine, such as the posting of a bond for a specified number of years, permit the company to own shares in a non-bank financial institution.

Section 20—Mergers, amalgamations, sale of assets

(1) A non-bank financial institution shall submit to the Bank for approval, any proposal or agreement which it intends to enter into with another party for the sale or disposal by amalgamation or otherwise of its business, or a part of its business.

(2) Subject to prior written approval of the Bank

(a) a non-bank financial institution may, other than in the ordinary course of its business, sell the whole or part of its assets in the country to another licensed non-bank financial institution;

(b) except in the case of a credit union, one or more non-bank financial institutions may merge or consolidate with each other or with other licensed financial institutions, as the case maybe; and

(c) a licensed non-bank financial institution may sell or transfer the whole or part of its shares to an individual or body corporate.

(3) A transfer of assets or a merger or consolidation shall, in the case of a Credit Union, be in accordance with section 14 of the Cooperative Societies Act, 1968 (NLCD 252) and is subject to approval by the Bank.

(4) A non-bank financial institution which breaches a provision of this section shall pay to the Bank a penalty of one thousand penalty units or a lesser amount that the Bank may determine in the case of a Credit Union; and the transfer shall be void.

Section 21—Directors

A non-bank financial institution shall have a board of directors comprising not less than five directors, each of whom must demonstrate an understanding of the financial institution's financial standing and reporting requirement.

Section 22—Appointment of directors and employees

(1) A person shall not be appointed or elected, or accept to be appointed or elected as a director, chief executive officer or employee of a non-bank financial institution, if that person

(a) has been declared to be of unsound mind or is detained as a criminal lunatic under a law in force in this country;

(b) has

(i) been declared insolvent, or

(ii) entered into terms with another person for payment of debt and has suspended payment of the debt;

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

(d) has been convicted for felony or has been adjudged to have participated in illegal financial activities in this country or elsewhere;

(e) has been a director or manager of or is associated with the management of an institution which is being or has been wound up by a court or the Bank due to

(i) offences committed under a law, or

(ii) bankruptcy;

(f) has a non-performing loan in a financial institution in this country;

(g) is a director of more than one other financial institution;

(h) has been disqualified from operating a current account;

(i) has been permanently suspended from acting as director, trustee, manager, administrator or proxy in a financial institution;

(j) has been disqualified by the Bank from acting as an internal auditor or other officer in any financial institution;

(k) is under the age of eighteen years; or

(l) is not, in the opinion of the Bank a fit and proper person to be a director.

(2) Where a person is disqualified under subsection (1) that person shall immediately cease to hold office and the institution shall immediately terminate the appointment of that person.

(3) Where subsection (1) is contravened, both the person who appoints the director and the person appointed as director commit an offence and each is liable on summary conviction to a fine of not more than two hundred and fifty penalty units or to a term of imprisonment of not more than twelve months.

Section 23—Responsibilities of Directors

The board of directors of a non-bank financial institution among other things shall ensure that,

- (a) its management is in full control of the affairs and business operations of the institution;
- (b) the business of the institution is conducted in a safe and sound manner;
- (c) the internal controls systems, and management information systems of the institution,
 - (i) provide reasonable assurance of the integrity and reliability of the financial statements of the institution,
 - (ii) adequately verify, safeguard and maintain accountability of the assets of the institution based on established and written policies and procedures,
- (d) the policies and procedures are implemented by trained and skilled officers with an appropriate segregation of duties which are continuously monitored, reviewed and updated by the board of directors so that no material breakdown occurs in the functioning of the controls, procedures and systems, and
- (e) the institution or operator is in compliance with all applicable laws.

(2) The board shall promote good corporate governance and efficient performance of the institution and report to the shareholders on all its activities at the annual general meeting of the institution.

Accounts and financial statements

Section 24—Accounting records

(1) A non-bank financial institution licensed under this Act shall keep accounting records in a manner that gives an accurate and reliable account of its transactions and the accounts prepared from the records shall give a true and fair view of the state of affairs of the institution and its results for the accounting periods.

(2) The books of account and other accounting records to which this section applies shall be kept in Ghana and shall comply with the requirements of

- (a) the Companies Act 1963 (Act 179),
- (b) International Financial Reporting Standards, and
- (c) other requirements that the Bank may prescribe in writing.

(3) A non-bank financial institution shall preserve the books of account and other accounting records referred to in this section for a period of not less than ten years.

Section 25—Internal audit

- (1) A non-bank financial institution shall establish an internal audit unit that reports directly to its board of directors or other governing body.
- (2) The audit unit shall be managed by a person with relevant qualifications and experience in banking or accounting or in the supervision or management of non-bank financial institutions business and shall be subject to approval by the Bank.

Section 26—Appointment of external auditor

- (1) A non-bank financial institution shall appoint an external auditor who shall audit its books of accounts and records at least once in a year.
- (2) A person shall not be appointed an auditor under subsection (1) unless that person is
 - (a) a member of the Institute of Chartered Accountants established under the Chartered Accountants Act, 1963 (Act 170);
 - (b) resident in the country or if not resident, that person's residence outside the country has been specifically approved in writing by the Bank;
 - (c) not an employee or director or officer of the institution for which the appointment is made; and
 - (d) not disqualified by law from being appointed as auditor.
- (3) An external auditor shall within three months after the end of the financial year submit a statutory audit report and a long form audit report to the institution audited.

Section 27—External auditor's report

The external 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 institution;
- (b) the external auditor was able to obtain all the information and explanation required for the efficient conduct of the audit; and
- (c) the institution's transactions are within the powers of the institution.

Section 28—Submission of audited financial statements

A non-bank financial institution shall

- (a) submit a copy of its audited financial statements to the Bank not later than three calendar months after the end of its financial year, and
- (b) simultaneously publish the financial statements at least once in a local newspaper of national circulation.

Section 29—Audited financial statements to be made public

A non-bank financial institution shall exhibit throughout the year at a conspicuous place in every office and branch, a copy of its last audited financial statement and shall within four

months after the end of each financial year, cause a copy of the balance sheet to be published on its website or in any other manner specified by notice by the Bank.

Section 30—Non-compliant financial statements

(1) Where the Bank is satisfied that the audited accounts of a non-bank financial institution

- (a) do not comply with the requirements of this Act;
- (b) contain information that may be misleading; or
- (c) are not published in the specified form;

the Bank may require the institution to

- (d) amend the audited accounts to comply with this Act;
- (e) correct the misleading information;
- (f) re-publish the amended audited accounts; or
- (g) submit to the Bank further documents or information that relate to the audited accounts.

(2) The Bank may impose sanctions that it considers appropriate in addition to any orders made in subsection (1).

Powers of supervision and control

Section 31—Supervision.

(1) A non-bank financial institution shall be supervised by the Bank.

(2) Despite subsection (1), the Bank under section 4(2), (3), and (4) of the Bank of Ghana Act, 2002, (Act 612) may appoint an authorized agent which includes an apex body, network, industrial association, self regulatory organisation, society or group to regulate and supervise specified activities of a particular tier or category or class of non-bank financial institutions.

(3) The Bank may supervise a holding company of a non bank financial institution in relation to financial transactions between the holding company and the non-bank financial institution.

Section 32—Returns

(1) The Bank may require a non-bank financial institution to submit to it or its authorized agent information or data that relates to

- (a) the assets, liabilities, income, and expenditure of that institution, or
- (b) any of the institution's affairs,

in a specified form, at intervals and within the times that the Bank or its authorised agent may stipulate and that non-bank financial institution shall comply with the requirement.

(2) The Bank may impose a penalty of not more than two hundred and fifty penalty units on a non-bank financial institution for

- (a) non submission,
- (b) incomplete submission,

(c) delayed submission, or

(d) inaccurate submission

of the required information, data, statements or returns.

Section 33—Examination

(1) The Bank or its authorized agent may, at any time, cause a non-bank financial institution and its books, accounts and records to be examined.

(2) A non-bank financial institution and every officer and employee of that institution shall make available to a person who conducts an examination under subsection (1), within the period directed by that person in writing,

(a) the books, accounts, records and other documents of the institution, and

(b) correspondence, statements and information that relate to the non-bank financial institution, its business and conduct,

required by that person.

(3) Failure to produce a book, an account, record, document or information within the period specified constitutes a contravention of this Act.

(4) The person who conducts the examination shall submit a report to the Bank, and the report shall draw attention to

(a) any breach or contravention of this Act or any Regulations made under this Act; and

(b) any mismanagement or other matter that relates to the business of the non-bank financial institution which is not consistent with sound business practice.

Section 34—Power to intervene

The Bank may intervene in the affairs of a non-bank financial institution if

(a) the institution has contravened a provision of this Act or any other law or condition on which the licence was issued;

(b) the affairs of the institution are being conducted in a manner detrimental to the interests of creditors or prejudicial to the interests of the financial institution;

(c) the institution has refused to submit itself to inspection, or has provided false information;
or

(d) the institution has insufficient assets to cover its liabilities.

Section 35—Remedial action

The Bank may, without prejudice to any other course of action

(a) order in writing that a non-bank financial institution take remedial action to comply with this Act or Regulations, notices or orders issued under this Act;

(b) issue directives regarding measures to be taken to improve the management, financial soundness or business methods of the non-bank financial institution; or

(c) require the directors or management of a non-bank financial institution to execute an agreement concerning its implementation of orders or directives issued by the Bank.

Section 36—Additional powers of intervention

(1) Where a non-bank financial institution fails, refuses or neglects to comply with an order, direction, or agreement made under section 35, the Bank may

(a) make a "cease and desist" order, of either temporary or indefinite duration requiring the non-bank financial institution and its management to

(i) stop the improper or unacceptable practice,

(ii) put a limit to lending, or

(iii) stop the declaration of dividends;

(b) remove or suspend a person from the management of the affairs of the institution or operation;

(c) impose specified penalties on the offending member of management;

(d) appoint a person who, in the opinion of the Bank is suitably qualified and competent to advise and assist the institution generally or for the purposes of implementing the orders, directions, or agreements under paragraphs (a), (b), or (c) and the advice of the person appointed shall

(i) have the same force and effect as a direction made under paragraphs (a), (b), and (c), and

(ii) be deemed to be a directive of the Bank under this section;

(e) appoint a person, suitably qualified and competent in the opinion of the Bank, to manage the affairs of the institution for the period necessary to rectify the problem and require the institution to add capital as may be specified;

(f) impose any other measures or sanctions as the Bank considers appropriate in the circumstances;

(g) by notice in the gazette, revoke or cancel any existing power of attorney, mandate, appointment or other authority by the institution in favour of any officer or employee or another person.

(2) A person who is not satisfied with the decision of the Bank under subsection (1) may apply to the High Court for redress.

Section 37—Power to investigate and make orders concerning exempted services

(1) Where in the opinion of the Bank the operations of a person engaged in non-bank financial services, which are not regulated under this Act, are not conducive to the stability of the financial sector, the Bank, may commence investigations into the operations of that person and may issue orders to that person or group as appropriate.

(2) A person who fails or neglects to comply with the orders issued under subsection (1) commits an offence under this Act and is liable on summary conviction to a fine of one thousand penalty units or a term of imprisonment of not less than twelve months and where the

offence continues after conviction to a fine of not less than two thousand penalty units for each day the offence continues.

Liquidation

Section 38—Liquidation

(1) If a non-bank financial institution becomes insolvent, the Bank may, notwithstanding the provisions of the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) or any other law, appoint a liquidator to wind up the affairs of the insolvent institution or operator, and the appointment has the same effect as the appointment of a liquidator by the Court.

(2) The Minister in consultation with the Bank may by legislative instrument make Regulations or Rules prescribing the procedures necessary to give effect to this section.

(3) A person who is not satisfied with the decision of the Bank under this section or of the liquidator may apply to the High Court for redress.

Section 39—Voluntary winding-up

(1) Despite anything to the contrary in the Companies Act, 1963 (Act 179) or any other law, a non-bank financial institution shall not voluntarily wind up its operations unless the Bank has certified in writing that the non-bank financial institution is able to meet its obligations in full to the creditors as the obligations accrue.

(2) If the Bank, at any stage of the voluntary winding up, considers that the non-bank financial institution which is being wound up is unable to meet its obligations in full to creditors, the Bank shall appoint a liquidator to wind up the affairs of the institution and the provisions of section 38 shall apply.

Miscellaneous matters

Section 40—Protection of officers

(1) The Bank or any officer, employee or authorized agent of the Bank is not liable to a civil suit for anything which is done in good faith under this Act.

(2) Subsection (1) does not apply where the action or claim arises out of negligence.

Section 41—Confidentiality

Subject to any law that relates to sharing of information on credit transactions, a non-bank financial institution and its staff shall ensure that transactions are conducted in strict confidence and that the confidentiality of customers is maintained.

Section 42—Know your customer

A non-bank financial institution shall

(a) demand proof of and record the identity of its clients or customers, when establishing business relations or conducting transactions, in particular;

(i) opening of accounts or issuing of passbooks where applicable,

(ii) entering into fiduciary transactions, or

(iii) performing large cash transactions, and

(b) through its directors, officers and employees report promptly to the Bank and relevant law enforcement agencies any suspected money laundering activity related to an account held with the non-bank financial institution.

Section 43—Offences

(1) Where a body of persons is convicted of an offence under this Act, in the case of a body corporate, each director and officer of that body shall also be deemed to have committed the offence.

(2) A person shall not be convicted under subsection (1) if that person proves that the offence was committed without the consent or connivance of that person and that that person exercised due diligence to prevent the commission of the offence having regard to all the circumstances.

Section 44—Notices

(1) Except otherwise provided under this Act, the Bank may issue Notices for anything required or authorized to be provided for by the Bank under this Act.

(2) Without limiting the effect of subsection (1), the Notices may among other matters

(a) clarify regulatory functions which may be delegated to agents of the Bank;

(b) set out transitional matters to be complied with by institutions holding licences specified in the Second Schedule immediately before the commencement of this Act;

(3) Except otherwise provided under this Act failure to comply with a Notice issued by the Bank shall attract administrative penalties specified by the Bank including revocation or suspension of licences.

Section 45—Regulations

The Minister in consultation with the Bank, may by legislative instrument make Regulations for the effective implementation of this Act.

Section 46—Interpretation

(1) In this Act, unless the context otherwise requires,

"applicant" means a person who has applied for a licence or registration under this Act;

"authorized or designated agent" is an institution and it includes an apex body, an industry association or group which has been appointed by the Bank under section 4 (2), (3), and (4) of the Bank of Ghana Act, 2002 (Act 612) to regulate and supervise any category of non-bank financial or microfinance services;

"Bank" means the Bank of Ghana;

"borrower" means a person who has concluded a loan agreement with a non-bank financial institution;

"Capital Adequacy Ratio" means the percentage of a non-bank financial institution's risk-weighted credit exposure or as the Bank shall more specifically define from time to time;

"core capital" means permanent shareholders equity in the form of issued and fully paid-up shares together with all disclosed reserves except goodwill or any intangible assets;

"credit facility" means

(a) the granting by an institution of an advance, loan or other facility which enables a customer of the institution to access funds or financial guarantees, or

(b) the incurring of liabilities by an institution on behalf of a customer with the prior written consent as a mechanism for loan disbursement;

"deposit-taker" means a person, other than a bank licensed under the Banking Act 2004 (Act 673) who offers debt securities to the public and is in the business, directly or indirectly, of lending money or providing other financial services determined by the Bank;

"director" means a natural person occupying the position of director, by whatever name called, of a body corporate, and

"board of directors" or "directors" refers to the directors of a body corporate as a body;

"financial statements" includes the balance sheet, profit and loss accounts, statements of funds flow and notes to the financial statements;

"fit and proper person" means a person who is fit and proper person[sic] to hold the particular position which that person holds or is to hold as regards to

(i) that person's probity, competence and soundness of judgment for fulfilling the responsibilities of that position;

(ii) the diligence with which that person fulfils or is likely to fulfill those responsibilities; and

(iii) whether the interest of depositors or potential depositors of the financial institution are, or are likely to be, in any way threatened by that person holding that position;

"gearing ratio" means the ratio of a non-bank financial institution's level of long-term debt to its equity capital as expressed in percentage form;

"government securities" includes treasury bills and government bonds issued by the Government of Ghana;

"licence" means a licence issued under section 5 (2);

"liquid assets" means the cash in till, balances deposited with the Bank and such other assets as the Bank may determine from time to time.

"liquid assets ratio of non-bank financial institution" means the ratio of the non-bank financial institution's total assets readily convertible into cash as expressed in percentage form;

"loan agreement" means an agreement, acknowledgement of a debt, or any other lending instrument concluded between a lender and a borrower;

"manager" means an officer of a financial institution empowered to control, direct, and influence decision making of the financial institution;

"microfinance services" means financial services provided by institutions however organized whether as companies limited by guarantee, limited by liability or unlimited, Non-Governmental Organisations, cooperatives or cooperative societies, rotating savings and credit associations or groups, common bond institutions, self-help groups or associations promoting self-help groups, providing loans not exceeding an amount determined by the Bank to a single borrower whether directly to borrowers, contributors or members or through intermediaries, and whether accepting deposits from members or not;

"minimum capital" for purposes of this Act means minimum equity capital of a non-bank financial institution;

"Minister" means the Minister responsible for finance;

"non-bank financial services" mean[sic] non-deposit taking financial institution which provides a service specified in the First Schedule;

"person" includes an individual, a company, a partnership, an association, and any other group of persons acting in concert, whether incorporated or not;

"prescribed" means prescribed by Regulations, Rules, Notices, or directives as the case may be, issued by the Bank;

"significant shareholding" means a direct or indirect holding in a non-bank financial institution which

(a) represents ten per cent or more of the capital or of the voting right, or

(b) makes it possible to exercise a significant influence over the management of the institution in which the holding subsists, and

"single exposure or obligor limit" means the limit of a non-bank financial institution's exposure to a single borrower in relation to that non-bank financial institution's net worth.

Section 47—Repeals, transitional and savings

(1) The Financial Institutions (Non-Banking) Act, 1993 (P.N.D.C.L. 328) and the Money Lenders Ordinance (Cap 176) as variously amended are hereby repealed.

(2) Despite subsection (1), Regulations, rules, instruments, licences, orders and decisions made under the repealed Acts, shall, in so far as they are consistent with this Act, remain valid and binding and shall be deemed to have been made under this Act.

(3) Despite subsection (2), a person who holds a licence for a service specified in the Second Schedule, immediately before the coming into force of this Act, shall within six months after the commencement of this Act, apply to the Bank in a form and on terms and conditions to be prescribed by the Bank, for a licence to cover the service specified in the First Schedule of this Act.

(4) Despite subsection (2) a person who holds a licence under the Money Lenders Act, 1941 (Cap 176), immediately before the commencement of this Act shall apply to the Bank within six months after the commencement of this Act, for a licence under this Act on terms and conditions to be prescribed by the Bank.

(5) Except as otherwise provided in this Act the provisions of the Co-operative Societies Decree 1968 (NLCD 252) shall continue to apply to Credit Unions after the commencement of this Act.

(6) On the coming into force of this Act, the financial institutions specied[sic] in the Second and Third Schedules shall be reclassified and regulated as specified under those Schedules.

SCHEDULES

FIRST SCHEDULE

(Sections 2 and 4)

Section 2: Non Bank Financial Services

1. Leasing Operations
2. Money lending operations
3. Money Transfer services
4. Mortgage Finance operations
5. Non-deposit-taking microfinance services
6. Credit Union operations
7. Any other services or operations as the Bank of Ghana may from to time by notice designate as such.

SECOND SCHEDULE

(Sections 44 (2), 47 (3) and (6))

Institutions previously regulated under Financial Institutions (Non-Banking) Law, 1993 (P.N.D.C.L. 328) immediately before the coming into force of this Act and to be converted into other licensed non-bank financial services under this Act.

1. Acceptance Houses
2. Building Societies
3. Discount Houses

THIRD SCHEDULE

(Section 47 (6))

Institutions Previously Regulated under Financial Institutions (Non-Banking) Law, 1993 (P.N.D.C.L. 328) immediately before the coming into force of this Act and to be migrated to other regulatory regimes.

1. Savings and Loans Companies, Finance Houses, and deposit-taking microfinance institutions, to be regulated under the Banking Act 2004 (Act 673) as amended.

FOURTH SCHEDULE

(Sections 11 to 16: Regulatory Limits)

Category Limit

(1) Minimum Capital GH¢1 million

(2) Capital Adequacy Ratio (CAR) 8%

(3) Gearing Ratio[sic] (GR) No of time borrowings or liabilities could exceed your capital 8

(4) Liquid Assets Ratio Nil

(5) Single Exposure/Obligor Limit (Secured) 25%

(6) Single Exposure/Obligor Limit (Unsecured) 10%

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