

Banking Regulation

Contributing editor
Richard K Kim



2018

GETTING THE
DEAL THROUGH

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Richard K Kim

Wachtell, Lipton, Rosen & Katz

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CONTENTS

Andorra	5	Lebanon	74
Miguel Cases and Marc Ambrós Cases & Lacambra		Carlos Abou Jaoude, Souraya Machnouk, Eddy Maghariki and Fouad El Cheikha Abou Jaoude & Associates Law Firm	
Austria	12	Monaco	81
Christoph Moser and Stefan Weber Weber & Co		Olivier Marquet and Michael Dearden CMS Pasquier Ciulla & Marquet	
Canada	20	Norway	86
Pat Forgione, Darcy Ammerman and Tayleigh Armstrong McMillan LLP		Klaus Henrik Wiese-Hansen and Bjarne Rogdaberg Advokatfirmaet Schjødt AS	
Germany	27	Philippines	92
Maximilian von Rom, Benjamin Herz Gleiss Lutz Hootz Hirsch PartmbB		Jose Florante M Pamfilo SyCip Salazar Hernandez & Gatmaitan	
Ghana	32	Singapore	97
Theophilus Tawiah Nobisfields		Krishna Ramachandra and Gabriel Lee Duane Morris & Selvam LLP	
Hungary	38	Spain	102
Zoltán Varga and Eszter Kovács-Szitkay Nagy és Trócsányi		Fernando Mínguez and Miguel Sánchez Monjo Cuatrecasas	
India	46	Switzerland	108
Feroz Dubash, Sonali Mahapatra and Shruti Zota Talwar Thakore & Associates		Patrick Hünerwadel, Shelby R du Pasquier, Marcel Tranchet and Maria Chiriaeva Lenz & Staehelin	
Italy	55	Taiwan	117
Marcello Gioscia, Gianluigi Matteo Pugliese and Benedetto Colosimo Ughi e Nunziante - Studio Legale		Abe T S Sung and Eddie Hsiung Lee and Li, Attorneys-at-Law	
Japan	63	United Arab Emirates	123
Yoshiyasu Yamaguchi, Hikaru Kaieda, Yoshikazu Noma, Tae Ogita, Shuhei Oi and Ken Omura TMI Associates		Bashir Ahmed and Vivek Agrawalla Afridi & Angell	
Korea	69	United Kingdom	127
Soonghee Lee, Young Ho Kang and Hye Jin Hwang Yoon & Yang LLC		Selmin Hakki and Ben Kingsley Slaughter and May	
		United States	137
		Richard K Kim Wachtell, Lipton, Rosen & Katz	

Preface

Banking Regulation 2018

Eleventh edition

Getting the Deal Through is delighted to publish the eleventh edition of *Banking Regulation*, which is available in print, as an e-book, and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes a new chapter on Ghana and Monaco.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Richard K Kim of Wachtell, Lipton, Rosen & Katz, for his continued assistance with this volume.

GETTING THE
DEAL THROUGH 

London
March 2018

Ghana

Theophilus Tawiah

Nobisfields

Regulatory framework

1 What are the principal governmental and regulatory policies that govern the banking sector?

The government of Ghana is pursuing a policy that provides appropriate mechanisms to minimise financial system instability and deal with emerging risks using effective supervision and regulatory measures. Through the policy, the government seeks to make the financial sector of the country the preferred source of finance for domestic companies and further develop, strengthen and modernise the financial sector to support the government's economic vision and transformational agenda. The Bank of Ghana (BoG) shall support the general economic policy of the government by promoting economic growth, effective and efficient operation of banking and credit systems in the country. The BoG, in order to create a stable and efficient financial system, has the following on its agenda:

- increased disclosure requirements for financial institutions in line with Pillar III of the Basel accord;
- strong capital adequacy of financial institutions so that they will be Basel II and III compliant; and
- effective supervision and regulatory measures.

2 Summarise the primary statutes and regulations that govern the banking industry.

The Banks and Specialised Deposit-Taking Institutions Act 2016, Act 930, is the primary statute governing banking industry in Ghana. This came into force on 14 September 2016 to repeal the Banking Act 2004, Act 673. The new banking law has consolidated the laws relating to deposit taking and regulates institutions that carry on deposit-taking business. It does not apply to credit unions and leasing companies that are licensed and supervised under the Non-Bank Financial Institutions Act 2008, Act 774.

The new Act is wider in scope compared with the repealed Banking Act 2004, Act 673. It has given the BoG increased supervisory powers.

A concept of financial holding company has been introduced under the new Act. A person will not be permitted to serve as a financial holding company of a bank save where it has registered with the BoG. The BoG is vested with the powers to exempt a foreign bank or other foreign company from the registration requirements of a financial holding company. The BoG may grant that exemption to a foreign bank or other foreign company provided it is regulated and supervised in another jurisdiction. There should be some evidence that the foreign bank or company is supervised on a consolidated basis in its home country or another host country where it has substantial operations.

It imposes personal liability on principal officers or directors of a financial institution for non-compliance with a regulatory requirement.

It gives the BoG the power to formulate corporate governance directives and rules for financial institutions in Ghana, such as:

- the Ghana Deposit Protection Act 2016, Act 931, in force on 14 September 2017. It provides for the creation of a depositions protection scheme, A deposit protection fund, Ghana Deposit Protection Corporation (GDPC) and other related issues. It seeks to give protection to small depositors in the event that a bank fails;
- the Payment Systems Act 2003, Act 662, deals with the operation and supervision of electronic and other payment, clearing and settlement systems and it also provides for the rights and

responsibilities of transacting and intermediating parties and for other related matters;

- the Borrowers and Lenders Act 2008, Act 773, provides the legal framework for credit, standards of disclosure of information required by borrowers and lenders, and other related matters. It imposes obligation on lenders to register charges and collaterals used by borrowers to secure credit facilities from lenders with the Collateral Registry;
- the Anti-Money Laundering Act 2008, Act 749, applies to the prevention of money laundering;
- the Mortgages Act 1972, NRCD 96, regulates the creation of mortgages and its associated matters;
- the Anti-Terrorism Act 2008, Act 762, imposes obligations on the banks to help combat terrorist financing;
- the Income Tax Act 2015, Act 896 (as amended), provides for the taxation of banking business and its related matters;
- the Credit Reporting Act 2007, Act 726, deals with the legal framework for credit bureaus and creates the needed conditions for credit reporting;
- the Foreign Exchange Act 2006, Act 723, regulates the exchange of foreign currency, for international payment transactions and foreign exchange transfers and also regulate foreign exchange business;
- the Securities Industry Act 2016, Act 929, applies to financial institutions that are engaged in business on the capital market; and
- the Companies Act 1963, Act 179 (as amended), applies to the banking industry.

3 Which regulatory authorities are primarily responsible for overseeing banks?

The BoG is the only institution vested with the supervisory and regulatory authority in all matters regarding deposit-taking business. It supervises banks and non-bank financial institutions. It is responsible, inter alia, for the promotion of the safety and soundness of banks and specialised deposit-taking institutions, consideration and proposal of reforms of the law relating to deposit-taking business. It also deals with unlawful or improper practices of banks and specialised deposit-taking institutions.

The BoG has the sole responsibility to licence banks and specialised deposit-taking institutions, to grant approval of foreign banks in relation to the establishment of representative offices and to register financial holding companies. It regulates and supervises banks, specialised deposit-taking institutions and financial holding companies on a solo basis.

The Securities and Exchange Commission regulates the activities of banks that participate in the capital market.

4 Describe the extent to which deposits are insured by the government. Describe the extent to which the government has taken an ownership interest in the banking sector and intends to maintain, increase or decrease that interest.

Deposits are not insured by the government of Ghana. However, a Deposit Protection Scheme has been created under the Ghana Deposit Protection Act 2016, Act 931, to serve somewhat as insurance of deposits with financial institution. Banks and specialised deposit taking

institutions are required to insure stated deposits held by them with the Scheme. The Scheme is managed by the GDPC.

Although the Scheme is expected to have commenced with the coming into force of the law on 14 September 2016, it has not yet started. It is expected to be implemented in 2018.

The Scheme will serve as an insurance of deposits for customers of banks and specialised deposit-taking institutions. The aim of the scheme is to protect small depositors in the event of revocation of licence or insolvency of bank or special depositing institution. In other words, it will provide a safety net for depositors in the event of a bank failure.

The Scheme is at no cost to customers of banks and special deposit-taking institutions. It will be funded by premiums and other fees collected by the GDPC from banks and special deposit-taking institutions that are members of the scheme. At the start of the Scheme, a member of it shall pay an initial one-off premium of 0.1 per cent of its minimum paid-up capital to the GDPC. The minimum paid-up capital of banks and specialised deposit-taking institutions varies. Banks and specialised deposit-taking institutions will be required to pay also annual premiums in respect of the Scheme to the GDPC. The annual premium may range from 0.3 per cent to 1.5 per cent of the average deposits insured by the Scheme at the end of the preceding year. It should be noted that banks and specialised deposit-taking institutions do not pay the same annual premiums. An assessed annual premium will have to be paid on pro-rata basis within 30 days of the end of each quarter.

The Scheme entitles a customer of a financial institution to be compensated to a certain limit in the event that an insurable event crystallises. An insurable event has defined to mean an event that necessitates the revocation of the licence or appointment of a receiver or a liquidator of a bank or specialised deposit-taking institution. The maximum amount that a customer of a bank can be paid by the GDPC is 6,250 Ghana cedis.

By the same token, a customer of a specialised deposit-taking institution can receive a maximum of 1,250 Ghana cedis. A customer whose money with a financial institution is more than what he or she received from the GDPC, may have recover the difference from the receiver of the financial institution.

5 Which legal and regulatory limitations apply to transactions between a bank and its affiliates? What constitutes an 'affiliate' for this purpose? Briefly describe the range of permissible and prohibited activities for financial institutions and whether there have been any changes to how those activities are classified.

Transactions between a bank and its affiliates are subject to sections 64 and 65 of the Banks and Specialised Deposit-Taking Institutions Act 2016, Act 930.

A bank must not allow a financial exposure of an affiliate to be outstanding except on terms that reflect an arm's length. That is, a bank must ensure that matters such as the creditworthiness, interest rate or the value of the collateral and the terms of the transaction do not differ from the terms of a comparable transaction between independent persons.

Similarly, a bank cannot accept a financial exposure of an affiliate if the total financial exposures of the affiliate is more than 25 per cent of the net own funds. Where the financial exposure of the affiliate is less than 25 per cent of the net own funds, the bank can take on the exposure.

For this purpose, 'affiliate' of a company means:

- a body corporate of which the company is a subsidiary;
- a subsidiary of the company; or
- a body corporate that is under a common control with the company.

Also, transactions between a bank and its affiliates are subject to transfer pricing rules under the Income Tax Act 2015, Act 896 (as amended) and the Transfer Pricing Regulations 2012, LI 2188.

A person shall not engage in a regulated activity except it is licenced by the BoG. A person who carries out a deposit taking business without a licence commits an offence and shall be liable to a fine between 30,000 and 60,000 Ghana cedis in case of a body corporate. Further, the principal officers of the body corporate operating without a licence shall be slapped with a fine between 18,000 and 36,000 Ghana cedis or imprisoned for two to four years. Consequently, banks and special deposit-taking institutions must therefore obtain authorisation from the BoG to accept deposits from the public.

Permissible activities for banks and special deposit-taking institutions are:

- acceptance of deposits and other repayable funds from the public;
- financial leasing;
- money transmission services;
- guarantees and commitments;
- trading in money market instruments, foreign exchange or transferable securities;
- safe custody of valuables;
- bank assurance;
- electronic banking;
- portfolio management;
- lending;
- investment in financial securities;
- issuing and administering means of payment;
- credit reference services;
- keeping and administration of securities;
- corporate finance;
- payment and collection services;
- non-interest banking services; and
- participate in securities issues and provision related services.

Specialised deposit-taking institutions are precluded from engaging in the trading of foreign exchange or render services that are denominated in foreign currencies.

Some of the permissible activities for financial institutions falls under the purview of other legislations, and in that case, it is required that the financial institution must comply with the relevant legislation concern in respect of registration, licensing and authorisation requirements. For example, where a financial institution plans to list on the Ghana Stock Exchange or issue securities, it would have to comply with the Securities Industries Act 2016, Act 929 and its attending regulations.

There are restrictions on a financial institution in engaging directly in a commercial, industrial or agricultural business.

A ring-fencing rule applies to the financial industry. The banking business of a financial institution will be deemed as separate from other business activities of the same financial institution.

6 What are the principal regulatory challenges facing the banking industry?

Anti-money laundering compliance

Financial institutions are required to report suspicious transactions or flag issues of money laundering to the appropriate authorities. The complexity of technology is exposing a risk to financial institutions to be able to identify and report any suspicious transaction. Most financial institutions have anti-money laundering officers to report on these matters and regular training is being provided to assist in this respect. The establishment of the Financial Intelligence Centre and Economic and Organised Crime Office are providing support to the banking industry in respect of anti-money laundering compliance.

Liquidity compliance

It is said that liquidity is the life blood of every bank. Likewise, banks are required to report on their liquidity positions to the BoG. For example, each bank must have a reserve of 9 per cent of its weighted average deposit with the BoG. The obligation is on the banks to monitor so that it does not fall below the required threshold, otherwise it will be penalised in monetary terms.

Capital adequacy requirements

Banks must comply with the capital adequacy requirement and this poses a challenge for them.

Registration of charges

Banks must register collaterals provided by customers to secure a loan within 28 days. Failure of a bank to comply renders the collateral provided by the customer to be of no effect as security for a borrower's obligations for repayment of the money secured. The money secured shall immediately become payable despite any provision to the contrary in any contract. Banks are having difficulty in complying in this regard because of bureaucracy with government agencies.

7 Are banks subject to consumer protection rules?

Banks are subject to consumer protection rules. The BoG has the responsibility to enforce consumer protection rules. It is clothed with the statutory duty of developing appropriate consumer protection measures to ensure that the interests of bank customers and the specialised deposit-taking institutions are adequately protected. On 10 February 2017, the BoG issued Consumer Recourse Mechanism Guidelines for Financial Service Providers in the light of the power granted it under the Banks and Specialised Deposit-Taking Act to issue measures to protect consumers. The Guidelines are applicable to banks, non-banking institutions, specialised deposit-taking institutions, financial holding companies, affiliates of banks, non-banking institutions specialised deposit-taking institutions and financial holding companies regulated by the BoG.

The BoG has a unit called the Investigation and Consumer Reporting Office (ICRO) that has the responsibility for protecting consumers of financial products and services and also educate customers on their rights and responsibilities. If the ICRO receives complaints from bank customers and specialised deposit-taking institutions, they will investigate with a view to protect customers.

Some of the consumer protection rules have been set out below. Financial institutions are required to:

- honour customer cheques up to the credit balance or overdraft limit, provided they are in order and there is no stop order;
- uphold strict secrecy about customer affairs, while the account is operational or after it had been closed; accept the disclosure is by an act of parliament or a court order, the disclosure is in the public interest, the disclosure is in the bank's interest and the disclosure is with the express or implied consent of the customer;
- give reasonable notice to close an account in credit;
- provide an accurate statement of account as per the agreed time period or within reasonable time;
- receive money and cheques for collection and credit customers' accounts;
- advise a customer immediately that it suspects forgery or fraudulent deals in the operations of the account;
- exercise due care and diligence in the operation of a customer account; and
- give customers complete information on each product provided.

8 In what ways do you anticipate the legal and regulatory policy changing over the next few years?

Changes in the legal and regulatory regime in Ghana regarding the financial services industry will be driven by the need to respond to the volatility in the banking sector and the ability of banks to support the developmental projects of the economy. The BoG may increase the minimum capital requirements of banks to reach the overarching objective to strengthen the financial system.

Supervision

9 How are banks supervised by their regulatory authorities? How often do these examinations occur and how extensive are they?

Banks are subject to extensive legislation and supervision. The BoG conducts periodic on-site and regular off-site examinations on regulated banks. The on-site visit is influenced by the off-site examination undertaken by the regulator. It issues reports on the banks' concerns and expect corrective measures to taken by these banks. Where the affected banks fail to remedy the matter set out its report, the BoG may in the worst-case scenario revoke the licence of the financial institution concerned.

10 How do the regulatory authorities enforce banking laws and regulations?

The Banks and Specialised Deposit-Taking Institutions Act gives the BoG a number of supervisory measures and powers to enforce the law. Set out below is a brief overview of the different supervisory measures generally used by the BoG. An action taken by the BoG is not made public except in circumstances where it is severe.

Directives

The BoG occasionally issues directives to financial institutions to give effect to the provisions of the law or the necessary information to ensure the overall stability of the financial system in Ghana. A directive issued by the BoG must be adhered to by the financial institutions. Non-compliance will be attended with a pecuniary penalty imposed by the BoG. A penalty within the range of 24,000 and 120,000 Ghana cedis may be suffered by a financial institution for not complying with a directive. Apart from the penalty imposed by the BoG, it may apply any other penalty or take any remedial action that is appropriate in the circumstance.

Information request and periodic returns

Banks are required by the BoG to submit periodic returns and information. The BoG uses this information and returns for the purpose of supervising these banks. Financial institutions submit daily, weekly, monthly, quarterly, bi-annual and annual returns to the BoG. The information submitted by banks cover liquidity assets, minimum adequacy ratio, income statements, statement of financial positions, cash flow statements and in other information that the BoG considers appropriate.

There is a penalty for not submitting required information or a return to the BoG. This is not likely to exceed 6,000 Ghana cedis for non-compliance. The penalty is imposed on the financial institution or the key management personnel responsible for the submission of the information and the returns. There is a penalty of 600 Ghana cedis for each day of default of the financial institution not having submitted the required information and returns.

Examinations

The BoG employs both on-site and off-site examination to supervise the activities of financial institutions.

The off-site examination is when officers of the BoG reviews returns and other information that has been filed by the financial institutions from their desk. This is like a desk-top audit. The officers of the regulator examine the information and returns to assess the financial institution's compliance with laws and directives. It gives the regulator insight as to the affairs of these financial institutions. The off-site examinations are done frequently because there are some returns and information that must be submitted daily, weekly, monthly, quarterly, bi-annually and annually.

The BoG carries out on-site examinations on the financial institutions from time to time. The degree of on-site examinations will be influenced by the risk posed by a bank, specialised deposit-taking institution and the financial holding company. The officers physically visit the premises of the financial institution to examine its books and operations. During an on-site examination, the officer of the regulator may take records, files or documents which he or she considers relevant for the purposes of examination. However, the officer is required to give notice to the financial institution concerned.

Investigations

The BoG may conduct investigation into the affairs of a financial institution when it considers it appropriate to do so. It may do the investigation without notice to the financial institution concerned. This is based on complaints received from customers of a bank.

Supervisory and examination reports

The BoG issues formal examination reports to the regulated financial institutions on a periodic basis. It contains criticisms, findings in respect of the institutions' operations and directives from the BoG as to how best remedy the deficiencies or the concerns raised in the report. Examination reports are confidential and may not be released by the institutions to the public.

11 What are the most common enforcement issues and how have they been addressed by the regulators and the banks?

In recent years, the most common enforcement issues with relevant consequences for the banking sector have been:

- forex transfers without the required documentations;
- anti-money laundering non-compliance issues;
- non-compliance with submission of returns due to the BoG;
- non-compliance with the 9 per cent primary reserve requirements;

- non-compliance with the single obligor limits; and
- non-compliance with the capital adequacy requirements.

The BoG issues directives and training to these financial institutions to help mitigate non-compliance.

Resolution

12 In what circumstances may banks be taken over by the government or regulatory authorities? How frequent is this in practice? How are the interests of the various stakeholders treated?

Bank nationalisation is very uncommon in Ghana. However, the government may invest in a bank to save it from collapsing.

A bank deemed by the BoG to be insolvent or likely to be insolvent within 60 days may have its licence revoked. In order to ensure financial stability, the BoG may invite interested banks to bid to take over the assets and liabilities of the insolvent bank. The process of inviting banks to bid to take over the assets and liabilities are professionally managing not to erode public confidence in the banking system. There are instances where the bank may take over only the assets of the insolvent bank leaving the BoG, to appoint a receiver to take over the liabilities.

In practice, there have been two such incidents where the GCB Bank took over all the deposits and selected assets of UT Bank and Capital Bank. These banks were considered as insolvent banks and, consequently, their licences were revoked by the BoG. GCB Bank did not take over some of the liabilities of the two insolvent banks, so a receiver had to be appointed by the BoG.

Under the Deposit Protection Act, depositors will be compensated up to the statutory cap. Depositors may also recover from the receiver any difference over the statutory cap paid.

Shareholders, creditors, employees and others will have to depend on the receiver for potential payment out of the realised assets of the insolvent bank.

13 What is the role of the bank's management and directors in the case of a bank failure? Must banks have a resolution plan or similar document?

The management and directors do not play an active role in the case of a bank failure. That said, the management and directors may be required to assist with the smooth transition to the assets and liabilities to the acquirer.

Members of the management team may be employed by the bank taking over the insolvent bank or the failed bank.

14 Are managers or directors personally liable in the case of a bank failure?

Bank failure does not automatically result in personal liability for the managers or directors. However, the directors may be prosecuted for offences under the Banks and Specialised Deposit-Taking Institutions Act, which might have contributed to the failure of the bank.

15 Describe any resolution planning or similar exercises that banks are required to conduct.

There is no requirement to have a resolution plan in place.

Capital requirements

16 Describe the legal and regulatory capital adequacy requirements for banks. Must banks make contingent capital arrangements?

The BoG sets the capital adequacy requirements for banks from time to time, with regard to the risk exposure and vulnerability of the financial system. Banks are required to be adequately capitalised. On 11 September 2017, the BoG revised the minimum paid-up capital for existing banks and new entrants from 120 million to 400 million Ghana cedis. Existing banks have up to 31 December 2018 to comply with this new capital requirement. The capital must be unimpaired by losses or other adjustments that may be recommended by the BoG.

Existing banks may satisfy the new capital requirements by the injection of fresh capital, capitalisation of income surplus or a combination of fresh capital injection and capitalisation of income surplus.

All banks that have been granted approval prior to the issuance of the capital adequacy requirement directive have up to the end of December 2018 to comply with the new minimum capital levels.

All new applications for banking licence are required to meet the new minimum capital requirement of GHS 400 million Ghana cedis.

The minimum capital adequacy ratio is 10 per cent of the bank's assets. The capital ratio is a percentage of the adjusted capital base to the risk-weighted financial exposure. The methodology for calculating the minimum capital adequacy ratio may be reviewed by the BoG from time to time.

The BoG may suggest that the capital requirement be applied on a consolidated basis to a bank.

Apart from the minimum capital adequacy ratio of 10 per cent, a bank must have a capital buffer of at least 3 per cent.

17 How are the capital adequacy guidelines enforced?

The BoG enforces compliance of the capital adequacy requirements. Banks are required to submit period returns to the BoG that enables it to assess compliance of the capital adequacy rules. Banks are duty bound to notify the BoG of any failure to meet the capital adequacy requirement.

18 What happens in the event that a bank becomes undercapitalised?

The bank will need to notify the BoG of its being undercapitalised and submit a capital restoration plan to correct the undercapitalisation. The capital restoration plan must indicate how the bank intends to restore the bank to meet the capital adequacy with 180 days. The capital restoration submitted by the bank must be considered appropriate by the Bank of Ghana. The capital restoration plan must specify:

- the steps that the bank will take to be adequately capitalised;
- the levels of capital to be obtained during the period that the plan is in place; and
- how the bank will comply with the restrictions applicable to it.

In addition, the BoG may impose any restriction such as:

- preventing the bank from dividend declaration and distribution if they will cause the bank not to comply with the capital adequacy requirements; and
- prohibiting the bank from increasing emoluments and salary packages for directors and management as well as awarding bonuses.

In the event that a bank is significantly undercapitalised, the BoG shall take same actions as undercapitalised bank discussed above. In addition, it may take any of the following actions:

- appoint a suitable person to advise and assist the bank in designing and implementing the capital restoration plan;
- restrict the bank from opening new branches;
- restrict the bank from engaging in new businesses;
- impose restrictions on growth of assets or liabilities of the bank this it deems appropriate;
- restrict the rate of interest on all interest earning deposits payable by the bank to the rates that the Bank of Ghana prescribes;
- enter into an agreement with the board of directors to rectify the significant undercapitalisation within 90 days and restore the capital adequacy within 180 days or for period that the BoG may suggest; or
- prevent the bank from engaging in new 'off-balance sheet' transactions.

With respect to a significantly undercapitalised bank, the BoG may revoke its licence when the situation is not likely to improve.

19 What are the legal and regulatory processes in the event that a bank becomes insolvent?

First, the BoG revokes the licence of the insolvent bank. The BoG then appoints a receiver to take over the assets and liabilities of the insolvent bank. A notification is given by the BoG to the GDFC of its decision (see question 12).

20 Have capital adequacy guidelines changed, or are they expected to change in the near future?

Yes. It may be changed depending on the risk and vulnerability identified in the financial system (see question 16).

Ownership restrictions and implications**21 Describe the legal and regulatory limitations regarding the types of entities and individuals that may own a controlling interest in a bank. What constitutes 'control' for this purpose?**

There are no restrictions on the types of entities and individuals that may have a controlling interest in a bank in Ghana. Both companies and individuals, regardless of whether they are domestic or foreign, may acquire an interest in a bank.

A person acquiring a stake of at least 5 per cent in the equity of a bank is deemed as a significant shareholder. Thus, that person will be required to seek consent from the BoG (see question 26).

The BoG is given power to restrict the ownership of a person in a bank or to cap ownership at a certain percentage for all or some types of owners.

22 Are there any restrictions on foreign ownership of banks?

There are no restrictions on foreign persons owning banks in Ghana.

23 What are the legal and regulatory implications for entities that control banks?

Where the entity is a financial holding company (parent) of the bank, it shall register with the BoG. The BoG may waive this registration requirement for a foreign bank provided it is satisfied that bank is subject to supervision on consolidated basis in another country. The entity is expected to invest in companies that are individuals in financial services. It will be precluded from acquiring interest in a commercial, agricultural or industrial company or unincorporated entity. Such entities are required to seek consent from the BoG before it can acquire control (directly or indirectly) in any entity of another financial group.

Apart from financial holding companies, there are generally no restrictions on the acquirer of an interest in a bank. A bank may be partly owned by a person whose business activities are wholly non-financial in nature.

24 What are the legal and regulatory duties and responsibilities of an entity or individual that controls a bank?

An entity or individual that controls a bank must comply with the provisions on transfer of shares affecting shareholding set out in the Banks and Specialised Deposit-Taking Institutions Act. An approval of the proposed transaction must be sought from the BoG (see question 26).

25 What are the implications for a controlling entity or individual in the event that a bank becomes insolvent?

No specific consequences have been prescribed for a controlling entity or individual. Consequently, the treatment will be the same as any shareholder. They may have to rely on the receiver for possible payment after all priority claims have been paid.

Changes in control**26 Describe the regulatory approvals needed to acquire control of a bank. How is 'control' defined for this purpose?**

In order to acquire control of a bank in Ghana, an application for approval must be filed with the BoG three months before the date of the proposed transaction. The BoG has up to six months from the receipt of the notice to consent or object to the proposed acquisition of control or agreement to transfer shares. In practice, the approval process can be as shorter if the appropriate disclosures have been made.

The supervisory thresholds that require notification to the BoG for an approval as to an acquisition are 5, 10, 20, 30, 50 or 75 per cent of the shares of the bank.

If the acquirer is a foreign bank, it must seek consent from its home supervisor to the effect that it has no objection to the proposed transaction, otherwise the BoG will not approve it.

Apart from the BoG, an approval is required from the SEC where the acquisition is a takeover or merger or amalgamation of a publicly traded bank.

'Control' is defined as where a person or a group of persons acting in concert (directly or indirectly):

- owns at least 25 per cent of the voting rights;
- has the power to appoint or remove the majority of the members of the board of directors;
- exercises a significant influence on the management or policies; or
- has the ability to direct the activities of the person so as to affect the financial returns on any investment made with the person.

27 Are the regulatory authorities receptive to foreign acquirers? How is the regulatory process different for a foreign acquirer?

Yes. The regulatory authorities are receptive to foreign acquirers. The nationality of an acquirer or the place of incorporation of the acquiring company is not relevant. There is no discrimination in the process for approval.

28 What factors are considered by the relevant regulatory authorities in an acquisition of control of a bank?

The BoG will consider the factors set out below in deciding whether to consent to or refuse a sale of business, mergers or amalgamations or reconstructions:

- financial resources of the acquirer;
- the experience and management capabilities of persons of the acquirer;



Law . Tax

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- the background of the acquirer;
- the source of the funding;
- the impact of the proposed transaction on competition;
- risk exposure to the stability of the financial system;
- convenience and the needs of the community;
- the effective of the existing bank to comply with compliance requirements; and
- whether the proposed transaction does not amount to money laundering and terrorist financing.

29 Describe the required filings for an acquisition of control of a bank.

The first step is to submit an application for approval on a prescribed form to the BoG. The form should be supported with the following documents:

- a certified copy of the Regulations and incorporation documents of the acquirer;
- the names, addresses and occupations of the persons including corporate affiliations of significant shareholders and their respective values of shares;

- the sources of funds for the acquisition;
- a letter from the home country of the acquirer's supervisor that it has no objection to the proposed transaction in Ghana;
- a statutory declaration by each director of the acquirer that they have not been declared bankrupt, qualified from practising a profession or convicted of an offence by a court or subject to insolvency proceedings; and
- corporate governance policies of the acquirer.

The BoG, having received this notice, may require additional information or documents which it deems appropriate.

30 What is the typical time frame for regulatory approval for both a domestic and a foreign acquirer?

The time frame for regulatory approval is the same for both domestic and foreign acquirer (see question 26).

Getting the Deal Through

Acquisition Finance
Advertising & Marketing
Agribusiness
Air Transport
Anti-Corruption Regulation
Anti-Money Laundering
Appeals
Arbitration
Asset Recovery
Automotive
Aviation Finance & Leasing
Aviation Liability
Banking Regulation
Cartel Regulation
Class Actions
Cloud Computing
Commercial Contracts
Competition Compliance
Complex Commercial Litigation
Construction
Copyright
Corporate Governance
Corporate Immigration
Cybersecurity
Data Protection & Privacy
Debt Capital Markets
Dispute Resolution
Distribution & Agency
Domains & Domain Names
Dominance
e-Commerce
Electricity Regulation
Energy Disputes
Enforcement of Foreign Judgments
Environment & Climate Regulation
Equity Derivatives
Executive Compensation & Employee Benefits
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Fintech
Foreign Investment Review
Franchise
Fund Management
Gas Regulation
Government Investigations
Healthcare Enforcement & Litigation
High-Yield Debt
Initial Public Offerings
Insurance & Reinsurance
Insurance Litigation
Intellectual Property & Antitrust
Investment Treaty Arbitration
Islamic Finance & Markets
Joint Ventures
Labour & Employment
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Mediation
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Oil Regulation
Outsourcing
Patents
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Private Client
Private Equity
Private M&A
Product Liability
Product Recall
Project Finance
Public-Private Partnerships
Public Procurement
Real Estate
Real Estate M&A
Renewable Energy
Restructuring & Insolvency
Right of Publicity
Risk & Compliance Management
Securities Finance
Securities Litigation
Shareholder Activism & Engagement
Ship Finance
Shipbuilding
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