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LEGISLATIVE DIGEST

GHANA DEPOSIT PROTECTION
ACT, 2016 (ACT 931)

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Legislation

Ghana Deposit Protection Act, 2016 (Act 931)

Purpose of the legislation

An Act to provide for the establishment of a Deposit Protection Scheme, a Deposit Protection Fund, a Deposit Protection Corporation and for related matters.

Implementing institution

Bank of Ghana (hereinafter called “the Bank”)

Application of the Act¹

1. Banks
2. Specialized Deposit-Taking Institutions

KEY DEFINITIONS UNDER THE ACT²

Bank: means an entity licensed by the Bank of Ghana in line with the relevant laws on banks and specialized deposit-taking institutions.

Board: means the governing body of the Corporation.

Compounds: means an agreement between a creditor and a debtor by which the creditor accepts a composition or smaller sum in discharge of the original debt owed.

Corporation: means the Ghana Deposit Protection Corporation established under Section 22.

Deposit: means a sum of money paid by a depositor to a bank or a specialized deposit-taking institution on condition that the money is to be repaid by the bank or specialized deposit-taking institution either on demand by the depositor or at an agreed time by that bank or specialized deposit-taking institution with or without interest or premium under applicable legal and contractual conditions, without the depositor providing property, giving a service or security.

¹Section 1(1) of Act 931

²Section 53 of Act 931

Depositor: means a person that holds a deposit in an insured institution; [As deleted by the Ghana Deposit Protection (Amendment) Act, 2018 (Act 968), s. 53 (e)]

Deposit Protection Scheme: means the scheme established under Section 2 and the legal, financial, and organizational arrangements and operational activities undertaken by the Corporation in order to achieve the objects specified in Section 3.

Distressed financial institution: means a financial institution that is subject to remedial measures, prompt corrective measures involving Administration or Receivership as specified in relevant laws on banks and specialized deposit-taking institution.

Financial institution: means a banking institution or a specialized deposit-taking institution.

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 to—

a. that person's probity, competence, and soundness of judgment for fulfilling the responsibilities of the position;

b. the diligence with which that person fulfils or is likely to fulfil those responsibilities;

c. whether the interest of depositors or potential depositors of the deposit-taking industry is, or likely to be, in any way threatened by that person holding that position; and;

d. whether the integrity of the person is established, and the qualifications and experience of the person are appropriate for the position in light of the business plan and activities of the entity which the person serves, or going to serve, taking into account the size, nature, and complexity of the responsibility.

Fund A: means the Deposit Protection Fund "A".

Fund B: means the Deposit Protection Fund "B".

Initial premium: means a one-off premium paid by a bank or specialized deposit-taking institution to the Corporation.

Insured depositor: means a person who owns an insured deposit account.

Insured event: means

a. The revocation of the license of a bank or a specialized deposit-taking institution; and

b. The appointment of a receiver or a liquidator as specified in relevant laws on banks and specialized deposit-taking institutions.

Joint account: means an account opened in the names of two or more persons or over which two or more persons have rights as opposed to an individual account, which is an account opened in the name of only one person or more persons have rights as opposed to an individual account, which is an account opened in the name of only one person.

Main asset: includes core assets such as cash, Treasury Bills and other short-term investments of Fund A and Fund B, other than investment for operational purposes.

Operational result: means balance available to the Corporation after paying for recurrent expenditure of the Corporation and satisfying any provisions determined by the Board in respect of depreciation of assets and other contingencies.

Ordinarily resident: means a person residing in Ghana for at least twelve months;

Pay-box: means a deposit insurer who is only responsible for the reimbursement of insured deposits on the occurrence of an insured event.

Payout date: means the date on which the Corporation commences payment of compensation for insured deposits to insured depositors.

Protection Fund: means the Deposit Protection Fund.

Scheme: means the Deposit Protection Scheme established under Section 2.

Small depositor: means a person who has a level of account determined by the Board to be a small deposit.

Specialized deposit-taking institution: means a body corporate that engages in the deposit-taking business and is issued with a specialized deposit-taking institution license in accordance with the relevant laws on banks and specialized deposit-taking institutions.

Supervisory instructions: means the outcome of an assessment of a bank or specialized deposit taking institution; and

Trust account: means a savings account established under a trust agreement whereby a trustee administers the funds for the benefit of one or more beneficiaries.

APPLICATION³

This Act applies to banks and specialized deposit-taking institutions licensed by the Bank of Ghana.

In cases where there is a conflict between the provisions of this Act and another law governing the insurance of deposits or related matters, the provisions of this Act will take precedence.

ESTABLISHMENT AND MEMBERSHIP OF THE DEPOSIT PROTECTION SCHEME

1. The Act establishes a Deposit Protection Scheme (the “Scheme”) as a form of insurance to protect the deposits of small depositors. The primary purpose of the Scheme is to serve as a pay-box for depositors.⁴

2. The objectives of the Scheme, which are to protect small depositors from losses resulting from insured events and to contribute to the development of a secure, efficient, and stable financial system in Ghana. The Scheme aims to achieve these objectives by ensuring timely payouts to insured depositors when insured events occur.⁵

³Section 1 of Act 931

⁴Section 3(a) of Act 931

⁵Section 3(b) of Act 931 as amended by the Ghana Deposit Protection(Amendment) Act 2018 (Act 968)

3. A Bank or a Specialized Deposit-Taking Institution that is licensed by the Bank of Ghana shall be a member of the Scheme. A Bank or Specialized Deposit-Taking Institution becomes a member of the Scheme when the Bank of Ghana informs the Corporation that that Bank or Specialized Deposit-Taking Institution has been granted a license by the Bank of Ghana to commence operations.⁶

4. Upon becoming a member, the Corporation is responsible for providing the certificate of membership. The bank or specialized deposit-taking institution is then required to prominently display this certificate at their main office, branch offices, agencies, or outlets.⁷

CESSATION OF MEMBERSHIP

5. Section 6 of the Act outlines the procedures and implications regarding the cessation of membership in the Scheme for banks and specialized deposit-taking institutions.

In the event of an insured event occurring, the Bank of Ghana is empowered to revoke the license of the affected institution in writing to the affected Banks or Specialized Deposit-Taking Institutions and appoint a receiver or liquidator. The Corporation is promptly notified of the license revocation and surrender. The Corporation then initiates the process of reimbursing compensation to insured depositors.⁸

6. If an institution is involuntarily liquidated, its participation in the Scheme ends upon finalizing compensation payments to depositors. The obligation to pay insurance premiums also ceases at this point. In the case of voluntary liquidation, participation in the Scheme and the obligation to pay insurance premiums end upon the last payment of an insured deposit to an insured depositor.⁹

7. In the event that a bank or specialized deposit-taking institution undergoes voluntary liquidation in accordance with the applicable laws governing such institutions, the bank's or specialized deposit-taking institution's participation in the Scheme, as well as its obligation to pay insurance premiums under the Scheme, will cease on the date when the final payment of an insured deposit is made to an insured depositor by the institution in voluntary liquidation.¹⁰

8. Membership of the Scheme for a bank or specialized deposit-taking institution will cease under certain circumstances. Firstly, if the bank or specialized deposit-taking institution transfers its deposit liabilities in Ghana to another bank or institution. Secondly, if the bank or specialized deposit-taking institution is acquired by another bank or institution. Lastly, if, as a result of an amalgamation, the participating banks or specialized deposit-taking institutions adopt a new name and identity different from the one previously registered with the Scheme.

⁶Section 4 of Act 931

⁷Section 5 of Act 931

⁸Section 6(1) of Act 931

⁹Section 6 (2) of Act 931

¹⁰Section 6 (3) of Act 931

9. Upon cessation of membership, Corporation will then revoke the certificate of membership issued to the institution. Therefore it must not represent itself as a member of the Scheme. The bank or specialized deposit-taking institution is required to surrender the membership certificate to the Corporation and notify both its depositors and the general public of the cessation of its membership in the prescribed manner. Additionally, once the license is revoked and membership ceases, the institution is no longer permitted to accept deposits from the public¹¹.

10. Once a bank or specialized deposit-taking institution has ceased to be a member of the Scheme, the Corporation is responsible for promptly publishing the name of the institution in the Gazette and in two daily circulated national newspapers.¹²

11. When a bank or specialized deposit-taking institution ceases to be a member of the Scheme under Section 6, it remains responsible for fulfilling any obligations or liabilities that were incurred prior to the cessation of its membership.¹³

ESTABLISHMENT OF THE DEPOSIT PROTECTION FUND AND RESERVE FUND

1. Section 8 of the Act establishes the Deposit Protection Fund, which is divided into two funds: Fund "A" and Fund "B". The Corporation is responsible for opening two special accounts with the Bank of Ghana to facilitate the operation of the Protection Fund¹⁴.

2. The purpose of the Protection Fund is to provide the necessary financial resources for the functioning of the Scheme, specifically for the reimbursement of small depositors when an insured event occurs involving a member of the Scheme.

3. The Act outlines the various sources of money for the Deposit Protection Fund. The Corporation is responsible for making the following payments into the Fund:¹⁵

a) Fund "A" receives premiums and fees paid by banks that are members of the Scheme.

b) Fund "B" receives premiums and fees paid by specialized deposit-taking institutions that are members of the Scheme.

c) Returns on investment of Fund "A," with a portion of the income used to cover operational expenses of the Corporation, not exceeding twenty percent.

d) Returns on investment of Fund "B," with a portion of the income allocated for operational expenses of the Corporation, not exceeding twenty percent.

e) Revenue from the claims of the Corporation in the liquidation proceedings of a member of the Scheme, which can be allocated to either Fund "A" or Fund "B".

¹¹Section 7(2) and (3) of Act 931 as amended by Act 968

¹²Section 6 (5) of Act 931

¹³Section 7(1) of Act 931 as amended by Act 968

¹⁴Section 8 of Act 931

¹⁵Section 10 of Act 931

The Protection Fund serves as the primary asset of the Scheme and is used solely for the purpose of reimbursing depositors. In cases where income or costs cannot be clearly allocated to a specific Fund, they may be divided equally between Fund "A" and Fund "B".

RESERVE FUND¹⁶

The Act requires the Corporation to establish and operate a Reserve Fund, which will receive the operational outcomes of the Corporation. In situations where the funds in the Protection Fund are insufficient to fulfill the obligations of the Scheme to insured depositors, the Board of the Corporation is authorized to withdraw money from the Reserve Fund to meet these obligations.

INSURABLE DEPOSITS, PREMIUM AND PAYMENT OF COMPENSATION¹⁷

1. Under the Act, banks and specialized deposit-taking institutions are required to insure deposits held with them, except for certain specific cases.

2. These exceptions include deposits where the depositor is unidentified, frozen deposits in compliance with a court order, deposits belonging to directors or key management personnel, deposits belonging to accounting or audit firms involved with the bank or institution, deposits used as collateral for loans or obligations, deposits held by certain financial institutions or government bodies, and deposits held in foreign branches or subsidiaries. These excluded deposits do not fall under the coverage of the Scheme.

3. Members of the Scheme are required to make an initial one-time premium payment to the Corporation. This premium amounts to 0.1% of the minimum paid-up capital required by relevant laws for banks and specialized deposit-taking institutions.¹⁸

The member must settle this initial premium within thirty days of receiving a demand notice from the Corporation.¹⁹ In the event that a member undergoes a change in license resulting in an increased minimum capital requirement, they are responsible for paying the difference between the initially paid premium and the premium due as a result of the capital requirement increase.²⁰

4. The Corporation is responsible for determining the specific amount of the annual premium that each member is required to pay. This premium is calculated based on a percentage ranging from 0.3% to 1.5% of the total deposits, excluding the exceptions stated in section 13 of the Act, at the end of the preceding year.²¹

¹⁶Section 12 of Act 931

¹⁷Section 13 of Act 931

¹⁸Section 14 (1) of Act 931

¹⁹Section 14 (2) of Act 931

²⁰Section 14 (3) of Act 931

²¹Section 15 of Act 931

The premium amount may vary between Fund "A" and Fund "B". Members are required to make quarterly payments of the prorated annual premium to the Corporation. The assessed premium for each quarter must be paid within thirty days after the end of that quarter.

5. The Act allows the Corporation to determine different premiums based on the assessed risk level of a member. These differential premiums may be applicable to both Fund "A" and Fund "B" within the Scheme. In assessing the differential premium, the Corporation takes into account various factors, including the Bank of Ghana supervisory instructions. However, the Corporation is prohibited from assessing differential premiums until three years after the enactment of this Act.²²

6. In the event of an insured event, the Corporation is obligated to announce the procedures and details regarding the payment of compensation for insured deposits. This announcement must be made through various channels, including the Corporation's website, at least two nationally circulated daily newspapers, and through television and radio broadcasts.²³

7. An insured depositor has the option to personally submit a claim for compensation or authorize another person in writing to do so on their behalf.²⁴ When submitting a claim, the depositor or authorized person must provide evidence of ownership of the insured accounts.²⁵

If an insured depositor is unable to claim the compensation within the prescribed period, they must make the claim at the registered office of the Corporation or at a specified location within five years after the expiration of the prescribed period. Failure to make a claim within this timeframe results in forfeiture of the right to the claim, and the amount forfeited reverts to the Fund.²⁷

However, subsection (4) does not apply to claims made by personal representatives of deceased individuals or next of kin acting on behalf of others.

8. The Corporation begins the payment process six days after the insured event, following the publication of payment details in national newspapers, on television, and radio. The payment process lasts for thirty days, during which the Corporation may make a single or multiple payments. The receiver or liquidator of a bank undergoing liquidation must provide necessary data for calculation and payout within five days.²⁸

The Corporation verifies the amount based on the submitted data and may use a payout agent or bank for payment. In cases of third-party charges, compensation is paid to the secured party or as directed by a court. Once compensated, the Corporation assumes the position of the insured depositor.

²²Section 16 of Act 931

²³Section 17 of Act 931

²⁴Section 18(1) of Act 931

²⁵Section 18(2) of Act 931

²⁶Section 18(3) of Act 931

²⁷Section 18 (4) of Act 931

²⁸Section 19 of Act 931

9. Under Section 20 of Act 931, when an insured event occurs, the Corporation is responsible for reimbursing the insured depositor for their insured deposit. The Corporation calculates the reimbursement amount by combining the deposit accounts and any accrued interests. From this total, they deduct deposits that are exempt from insurance and any overdue amounts owed by the depositor to the bank or specialized deposit-taking institution undergoing liquidation.

However, the reimbursement amount cannot exceed the maximum insured amount, which is set at six thousand, two hundred and fifty Cedis for bank depositors and one thousand, two hundred and fifty Cedis for specialized deposit-taking institution depositors.

The Corporation disburses the reimbursement amount from Fund "A" for bank customers and Fund "B" for specialized deposit-taking institution customers.

10. Banks and specialized deposit-taking institutions are required to provide the Corporation with periodic reports containing information, data, statements, and reports in a format and manner specified by the Corporation. Additionally, with consultation from the Bank of Ghana, an employee of the Corporation has the authority to access the premises of the bank or specialized deposit-taking institution to inspect deposit-related records and activities.

FINANCIAL PROVISIONS

1. Section 40 of the legislation outlines the sources of funds and expenses for the Corporation. The funds for the Corporation come from various sources, including capital contributions from the Government and the Bank of Ghana, along with the interest earned from investing those contributions. The Corporation also receives funds approved by Parliament, withdrawals from the Reserve Fund, grants from the Government and donors, borrowings (including securities issuance), and other revenues as specified in the Act.

Regarding expenses, they are covered by the income generated from investing the Corporation's capital and are also limited to a maximum of twenty percent of the income derived from Deposit Protection Funds "A" and "B" in the reporting year.

2. The Board is responsible for creating an investment policy that governs the allocation of the Fund's resources. In formulating this policy, the Board must prioritize the principles of safety and liquidity over high returns. The Corporation may invest the Protection Fund in financial instruments such as securities issued or guaranteed by the Republic of Ghana and securities designated as qualified instruments by the Bank of Ghana.

3. The Board is entrusted with the responsibility of safeguarding the small depositor while effectively managing the assets of Fund "A" and Fund "B".³⁰ It is the Board's duty to determine the target size for each Fund.

²⁹Section 41 of Act 931

³⁰Section 42 of Act 931

4. The Corporation must keep accurate records and financial statements in compliance with international standards. An independent external auditor, appointed by the Auditor-General, audits the Corporation's accounts. The audited financial statements must be published by March 31st of the following year on the Corporation's website and in national newspapers. The Board is responsible for submitting copies of the audited financial statements to the Minister and the Bank of Ghana.³¹

5. Section 44 stipulates that the Board is obligated to prepare an annual report within one month of receiving the audit report. This report covers the Corporation's activities and operations for the relevant year and includes the report of the Auditor-General. The Minister is responsible for submitting the annual report to Parliament within one month of receiving it, along with any appropriate statements. Additionally, the Board must submit any other reports related to the annual report as requested by the Minister in writing.

6. Section 46 addresses emergency or extraordinary funding for Fund "A" and Fund "B". If a review of the financial plan or supporting financial information indicates that the funds are insufficient to achieve their objectives, the Board, along with the Chief Executive Officer, can approve a plan to take necessary actions. These actions may include charging an additional extraordinary premium to Scheme members, issuing bonds in compliance with the Act and Bank of Ghana rules, or borrowing funds guaranteed as per the Act or Bank of Ghana instructions.

7. In cases where there is no anticipated failure among members of the Scheme under Fund "A" or Fund "B," the Board may allow borrowing between the two funds. However, any borrowing conducted under this provision must be repaid within six months to ensure the financial stability of the funds.

PENALTIES AND SANCTIONS IMPOSED UNDER THE ACT

1. A bank or specialized deposit-taking institution that continues to accept deposits from the public and further holds itself as a member of the Scheme upon the revocation of its license and cessation of membership commits an offence and is liable on summary conviction to a fine of not more than five thousand penalty units.³²

2. A bank or specialized deposit-taking institution that fails to submit required information, provides incomplete or inaccurate information, or delays in submitting such information to the Corporation shall be liable to pay to the Corporation, an administrative penalty of not more than the monetary equivalent of five hundred penalty units and fifty penalty units for each day that the offence continues.³³

3. A bank or specialized deposit-taking institution that fails to pay a premium as specified under sections 14, 15 and 16 is liable to pay to the Corporation an administrative penalty of not more than the monetary equivalent of five thousand penalty units.³⁴

³¹Section 43 of Act 931

³²Section 7(4) of Act 931

³³Section 21 (2) of Act 931

³⁴Section 51(1) of Act 931

4. A bank or specialized deposit-taking institution that fails to openly display and make available brochures, leaflets, and other educational materials to explain the Scheme or displays material which contains false or misleading information is liable to pay to the Corporation an administrative penalty of not more than the monetary equivalent of one thousand penalty units.³⁵

³⁵Section 50(1) of Act 931

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