



HFC BANK (GHANA) LIMITED

(incorporated as a limited liability company under the Companies Act, 1963
(Act 179) with registration No. C-39,755)

CIRCULAR TO SHAREHOLDERS
PROPOSED
AMENDMENTS TO THE REGULATIONS

DATED: 14 MARCH 2016

This document is important and requires your immediate attention.

This Circular has been sent to all of the shareholders of HFC Bank (Ghana) Limited ("HFC") whose names appear on its register of members as at 24th March 2016.

If you have sold or transferred all your shares in HFC, you should pass this Circular and all other documents enclosed with it to the stockbrokers, bank or other agent through whom the sale or transfer was effected for forwarding to the purchaser or transferee.

This Document has been seen and approved by the Directors of HFC and we collectively and individually accept full responsibility for the accuracy of the information given and that after making all reasonable inquiries and to the best of our knowledge and belief there are no facts the omission of which would make any statement in the document referred to above misleading.

14th March 2016

Amendments to the Regulations of HFC Bank (Ghana) Limited (the "Company")

Dear Shareholder,

The 25th Annual General Meeting (AGM) of the Company will take place on Thursday 28th April 2016 at 10.00 a.m at the La Palm Royal Beach Hotel, Accra. At the meeting, the Directors of HFC Bank (Ghana) Limited (the Board) will ask the Shareholders to consider proposed amendments to the Regulations of the Company (the Regulations). The purpose of this Circular is to provide to you with information relating to the proposed amendments in respect of which your approval by way of special resolutions is sought.

1. Proposed Changes to the Regulations

The Board has undertaken a review of the Regulations of the Company and approved certain amendments to the Regulations. The proposed amendments are designed to reflect best practices in corporate governance, the requirements of the Banking Act, as well as to update and modernise the Regulations.

Please find included in the Circular the following:-

- (1) Notice of Annual General Meeting which contains the full text of Special Resolutions proposed (Appendix 1)
- (2) Explanatory Notes to the key amendments proposed (Appendix 2)

Copies of the current Regulations are available for inspection during normal business hours from the date of this Circular up to and including the time of, and during, the AGM (and any adjourned meeting) at the registered office of the Company at Ebankese, 35 Sixth Avenue, North Ridge, Accra, Ghana.

2. Recommendations

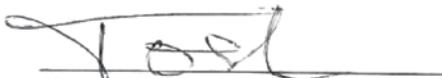
The Board is of the opinion that the proposed amendments to the Regulations and the other matters described above are in the best interests of Shareholders. The Directors recommend that you vote in favour of the resolutions set out in the Notice of the AGM.

The Directors of the Company accept responsibility for the information contained in this Circular.

If you have any queries or if any of the above is not clear please contact Mrs. Ama Amoah, Company Secretary of the Company on telephone number (233) 302 242090 – 4 or by e-mail at bamoah@hfcbank.com.gh.

We thank you for your continuing support of the Company.

Yours faithfully



Chairman
Board of Directors

Appendix 1

NOTICE OF MEETING

NOTICE IS HEREBY GIVEN that the 25th Annual General Meeting of the HFC Bank (Ghana) Limited (the "Company") will be held at La Palm Royal Beach Hotel, Accra at Ten O'clock in the forenoon (10:00 a.m.) on Thursday, 28th April, 2016 to transact the following business:

AGENDA

ORDINARY BUSINESS

1. To receive the Chairman's Statement and the Managing Director's Report for the year ended 31st December 2015.
2. To receive the Annual Report and Financial Statements of HFC Bank (Ghana) Limited and its Subsidiaries for the financial year ended 31st December, 2015 together with the Auditors' Report thereon.
3. To re-elect Institutional Directors under Regulation 63 of the Company's Regulations and Section 298(d) of the Companies Code, 1963, Act 179 ("Companies Code").
4. To re-elect Directors under Regulation 65 of the Company's Regulations and Section 298(e) of the Companies Code.
5. To consider and approve the remuneration of Directors.
6. To authorize the Directors to approve the remuneration of the Auditors for the year 2016.

SPECIAL RESOLUTIONS

7. Amendment of Regulations
To amend by Special Resolutions the Company Regulations in the following manner:-

(I) Special Resolution One

That **Regulation 4** be deleted and replaced with the following as a **new Regulation 4**:

"4) The Directors of the Company as at 28th April 2016 are:-

- | | |
|-----------------------------|------------------------------|
| a) Professor Joshua Alabi | e) Ms. Rebecca Atswei Lomo |
| b) Mr. Robert Le Hunte | f) Mr. Charles Zwennes |
| c) Mr. Osei Asafo-Adjei | g) Mr. Ebenezer Tetteh Tagoe |
| d) Mr. David Dulal-Whiteway | h) Mr. Paul King Aryene." |

(II) Special Resolution Two

That **Regulation 35(a)** be amended by inserting the following words before the words "the Company" in the first line thereof:

"Subject to the provisions of sections 29 and 30 of the Banking Act or any other statutory or regulatory provisions"

(III) Special Resolution Three

That **Regulation 36(a)** be amended by inserting the following as a **new** sub-paragraph (a) and **renumbering the remaining sub-paragraphs** accordingly:

"a) the Company has complied with the provisions of sections 29 and 30 of the Banking Act or any other statutory or regulatory provisions,"

(IV) Special Resolution Four

That **Regulation 37** be amended by inserting the following words before the words "the Board of Directors" in the first line thereof:

"In addition to any amounts set aside for the maintenance of a statutory reserve as required by section 29 of the Banking Act or any other statutory or regulatory provisions,"

(V) Special Resolution Five

That **Regulation 46(a)** be amended by inserting the following words immediately after the word "Code" in the last line thereof:

"and the Banking Act or any other statutory or regulatory provisions"

(VI) Special Resolution Six

That **Regulation 53** be amended by deleting the words "Home Finance Company Limited" and replacing them with the words "*HFC Bank (Ghana) Limited*".

(VII) Special Resolution Seven

That **Regulation 60(1)** be amended by inserting the following words immediately after the word "Code" in the last line thereof:

"and the Banking Act or any other statutory or regulatory provisions"

(VIII) Special Resolution Eight

That **Regulations 63 and 64** be deleted in their entirety and replaced by the following as a **new Regulation 63**:

"63) A shareholder shall be entitled to appoint and maintain one director for each block of twelve and half per cent fully paid up of the issued ordinary shares of the Company held by that shareholder. A Director so appointed shall be subject to rotation, retirement and re-election in accordance with section 298 of the Code. In the event of the resignation, retirement or vacation of office of a Director appointed pursuant to this Regulation 63, the relevant shareholder shall, so long as it maintains the share qualifications prescribed by this Regulation 63, be entitled to appoint another person as a director."

(IX) Special Resolution Nine

That **Regulation 65** be renumbered as Regulation 64 and the **new Regulation 64** be amended by inserting the word "*Independent*" between the words "of" and "Non-Executive".

(X) Special Resolution Ten

That the following be inserted as a **new Regulation 65**:

"65) All other Directors may be appointed by the Board of Directors on the basis of their ability to represent and enhance the interests of the shareholders and the business of the Company as a whole. Any Director so appointed shall be subject to rotation, retirement, and re-election in accordance with section 298 of the Code;"

(XI) Special Resolution Eleven

That **Regulation 67** be amended by inserting the following words after the word "Directors" in the last line thereof:

"of which three shall be Non-Executive Directors one of whom shall be Independent"

(XII) Special Resolution Twelve

That the following be inserted as a **new Paragraph 67A**:

"67A) The quorum necessary for the transaction of business of a committee of the Board of Directors shall be three Directors of which two shall be non-executive Directors one of whom shall be Independent;"

(XIII) Special Resolution Thirteen

That **Regulation 73** be deleted in its entirety and replaced by the following as a **new Regulation 73**:

"73) (1) The office of Director shall be vacated if:-

- a. the Director becomes incompetent to act as a Director by virtue of the provisions of section 182 of the Code;

- b. the Director ceases to hold office by virtue of section 183 of the Code;
- c. the Director resigns his office by notice in writing to the Company;
- d. where the Director has been appointed for a fixed term, the term expires;
- e. being a Director appointed by a shareholder pursuant to Regulation 63, that shareholder requires the removal of the Director by notice in writing to the Board and to the Director concerned;
- f. the Director no longer meets the qualifications required by the Bank of Ghana or other regulatory authority.

(2) Any Director may be removed from office in accordance with section 185 of the Code.”

(XIV) Special Resolution Fourteen

That **Regulation 77** be amended by inserting the following words before the words “the proceedings” in the first line thereof:

“Save as specified in Regulations 77A and 77B”

(XV) Special Resolution Fifteen

That the following be inserted as a **new Regulation 77A**:

“77A) It shall be necessary to give notice of a meeting of the Board of Directors to all Directors and notice of a Committee of the Board of Directors to all Directors of that Committee including, for the avoidance of doubt, any Director for the time being absent from Ghana.”

(XVI) Special Resolution Sixteen

That the following be inserted as a **new Regulation 77B**:

“77B Any Director or his alternate or any Substitute director may validly participate in a meeting of the Board of Directors or a Committee of the Board of Directors through the medium of conference telephone, video teleconference or similar form of communication equipment, provided that all persons participating in the meeting are able to hear and speak to each other throughout such meeting. A person so participating shall be deemed to be present in person at the meeting and shall accordingly be counted in a quorum and is entitled to vote. All business transacted in this way by the Board or a Committee of the Board is deemed to be validly and effectively transacted at a meeting of the Board or a Committee of the Board.”

(XVII) Special Resolution Seventeen

That **Regulation 96** be amended by inserting the following as a **new** sub-paragraph (b):

“(b) “The Banking Act” shall mean the Banking Act 2004 (Act 673) as amended by the Banking (Amendment) Act, 2007 (Act 738) or any statutory re-enactment or modification thereof for the time being in force, and reference to any section or provision of the Banking Act shall include a reference to any statutory re-enactment or modification of such section or provision for the time being in force.”

(XVIII) Special Resolution Eighteen

That **Regulation 96** be amended by inserting the following as a **new** sub-paragraph (c) and sub-paragraph (c) shall be re-named (d):

“(c) “Independent” shall mean a person that complies with the criteria for Independent Directors defined by the Code, the Banking Act or any other statutory or regulatory provisions.”

A member of the Company is entitled to appoint a proxy to attend and vote instead of him/her. A proxy need not also be a member.

Proxies may be deposited at the Company’s Registered Office Ebankese, No. 35, 6th Avenue, North Ridge, Accra, aforesaid at any time prior to the commencement of the meeting in accordance with the Company’s Regulations.

Dated this 14th March 2016

Signed

**COMPANY SECRETARY
BY ORDER OF THE BOARD**

Appendix 2

EXPLANATORY NOTES OF PRINCIPAL CHANGES TO THE COMPANY'S REGULATIONS

The following sets out notes to the principal changes proposed to the Regulations. Each current provision proposed to be amended is set out and the proposed amendments are set out beneath the current provision and all language to be introduced is underlined.

New provisions are also underlined.

1. Regulations to take account of the Banking Law

1.1 *Current provision*

Regulation 35(a): The Company may, by ordinary resolution, declare dividends in respect of any year or other period but no dividend shall exceed the amount recommended by the Board of Directors.

Proposed amendment

Regulation 35(a): Subject to the provisions of sections 29 and 30 of the Banking Act or any other statutory or regulatory provisions, the Company may, by ordinary resolution, declare dividends in respect of any year or other period but no dividend shall exceed the amount recommended by the Board of Directors;

1.2 *Current provision*

Regulation 36: No dividend shall be paid unless:-

(a) the Company will, after such payment, be able to pay its debts as they fall due;

(b) the amount of such payment does not exceed the amount of the Company's income surplus immediately prior to the making of such payment;

Proposed amendment

Regulation 36: No dividend shall be paid unless:-

(a) the Company has complied with the provisions of sections 29 and 30 of the Banking Act or any other statutory or regulatory provisions;

(b) the Company will, after such payment, be able to pay its debts as they fall due;

(c) the amount of such payment does not exceed the amount of the Company's income surplus immediately prior to the making of such payment;

1.3 *Current provision*

Regulation 37: The Board of Directors may, before recommending any dividend, set aside out of the profits or income surplus of the Company such sums as they think proper in order to provide for a known liability or as depreciation or replacement provision and may carry forward any profits or income surplus, which they may think prudent not to distribute;

Proposed amendment

Regulation 37: In addition to any amounts set aside for the maintenance of a statutory reserve or any other statutory or regulatory provisions, the Board of Directors may, before recommending any dividend, set aside out of the profits or income surplus of the Company such sums as they think proper in order to provide for a known liability or as depreciation or replacement provision and may carry forward any profits or income surplus, which they may think prudent not to distribute;

1.4 *Current provision*

Regulation 46(a): Auditors, qualified in accordance with section 296 of the Code, shall be appointed and their duties regulated in accordance with sections 134 to 136 of the Code.

Proposed amendment

Regulation 46(a): Auditors, qualified in accordance with section 296 of the Code, shall be appointed and their duties regulated in accordance with sections 134 to 136 of the Code and the Banking Act or any other statutory or regulatory provisions.

1.5 *Current provision*

Regulation 60: The appointment of Directors shall be regulated by sections 181, 298, and 299 of the Code

Proposed amendment

Regulation 60(1): The appointment of Directors shall be regulated by sections 181, 298, and 299 of the Code and the Banking Act or any other statutory or regulatory provisions;

Commentary:

There are provisions of the Banking Act, 2004 (Act 673) as amended by the Banking (Amendment) Act, 2007 (Act 738) (the Banking Act) that must be taken into account in determining the amount of dividends to be declared and dividends to be paid by a bank. Regulations 35, 36 and 37 deal with the declaration and payment of dividends by the Company. The amendments proposed are to bring the Regulations in line with the Banking Act provisions.

2. Appointment of directors

2.1 *Current provisions*

Regulation 63: An individual holder of not less than twelve and half per cent fully paid up of the Company's shares, being private individual, body corporate or any other legal entity shall be entitled to appoint one Director to the company's board except where an incumbent Director is a previous appointee of that shareholder. A Director so appointed shall be subject to rotation, retirement and re-election in accordance with section 298 of the Code;

Regulation 64: An individual holder of twenty-five percent or more fully paid up of the Company's shares, being a private individual, body corporate or any other legal entity shall be entitled to appoint two Directors to the Board except where two incumbent Directors are previous appointees of that shareholder. Any Director so appointed shall be subject to rotation, retirement and re-election in accordance with section 298 of the Code;

Proposed amendment

To introduce a new Regulation 63 in the following terms:

A shareholder shall be entitled to appoint and maintain one Director for each block of twelve and half per cent fully paid up of the issued ordinary shares of the Company held by that shareholder. A Director so appointed shall be subject to rotation, retirement and re-election in accordance with section 298 of the Code. In the event of the resignation, retirement or vacation of office of a Director appointed pursuant to this regulation 63, the relevant shareholder shall, so long as it maintains the share qualifications prescribed by this regulation 63, be entitled to appoint another person as a Director.

The current regulation 64 to be deleted altogether.

Commentary:

The current Regulations allow a shareholder holding 12.5% of the shares of the Company to appoint a Director. The current Regulations also allow a shareholder holding 25% or more fully paid up shares to appoint up to two Directors.

The effect of this amendment would be to allow a member to appoint a Director for each block of 12.5% shareholding that the member holds.

2.2 *Current provisions*

Regulation 65: Two positions on the Board shall be reserved for the appointment of Non-executive Directors who shall be recommended on the basis of their ability to represent and enhance the interest of the shareholders and the business of the Company as a whole. They shall be appointed by the existing Directors for periods not exceeding one year and confirmed by Ordinary resolution of the

shareholders in general meeting. Any Director so appointed shall be subject to rotation, retirement, and re-election in accordance with section 298 of the Code;

Proposed amendment

It is proposed that this will be a New Regulation 64- Two positions on the Board shall be reserved for the appointment of Independent Non-executive Directors who shall be recommended on the basis of their ability to represent and enhance the interest of the shareholders and the business of the Company as a whole. They shall be appointed by the existing Directors for periods not exceeding one year and confirmed by Ordinary resolution of the shareholders in general meeting. Any Director so appointed shall be subject to rotation, retirement, and re-election in accordance with section 298 of the Code

Regulation 65: All other Directors may be appointed by the Board of Directors on the basis of their ability to represent and enhance the interests of the shareholders and the business of the Company as a whole. Any Director so appointed shall be subject to rotation, retirement, and re-election in accordance with section 298 of the Code;

Commentary:

The reference to appointment of the two Non-executive Directors will now be changed to include "Independent" with a corresponding definition of "Independent". Under the definition, "Independent" will mean a person that complies with the criteria for Independent Directors defined by the Code, the Banking Act or any other statutory or regulatory provisions.

Lastly, the power of the Board to appoint directors to fill a vacancy will be to appoint directors who have the ability to represent and enhance the interests of the shareholders and the business of the Company as a whole".

3. Quorum for conduct of directors' meetings

3.1 Current provision:

Regulation 67: The quorum necessary for the transaction of business of the Board of Directors shall be five Directors

Proposed amendments

Regulation 67: The quorum necessary for the transaction of business of the Board of Directors shall be five Directors of which three shall be non-executive Directors one of whom shall be Independent.

New Regulation 67A: The quorum necessary for the transaction of business of a committee of the Board of Directors shall be three Directors of which two shall be non-executive Directors one of whom shall be Independent.

Commentary:

The Regulations did not previously stipulate the quorum for a committee of Directors.

The proposal is for a quorum of three Directors for a meeting of a committee of Directors. The amendment is to also ensure that at all times, the quorum for the transaction of the Company's business includes at least two Non-Executive Directors (in the case of a committee) and three Non-Executive Directors (in the case of a full board meeting) and at least one of whom should be Independent.

4. Vacation of office by directors

Current provision:

Regulation 73) The office of Director shall be vacated in accordance with section 184 of the Code and any Director may be moved from office in accordance with section 185 of the Code;

Proposed amendment:

Regulation 73) (1) The office of Director shall be vacated if

- a. the Director becomes incompetent to act as a director by virtue of the provisions of section 182 of the Code;
- b. the Director ceases to hold office by virtue of section 183 of the Code;
- c. the Director resigns his office by notice in writing to the company;
- d. where the Director has been appointed for a fixed term, the term expires.

- e. being a Director appointed by a shareholder pursuant to regulation 63, that shareholder requires the removal of the Director by notice in writing to the Board and to the Director concerned.

(2) Any Director may be removed from office in accordance with section 185 of the Code.

Commentary:

The current Regulations limit the circumstances in which a Director must vacate office to the circumstances set out in section 184 of the Companies Act. These are: "if the Director becomes incompetent to act as a Director by virtue of the provisions of section 182 of this Code, or if he ceases to hold office by virtue of section 183 of this Code, or if he resigns his office by notice in writing to the company".

Section 184 (2) allows a company's Regulations to lawfully provide for the termination or vacation of office of a Director in other circumstances. Consequently, the new proposed Regulations will update these provisions to compliment regulations allowing the Board or shareholders to appoint Directors by stipulating the vacation of office where the Board or a shareholder (as the case may be) terminates the appointment of a Director appointed by it.

Note that the shareholders always have the power to remove any Director under section 185. This is notwithstanding anything in the Regulations. Thus even if a shareholder refuses to terminate the appointment of its appointed director or the Board refuses to terminate its appointed Director, the body of shareholders may always do so under section 185.

5. Notice of meeting to directors outside Ghana

Current provision

77) The proceedings of the Directors shall be regulated by section 200 of the Code and the Board of Directors may delegate any of their powers of committees of the Directors in accordance with that section.

Proposed amendments

77) Save as specified in Regulations 77A and 77B, the proceedings of the Directors shall be regulated by section 200 of the Code and the Board of Directors may delegate any of their powers of committees of the Directors in accordance with that section.

New Regulation 77A: It shall be necessary to give notice of a meeting of the Board of Directors to all Directors and notice of a Committee of the Board of Directors to all Directors of that Committee including, for the avoidance of doubt, any Director for the time being absent from Ghana.

Commentary:

The Companies Act provides in section 200 (c) that, unless otherwise specified in the Regulations, notice of a meeting is not required to be provided to a Director absent for the time being from Ghana. This amendment is to require notice of directors' meetings to be provided to all directors notwithstanding that they may not be in Ghana.

6. Participation in board meetings by electronic means

Current provision:

None.

Proposed amendment:

Any Director or his alternate or any Substitute Director may validly participate in a meeting of the Board of Directors or a Committee of the Board of Directors through the medium of conference telephone, video teleconference or similar form of communication equipment, provided that all persons participating in the meeting are able to hear and speak to each other throughout such meeting. A person so participating shall be deemed to be present in person at the meeting and shall accordingly be counted in a quorum and is entitled to vote. All business transacted in this way by the Board or a Committee of the Board is deemed to be validly and effectively transacted at a meeting of the Board or a Committee of the Board.

Commentary:

This proposed amendment is to stipulate that participation in board meetings through video conferencing is permitted and to stipulate that attendance through this means will count towards a quorum and entitles the director to vote.

7. Definitions

Proposed amendment

To amend regulation 96 to include the following as new definitions.

- a. "The Banking Act" shall mean the Banking Act 2004 (Act 673) as amended by the Banking (Amendment) Act, 2007 (Act 738) or any statutory re-enactment or modification thereof for the time being in force, and reference to any section or provision of the Law shall include a reference to any statutory re-enactment or modification of such section or provision for the time being in force.
- b. "Independent" shall mean a person that complies with the criteria for Independent Directors defined by the Code, the Banking Act or any other statutory or regulatory provisions.

Commentary

A definition of Independent is recommended as part of the amendments to the issue of "independent" directors. The aim of introducing the word "Independent" and a definition is to ensure that it is clear that the directors to be nominated under the current Regulation 65 and what is proposed as a new Regulation 64 are what are termed independent non-executive and at all times the criteria for the selection of those Directors conforms to the provisions of any applicable laws or regulations.

EXTRACTS FROM KEY LEGISLATION REFERRED TO

Provisions of the Banking Act, 2004 (Act 673) as amended by the Banking (Amendment) Act, 2007 (Act 738)

Section 29—Transfer of Profits to Reserve Fund (referred to in Special Resolutions Two, Three and Four) (referred to in Explanatory Note 1.1 and 1.2)

- (1) A bank shall maintain a Reserve Fund into which shall be transferred out of the bank's net profits for each year, before the bank declares a dividend and after it has made provision for any taxes, the following amounts:
 - (a) where the amount of the bank's Reserve Fund is less than fifty per cent of its paid-up capital, an amount which is not less than fifty per cent of the bank's net profit for the year;
 - (b) where the amount of the bank's Reserve Fund is fifty per cent or more but less than hundred per cent of its paid up capital, an amount which is not less than twenty five per cent of the bank's net profit for the year; or
 - (c) where the amount of the bank's Reserve Fund is equal to one hundred per cent or more of its paid-up capital, an amount equal to twelve and half per cent of the bank's net profit for the year.
- (2) A bank which fails to maintain a Reserve Fund in accordance with subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding 1000 penalty units.

Amended by the Banking (Amendment Act) as follows:

Section 29 of Act 673 amended

17. Section 29 of the principal enactment is amended in subsection 1 by the insertion of the words "holding a General Banking Licence or a bank holding a Class I Banking Licence" at the beginning of the subsection.

Section 30—Restrictions on Declaration of Dividend- (referred to in Special Resolutions Two and Three) (referred to in Explanatory Note 1.1 and 1.2)

- (1) A bank shall not declare or pay dividend on its shares unless it has,
 - (a) completely written-off all its capitalised expenditure,
 - (b) made the required provisions for non-performing loans and other erosions in assets values,
 - (c) satisfied the minimum capital adequacy ratio requirement, and
 - (d) completely written-off all its accumulated operating losses from its normal operations.
- (2) For the purposes of subsection (1), "capitalised expenditure" includes preliminary expenses, share selling commission, brokerage losses incurred by the bank and any other item of expenditure not represented by tangible assets.
- (3) Where the payment of dividend results in withdrawal of a part of the free reserves due to inadequacy of the profit for the year or where the statutory report of the auditors on the annual accounts of the bank is not satisfactory, the bank may declare a dividend on its shares only after obtaining the prior approval in writing of the Bank of Ghana.
- (4) Where a bank declares or pays a dividend in contravention of subsection (1) each director of the bank is liable to pay to the Bank of Ghana a penalty of not less than 100 penalty units.
- (5) A director is not liable to pay the penalty if:
 - (a) the contravention was committed without the director's consent or connivance by a person other than the director,
 - (b) the director exercised all due diligence to prevent the commission of the contravention having regard to all the circumstances.
- (6) A bank which contravenes a provision of this section commits an offence and is liable on summary conviction to a fine not exceeding one thousand penalty units.

Provisions of the Companies Code, (Act 179) The Companies Act

Section 134—Appointment and Remuneration of Auditors (referred to in Explanatory Note 1.4)

- (1) A person shall not be appointed as auditor of a company unless,
 - (a) has prior to the appointment consented in writing to be appointed; and
 - (b) is duly qualified in accordance with section 270, if appointed as auditor of a private company, or section 296 if appointed as auditor of a public company.
- (2) A partnership firm may be appointed, in the name of the firm, as auditors of a company, but, whether or not that firm is a body corporate, the appointment shall be deemed to be an appointment of the partners of the firm who, at the time of the appointment, are duly qualified.
- (3) The first auditors of a company incorporated after the commencement of this Act shall be appointed within three months of the incorporation of the company or prior to the delivery to the Registrar of the particulars required under section 27, and every existing company shall, unless it already has duly qualified auditors, appoint auditors within three months after the commencement of this Act.
- (4) Despite a contrary provision in the company's Regulations, auditors shall be appointed by ordinary resolution of the company and not otherwise.
- (5) For the purposes of subsection (4),
 - (a) the directors may appoint the first auditors of a company and fill a casual vacancy in the office of auditor;
 - (b) if a company does not have an auditor for a continuous period of three months the Registrar may appoint auditors.
- (6) An existing auditor shall continue in office until,
 - (a) that auditor ceases to be qualified for appointment; or
 - (b) that auditor resigns from office by notice in writing to the company; or

- (c) an ordinary resolution is duly passed at an annual general meeting in accordance with section 135 removing that auditor from office or appointing any other person in place of that auditor as from the conclusion of the annual general meeting; and when a casual vacancy occurs in the office of auditor the surviving or continuing auditor or auditors may act.
- (7) Notice of the names and addresses of the first auditors of a company incorporated after the commencement of this Act shall be given to the Registrar in accordance with section 27.
- (8) Within three months after the commencement of this Act, an existing company shall give notice in the prescribed form to the Registrar for registration of the names and addresses of its auditors.
- (9) Within twenty-eight days after the occurrence of a change in the auditors of a company, the company shall give notice thereof in the prescribed form to the Registrar for registration.
- (10) A company shall give notice to the Registrar if at any time after the commencement of this Act a continuous period of three months has elapsed without the company having a duly qualified auditor.
- (11) The remuneration of the auditors,
 - (a) in the case of an auditor appointed by the directors or by the Registrar, may be fixed by the directors or the Registrar, for the period expiring at the conclusion of the next annual general meeting of the company;
 - (b) subject to paragraph (a), shall be fixed by an ordinary resolution of the company or in a manner as the company by ordinary resolution may determine.
- (12) For the purposes of subsection (11), the sums paid or payable by the company in respect of the auditors' expenses shall be included in the expression "remuneration".
- (13) Where a company commits a breach of a provision of this section or describes as auditor of the company a person who has not been duly appointed, the company and an officer of the company who is in default is liable to a fine not exceeding two hundred and fifty penalty units.
- (14) For the purposes of subsections (7), (8) and (9) (a) where a partnership firm has appointed auditors in the name of the firm, the firm name and business address shall be given to the Registrar and, (b) a change in the constitution of the firm or of the partners in the firm who are auditors of the company is not a change in the auditors.

Section 135—Removal of Auditors (referred to in Explanatory Note 1.4)

- (1) A resolution to remove an auditor or to appoint any other person in the place of that auditor shall not be effective unless,
 - (a) it is passed at an annual general meeting of the company;
 - (b) written notice has been given to the company of the intention to move it not less than thirty-five days before the annual general meeting at which it is to be moved and on its receipt the company has forthwith sent a copy of the resolution to the auditor concerned; and
 - (c) the company has given its members notice of the resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, has given them notice of the resolution in the same manner as notices of meetings are required to be given not less than twenty-one days before the meeting:
- (2) For the purposes of subsection (1),
 - (a) if, after notice of the intention to move the resolution is given to the company, an annual general meeting is called for a date thirty-five days or less after the notice has been given to the company, the notice shall be deemed to have been properly given;
 - (b) in the case of a resolution to remove an auditor appointed by the directors in accordance with subsection (4) of section 134, or to appoint any other person in place of an auditor so appointed, subsection (1) shall have effect with the substitution of fourteen days for thirty-five days in paragraph (b) and seven days for twenty-one days in paragraph (c).
- (3) The auditor concerned is entitled,
 - (a) to be heard on the resolution at the meeting; and
 - (b) to send to the company a written statement, copies of which the company shall send with every notice of the annual general meeting or, if the statement is received too late, shall forthwith circulate to every person entitled under section 154 to notice of the meeting in the same manner as notices of meetings are required to be given.
- (4) The company need not send or circulate the statement under paragraph (b) of subsection (3),
 - (a) if it is received by the company less than seven days before the meeting; or
 - (b) if the Court, on application made by the company or any other person who claims to be aggrieved, so orders on being satisfied that the statement is unreasonably long or that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the Court may order the costs of the applicant to be paid in whole or in part by the auditor although the auditor is not a party to the application.
- (5) Without prejudice to the auditor's right to be heard orally on the resolution the auditor may, unless the Court makes an order under the subsection (4), also require that the written statement by the auditor is read to the meeting.
- (6) If the resolution is passed it shall not take effect until the conclusion of the annual general meeting.

Section 136—Duties and Powers of Auditors (referred to in Explanatory Note 1.4)

- (1) The auditors of a company while acting in the performance of their functions under this Act are not officers or agents of the company, but (a) shall stand in a fiduciary relationship to the members of the company as a whole and (b) shall act in such manner that faithful, diligent, careful, and ordinarily skilful auditors would act in the circumstances.
- (2) A provision, whether contained in the Regulations of a company, or in a contract, or in a resolution of a company, shall not relieve an auditor (a) from the duty to act in accordance with subsection (1) or (b) from a liability incurred as a result of a breach of that duty.
- (3) An auditor shall have a right of access at all times to the books and accounts and vouchers of the company and is entitled to require from the officers of the company the information and explanation that the auditor thinks necessary for the performance of the auditor's duties.

- (4) The auditors of a company are entitled (a) to attend any general meeting of the company and (b) to receive the notices of, and other communications relating to, a general meeting and (c) to be heard at a general meeting on any part of the business of the meeting which concerns them as auditors.
- (5) The auditors of a company may apply to the Court for directions in relation to a matter arising in connection with the performance of their functions under this Act; and on that application the Court may give the directions that the Court thinks just; and unless the Court shall otherwise direct, the costs of the application shall be paid by the company.
- (6) Before accepting appointment as auditor of a company the auditor shall communicate with the retiring auditor and invite the retiring auditor to make representations and supply information about the company which the retiring auditor may care to make and supply.
- (7) The auditors, in addition to their statutory functions to the members under subsection (1), may, under the terms of their contract with the company, expressly or impliedly undertake obligations to the company in relation to the detection of defalcations, and advice on accounting, costing, taxation, raising of finance and other matters.

Section 182—Competence of Directors (referred to in Special Resolution Thirteen) (referred to in Explanatory Note 4)

- (1) The following persons shall not be competent to be appointed or to act as directors of a company, namely,
 - (a) an infant;
 - (b) any one found by a competent court to be a person of unsound mind;
 - (c) a body corporate;
 - (d) any one in respect of whom an order has been made under section 186 while the order remains in force unless leave to act as director has been given by the Court in accordance with that section;
 - (e) an undischarged bankrupt, unless that bankrupt has been granted leave to act as director by the Court by which that person was adjudged bankrupt.
- (2) If any of the persons specified in subsection (1) of this section, other than a body corporate, or person of unsound mind, acts as a director of any company or agrees to be appointed a director, that person is liable on conviction to a term of imprisonment not exceeding five years or to a fine not exceeding one thousand penalty units or to both the imprisonment and the fine.
- (3) Where a body corporate acts as a director or agrees to be appointed a director, the body corporate and every officer of that body who knowingly permitted it so to act or to be appointed shall be liable to a fine not exceeding one thousand penalty units.
- (4) Where a company appoints a person as director in contravention of this section the company and every director of the company who is in default shall be liable to a fine not exceeding one thousand penalty units.
- (5) The company's Regulations may lawfully provide that classes of persons additional to those provided in subsection (1) are incompetent to be directors of the company.

Section 183—Directors' Share Qualification (referred to in Special Resolution Thirteen) (referred to in Explanatory Note 4)

- (1) Unless the company's Regulations otherwise provide, a director need not be a member of the company or hold any shares therein.
- (2) Where the Regulations require a director to hold a specified share qualification, every director shall obtain that qualification within two months after appointment as director or shorter period that may be fixed by the Regulations; and the office shall be vacated if that person fails to do so, or if at any time after the expiration of that period that person ceases to hold that qualification.
- (3) Where the company amends its Regulations so as to introduce or increase the requirement of a share qualification every director holding office at the date of the alteration shall have two months within which to obtain the qualification and shall not vacate office under this section unless that director fails to do so.
- (4) A person vacating office under this section is not qualified to be re-appointed a director of the company until that person has obtained the qualification.

Section 184—Vacation of Office of Director (referred to in Explanatory Note 4)

- (1) The office of director shall be vacated if the director becomes incompetent to act as a director by virtue of section 182, or if the directors ceases to hold office by virtue of section 183, or if the director resigns from office by notice in writing to the company.
- (2) The company's Regulations may lawfully provide for the termination or vacation of office in circumstances additional to those specified in subsection (1).

Section 185—Removal of Directors (referred to in Special Resolution Thirteen) (referred to in Explanatory Note 4)

- (1) Subject to section 300 and to this section, a company may by ordinary resolution at a general meeting remove from office all or any of the directors despite anything in its Regulations or in an agreement with the director.
- (2) A resolution to remove a director shall not be moved at a general meeting unless notice of the intention to move it has been given to the company not less than thirty-five days before the meeting at which it is to be moved.
- (3) If after notice of the intention to move the resolution is given to the company, a meeting is called for a date thirty-five days or less after the notice has been given, the notice shall be deemed to have been properly given for the purposes of subsection (2).
- (4) The company shall give its members notice of the resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice of the resolution in the same manner as notices of meetings are required to be given not less than twenty-one days before the meeting.
- (5) On receipt of notice of an intended resolution to remove a director under this section the company shall forthwith send a copy of the notice to the director concerned and that director, whether or not the director is a member of the company, is entitled,
 - (a) to be heard on the resolution at the meeting; and

- (b) to send to the company a written statement, copies of which the company shall send with every notice of the general meeting or, if the statement is received too late, shall forthwith circulate to every person entitled under section 154 to notice of the meeting in the same manner as notices of meetings are required to be given.
- (6) The company need not send or circulate such statement under paragraph (b) of subsection (5),
 - (a) if it is received by the company less than seven days before the meeting, or
 - (b) if the Court, on application by the company or any other person who claims to be aggrieved, so orders on being satisfied (i) that the statement is unreasonably long or (ii) that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the Court may order the costs of the applicant to be paid in whole or in part by the director although the director is not a party to the application.
- (7) Without prejudice to the director's right to be heard orally on the resolution, the director may, unless the Court makes an order under subsection (6), also require that the written statement by the director is read to the meeting.
- (8) A vacancy created by the removal of a director under this section, if not filled at the meeting at which the director is removed, may be filled as a casual vacancy in accordance with section 181.
- (9) This section shall not be taken as depriving a director who has a service agreement with the company of a right to compensation to which the director is lawfully entitled under that agreement on the termination of the directorship or of a right to damages if the removal from the directorship constitutes a breach of the service agreement.

Section 200—Proceedings of Directors (referred to in Explanatory Note 5)

Subject to any contrary provisions in the Regulations,

- (a) the directors may meet together in the Republic or elsewhere for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, and may delegate any of their powers to committees consisting of the member or members of their number that they think fit; but a committee so formed shall in the exercise of the powers so delegated conform to the regulations that may be imposed on them by the directors;
- (b) a director may, and the secretary on the requisition of a director shall, at any time summon a meeting of directors, and the director being a member of a committee may, and the secretary on the requisition of that director shall, at any time summon a meeting of the committee;
- (c) it shall not be necessary to give notice of a meeting of directors or of a committee of directors to a director for the time being absent from Ghana;
- (d) the quorum necessary for the transaction of business of the directors and of a committee of directors may be fixed by the directors and unless so fixed shall be two, or, in the case of a one-man committee one;
- (e) except as provided in paragraph (f) a business shall not be transacted in the absence of a quorum although a quorum was present at the commencement of the meeting;
- (f) the continuing directors may act despite a vacancy in their number but, if and so long as their number is reduced below the number fixed as the necessary quorum, the continuing directors or director may act for four weeks after the number is so reduced, but after the four weeks may act only for the purpose of increasing their number to that number or of summoning a general meeting of the company and for no other purpose;
- (g) the directors and a committee of directors may elect a chairman of their meetings and determine the period for which the chairman is to hold office, but if a chairman is not elected, or if at a meeting the chairman is not present within five minutes after the time appointed for holding the same, those present may choose one of their number to be chairman of the meeting;
- (h) questions arising at a meeting of the directors or a committee of directors shall be decided by a majority of votes and in the case of an equality of votes the chairman shall have second or casting vote;
- (i) attendance and voting by proxy shall not be permitted at meetings of directors or committees of directors;
- (j) a resolution in writing, signed by the directors for the time being entitled to receive notice of a meeting of the directors, or of a committee of directors, is valid and effectual as if it had been passed at a meeting of the directors or a committee of directors duly convened and held.

Section 296—Qualification of Auditors of a Public Company (referred to in Explanatory Note 1.4)

- (1) A person shall not be qualified for appointment as auditor of a public company whether or not that person may have been appointed auditor of the company while it was a private company, unless that person is, under the Chartered Accountants Act, 1963 (Act 170) a member of the Institute of Chartered Accountants; and is not disqualified under subsection (2) of this section.
- (2) The following persons are disqualified for appointment as auditor of a public company, namely,
 - (a) an officer of the company, or of any associated company;
 - (b) a person who is a partner of or in the employment of an officer of the company, or of any associated company;
 - (c) an infant;
 - (d) any person found by a competent court to be a person of unsound mind;
 - (e) a body corporate, except that members of an incorporated partnership may be appointed in the manner provided by subsection (2) of section 134;
 - (f) a person in respect of whom an order shall have been made under section 186 while the order remains in force unless leave to act as auditor of the company concerned has been given by the Court in accordance with that section;
 - (g) an undischarged bankrupt, unless that bankrupt has been granted leave to act as auditor of the company concerned by the court by which that person was adjudged bankrupt;
 - (h) a person who is for the time being disqualified from acting as auditor of a company by instrument of the Registrar under subsection (3) of this section:

- (3) Paragraph (b) of subsection (2) shall not disqualify a person from being appointed as auditor by reason only of that person being a partner or in the employment of a person acting as secretary or registration officer of the company of any associated company.
- (4) The Registrar may, on cause being shown, by legislative instrument, disqualify a person from acting as auditor of a public company and may remove such disqualification.
- (5) A person aggrieved by a decision of the Registrar under subsection (4) has a right of appeal to the Court.
- (5) Any person not qualified for appointment as auditor who acts as auditor of a public company is liable to a fine not exceeding [seven hundred and fifty penalty units] and the company by whom that person is appointed and every officer who is in default is liable to a like fine.

Section 298—Rotation of Directors of a Public Company (referred to in Special Resolution Eight, Ten) (referred to in Explanatory Notes 1.5, 2.1 and 2.2)

Subject to sections 181 to 185 and section 300 and except as otherwise provided in the company's Regulations, the following rules shall apply to the retirement and appointment of directors of a public company;

- (a) at the first annual general meeting of the company, all the directors shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office;
- (b) the directors to retire in every year shall be those who have been longest in office since their last election, but, as between persons who became directors on the same day those to retire shall, unless they otherwise agree among themselves, be determined by lot;
- (c) any director appointed to the office of managing director shall not, while holding that office, be subject to retirement by rotation or be taken into account in determining the rotation of retirement of directors;
- (d) a retiring director shall be eligible for re-election;
- (e) the company, at the annual general meeting at which a director retires as aforesaid, may fill the vacated office by electing a person to that office, and in default the retiring director shall, if offering to stand for re-election, be deemed to have been re-elected unless at the meeting it is expressly resolved not to fill the vacated office or unless a resolution for the re-election of such director has been put to the meeting and lost;
- (f) no person, other than a director retiring at the meeting shall, unless recommended by the directors, be eligible for election to the office of director at any general meeting unless not less than three nor more than twenty-eight days before the date appointed for the meeting, a notice in writing signed by a member entitled to attend and vote at the meeting of the intention to propose such person for election, and also notice in writing signed by that person of his willingness to be elected has been left at the registered office of the company notice in writing signed by;
- (g) on any increase or decrease in the number of directors the company may by ordinary resolution determine in what rotation the increased or decreased number is to retire from office.

Section 299—Voting for Directors of a Public Company (referred to in Explanatory Note 1.5)

- (1) At a general meeting of a public company, other than a company limited by guarantee, a resolution for the appointment of two or more persons as directors of the company by a single resolution shall not be moved unless a resolution that it shall be so moved has first been agreed to by the meeting without any vote being given against it.
- (2) A resolution moved in contravention of subsection (1) is void, whether or not its being so moved was objected to at that time.
- (3) For the purposes of this section, a resolution approving appointments or nominating persons for appointment shall be treated as a resolution for appointment.
- (4) This section shall not apply where the company's Regulations provide for cumulative voting in accordance with section 300.

Section 181—Appointment of Directors (referred to in Explanatory Note 1.5)

- (1) A person shall not be appointed a director of a company unless that person has prior to the appointment, consented in writing to be appointed.
- (2) The first directors of a company shall be named in the company's Regulations.
- (3) Subject to this section and to sections 182 and 183, the appointment of directors shall be regulated by the company's Regulations and except as otherwise provided in the Regulations, section 272 shall regulate the appointment of directors of a private company and sections 298 and 299 the appointment of directors of a public company.
- (4) The Regulations of a company may provide for the appointment of a director or directors by a class of shareholders, debentureholders, creditors, employees or any other person.
- (5) Despite a provision in the company's Regulations, a casual vacancy in the number of directors may be filled by,
 - (a) the continuing directors or director although their number may have been reduced below that fixed as the necessary quorum of directors; or
 - (b) by an ordinary resolution of the company in general meeting:
- (6) In exercising their power to fill a vacancy under subsection (5) the directors shall observe the rules laid down in sections 203 and 204 and shall not appoint a person to be a director unless they have taken reasonable steps to satisfy themselves of that person's integrity and suitability to be a director of the company.
- (7) if the casual vacancy filled under subsection (5) is one which, under the terms of the company's Regulations, should be filled by an appointment by any class of shareholders, debentureholders, creditors, employees, or another person, the director appointed by the continuing directors or by an ordinary resolution of the company in general meeting, shall cease to hold office so soon as any other director is duly appointed in accordance with the Regulations.