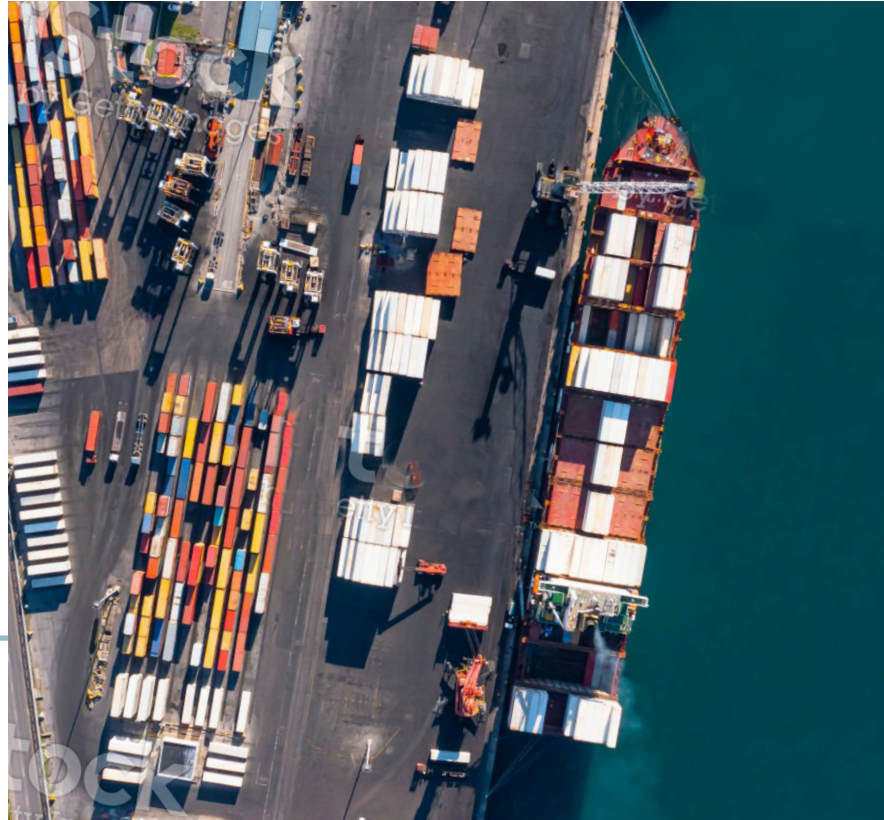


Africa Guide to Banking & Finance

Ghana



INTRODUCTION

Welcome to the First Edition of the Meritas Africa Guide to Banking & Finance.

This Guide, produced by the Africa Banking and Finance Group of Meritas, is a culmination of the combined efforts of all current African member law firms of Meritas. The Africa Banking & Finance Group brings together transactional and regulatory finance lawyers from across the continent. Given the international and cross-border nature of finance, this Group provides its members with the opportunity to get to know each other, share news and insights and work easily together. Members of the Finance Group advise on a wide range of issues.

This Guide provides a simple and high-level pathway to the banking and finance legal terrain in Africa. All the chapters deal with uniform issues which makes it easier to navigate the Guide and make comparisons between the different jurisdictions. The information provided includes the transactional and regulatory framework within the several African jurisdictions as well as various issues surrounding Acquisition Finance, Asset Finance, Bank Lending, Fintech, Real Estate Finance, Project Finance and Structured & Leveraged Finance.

With the ushering in of the African Continental Free Trade Area Agreement, we expect this Guide to be a useful tool in navigating the current banking and finance terrain in Africa as the laws progressively move towards harmonization. The member firms will track the developments and update this Guide on a regular basis.

Thank you to all the firms which contributed country chapters to this Guide. They all worked diligently with the common purpose of ensuring the publication of the Guide.

About Meritas

Meritas' global alliance of independent, market-leading law firms provides legal services to companies looking to effectively capture opportunities and solve issues anywhere in the world. Companies benefit from local knowledge, collective strength and new efficiencies when they work with Meritas law firms. The personal attention and care they experience is part of Meritas' industry-first commitment to the utmost in quality of service and putting client priorities above all else.

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Ntrakwah & Co. is a multi-service local law firm committed to delivering top-tier legal services to local businesses, government agencies and foreign corporations. Our areas of focus include corporate and commercial law, dispute resolution, property and construction law, IP law and banking and finance. With an office located centrally in the heart of Accra, we work extensively with a number of government institutions on developing high-profile regulatory frameworks.

Experienced and Dedicated Core Team

We have a team of creative and leading lawyers who have local and international experience in law and business. Our team members strive to stay up to date with innovations in business as well as local, regional, and global economic development which plays a vital part in formulating our advice given to our clients' businesses. With this we have earned a reputation for being trustworthy and ethical among law firms in Ghana.

Ntrakwah & Co. has been active in the west Africa region for more than three decades. Our affiliation with Legus and Meritas means that we have excellent links with international firms and can assist with most of our clients' key legal needs, irrespective of their size, location, industry, or legal matter. We are able to assist clients across all industries who are expanding into various parts of Africa. Particularly, we have developed a strong track record in the region, building strong networks and knowledge to help both local and international clients navigate challenges when transacting business in Ghana. We're able to anticipate pitfalls before they emerge, and no other firm can share the same insight and expertise. Coupled with this, our lawyers often work across borders to provide our clients with seamless service.

1. What are the main laws that govern banking and finance in Ghana?

- Anti-Money Laundering Act, 2020 (Act 1044)
- Anti-Money Laundering Regulations, 2008 (LI 1925)
- Anti-Terrorism Act, 2008 (Act 762)
- Anti-Terrorism Regulations, 2012 (L.I. 2181)
- Bank of Ghana Act, 2002 (Act 612) as amended
- Banks and Specialized Deposit-Taking Act, 2016 (Act 930)
- Borrowers and Lenders Act, 2020 (Act 1052)
- Central Securities Depository Act, 2007 (Act 733)
- Companies Act, 2019 (Act 992)
- Corporate Insolvency and Restructuring Act, 2020 (Act 1015)
- Data Protection Act, 2012 (Act 843)
- Development Finance Institutions Act, 2020 (Act 1032)
- Credit Reporting Act, 2007 (Act 726)
- Credit Reporting Regulations, 2020 (L.I. 2394)
- Foreign Exchange Act, 2006 (Act 723)
- Ghana Deposit Protection Act 2016 (Act 931) as amended by the Ghana Deposit Protection (Amendment) Act 2018 (Act 968)
- Ghana Revenue Authority Act, 2009 (Act 791) as amended
- High Court (Civil Procedure) Rules, 2004 (C. I. 47) as amended
- Income Tax Act, 2015 (Act 896) as amended
- Internal Audit Agency Act, 2003 (Act 658)
- Non-Bank Financial Institutions Act, 2008 (Act 774)
- Payment Systems and Services Act, 2019 (Act 987)
- Public Procurement Act, 2003 (Act 663)
- Revenue Administration Act, 2016 (Act 915)
- Value Added Tax Act, 2013 (Act 870)
- Venture Capital Trust Fund Act, 2004 (Act 680)

2. What are the capital requirements for financial institutions in Ghana?

Banks:

Banks are now required to hold a minimum paid-up capital of Four Hundred Million Ghana Cedis (GH¢400,000,000.00).

Rural/Community Banks and Microfinance Institutions:

Rural/Community Banks and Microfinance Institutions must hold a minimum paid-up capital of One Million Ghana Cedis (GH 1,000,000.00) and Two Million Ghana Cedis (GH 2,000,000.00) respectively.

Development Finance Institutions:

- i. Wholesale development finance institution: Minimum paid-up capital of Eight Hundred Million Ghana Cedis (GH¢800,000,000)
- ii. Retail development finance institution: Minimum paid-up capital of Six Hundred Million Ghana Cedis (GH¢600,000,000)
- iii. Guarantee development finance institution: Minimum paid-up capital of Three Hundred Million Ghana Cedis (GH¢300,000,000)
- iv. Combination of wholesale, retail and guarantee development finance institution: Minimum paid-up capital of One Billion, Two Hundred Million Ghana Cedis. (GH¢1,200,000, 000)
- v. Combination of wholesale and retail development finance institution: Minimum paid-up capital of One Billion Ghana Cedis (GH¢1,000,000,000)
- vi. Combination of wholesale and guarantee development finance institution: Minimum paid-up capital of One Billion Ghana Cedis (GH¢1,000,000,000)
- vii. Combination of retail and guarantee development finance institution: Minimum paid-up capital of Eight Hundred Million Ghana Cedis (GH¢800,000,000)

Payment Systems Services:

- i. Payment System Provider (PSP) Electronic Money Issuer: Twenty Million Ghana Cedis (GH 20,000,000.00)
- ii. PSP (Scheme): Eight Million (GH 8,000,000.00)
- iii. PSP (Enhanced License): Two Million Ghana Cedis (GH 2,000,000.00)
- iv. PSP (Medium License): Eight Hundred Thousand Ghana Cedis (GH 800,000.00)
- v. PSP (Standard License): No capital required

3. Who are the regulatory authorities for banks in Ghana?

The regulator for banks in Ghana is the Bank of Ghana.

4. Are there any recent proposals for reform? If so, what are the most important changes proposed and what is the likely timeframe for these to become effective?

One of the important proposed changes in Ghana's banking sector includes a migration from the Basel II Framework to Basel III Framework which is aimed at introducing new capital and liquidity standards to strengthen the regulation, supervision and risk management in the banking and finance sector. Currently there is no clear timeline for the implementation of the Basel III framework in Ghana.

5. What are the main laws that govern lending and security in Ghana?

- i. The Borrowers and Lenders Act, 2020 (Act 1052)
- ii. The Central Securities Depository Act, 2007 (Act 733)
- iii. The Banks and Specialised Deposit-Taking Act, 2016 (Act 930)
- iv. The Mortgages Act, 1972 (NRCD 96)
- v. Home Mortgage Finance Act, 2008 (Act 770)
- vi. Non-Bank Financial Institution Act, 2008 (Act 774)
- vii. Companies Act, 2019 (Act 992)
- viii. Corporate Insolvency and Restructuring Act, 2020 (Act 1015)
- ix. Lands Act, 2020 (Act 1036)

6. What types of banking and financial activities require a license/permit/approval in Ghana?

- i. Specialized deposit-taking institutions
- ii. Financial holding companies
- iii. Affiliates of banks, specialized deposit-taking institutions and financial holding companies
- iv. Non-Bank Financial Services (Money Transfer Services, Mortgage Finance Operations, On-Deposit-Taking Micro Finance Services, Credit Union Operations)
- v. Credit Bureaus
- vi. Payment Systems Providers

7. How do Ghanaian licensing requirements apply to cross-border business in Ghana?

To apply for a license for cross-border business in Ghana, the applicant must obtain a Class II license from the Bank of Ghana. The applicant must be of sufficient size, experience and financial health to support the operations of the proposed bank in Ghana.

To meet these criteria, the applicant would generally be required to have the following:

- i. A minimum of Five Billion USD (US\$5,000,000,000.00) in consolidated assets;
- ii. A proven track record in international banking;
- iii. A favourable financial performance over the last five years;
- iv. A controlling parent which is widely held in its jurisdiction; and
- v. Application for Class II Banking License.

8. What is the process of registering a banking institution in Ghana?

The licensing authority is the Bank of Ghana.¹ The institution must first be a body corporate formed under the laws of Ghana.² The banking institution must apply in writing to the Bank of Ghana indicating the objects of the business for the approval of Bank of Ghana.³ This has to be accompanied by the following:

- a. A certified true copy of the constitution or other relevant instrument relating to the proposed bank or specialized deposit-taking institution under which the person proposing to carry on deposit-taking business was established;
- b. The names, addresses, occupations, business and professional history, certified financial positions, and corporate affiliations of the significant shareholders and the respective values of the shares;
- c. Where the bank or specialized deposit-taking institution is a member of a corporate group:
 - (i) A complete organizational structure including a diagram of the group;
 - (ii) Direct and indirect affiliates and associates of the bank or specialized deposit-taking institution, and
 - (iii) The nature of the relationship to the group.

¹ Section 5 of the Banks and Specialised Deposit-Taking Act, 2016 (Act 930)

² Section 4 of the Banks and Specialised Deposit-Taking Act, 2016 (Act 930)

³ Section 7 (1) of the Banks and Specialised Deposit-Taking Act, 2016 (Act 930)

- d. The particulars of the proposed directors and key management personnel concerned with the management of the deposit-taking business, including:
 - (i) Their qualifications and experience;
 - (ii) Business and professional history for the preceding ten years or a longer period that the Bank of Ghana may determine;
 - (iii) Certified financial position;
 - (iv) Business interests; and
 - (v) The performance of the business concerns under their control or management.
- e. Feasibility report including a business plan and financial projections for the first five years and intended areas of specialization as well as Anti-Money Laundering policy and internal rules;
- f. Documentary evidence of the capital of the proposed bank or specialized deposit-taking institution, including the original sources of funds and particulars of the ultimate beneficial owners;
- g. In the case of a foreign applicant:
 - (i) An authenticated copy of the certificate of incorporation and the Company Regulations or other relevant instrument and by-laws or similar documents;
 - (ii) Shareholders' resolution; and
 - (iii) A written confirmation from the supervisory authority in the country of incorporation of the applicant or head office, if different, that the supervisory authority has no objection to the proposal of the applicant to carry on a deposit-taking business in the country and that the supervisory authority exercises global consolidated supervision over that bank or specialized deposit-taking institution.
- h. A statement on measures and structures that the applicant intends to adopt to ensure that business is conducted in accordance with sound corporate governance principles and in accordance with the Anti-Money Laundering and Anti-Terrorism laws of Ghana;
- i. A statutory declaration for each proposed director, key management personnel and significant shareholder of the proposed bank or specialized deposit-taking institution, disclosing, where applicable:
 - (i) A conviction for an offense by a court of competent jurisdiction;
 - (ii) A personal bankruptcy filing;
 - (iii) A disqualification from practising a profession; or

(iv) A past or present involvement in a managerial function of a body corporate or other undertaking that is subject to insolvency or liquidation proceedings.

j. The processing fee that the Bank of Ghana may by notice specify; and

k. Any other particulars that the Bank of Ghana may require.

Where a document which is not in the English language is submitted to the Bank of Ghana, that document will have to be accompanied with a certified translation in English language.⁴

It is worth noting that the Bank of Ghana may interview the promoter, directors and proposed senior management personnel in the course of an appraisal and may also inspect their books and records to satisfy itself about the representations made or information furnished by the applicant.⁵

9. Is the banking and finance industry open to foreign investors?

Yes. Ghana is one of the more open economies to foreign equity ownership in Sub-Saharan Africa. Most of its major sectors are fully open to foreign capital participation. All foreign investment projects must register with the Ghana Investment Promotion Centre (GIPC) as provided by the Ghana Investment Promotion Centre Act, 2013 (Act 865).

10. What are the classes of banks and other financial institutions found in Ghana?

- Banks with Class I license (universal banks)
- Banks with Class II license (offshore banking licence)
- Representative offices of foreign banks
- Rural and community banks
- Non-Bank financial institutions
- Microfinance institutions
- Savings and loans/Finance house licenses

⁴ Section 5 of the Banks and Specialised Deposit-Taking Act, 2016 (Act 930)

⁵ Section 4 of the Banks and Specialised Deposit-Taking Act, 2016 (Act 930)

11. What is Ghana's population and GDP, and how many banks operate in Ghana?

The Ghana Statistical Service Preliminary Report released on 22 September, 2021 indicates that Ghana's population (provisional) as at the 2021 census was 30.8 million.⁶ Ghana's Gross Domestic Product (GDP) is expected to trend around 64 billion United States Dollars in 2022.

The number of banks that operate in Ghana based on data found on the Bank of Ghana website is twenty-three (23).⁷

12. Is lending a regulated activity in Ghana and what are the licensing requirements for a lender?

Yes, lending is a regulated activity in Ghana.

Licensing requirements:

BANKS:

Refer to paragraph 8 above.

Microfinance/Money Lending Institutions

Every application for a license shall be made in writing to the Head, Other Financial Institutions Supervision Department Bank of Ghana, Accra for consideration and shall be accompanied by:

- a. A certified true copy of the Certificate of Incorporation and company's constitution or other instrument, relating to the proposed business, or by or under which any person proposing to carry on such business was established. The registered name of the company should include either 'Microfinance' or 'Money Lending' as the case may be or the type of licence being applied for.
- b. Full particulars of and detailed and clear definition of activities it proposes to carry out.
- c. Details of registered place of business, principal place of business accessible to the public and suitable for the services contemplated and a description of other places where it proposes to do business and the areas it proposes to serve.
- d. Names, addresses, occupations and corporate affiliations of persons who hold or would hold significant shareholdings directly or indirectly in the proposed venture and the respective values of such holdings or proposed holdings.

⁶ <https://statsghana.gov.gh/gssmain/storage/img/infobank/2021%20PHC%20Provisional%20Results%20Press%20Release.pdf>

⁷ <https://www.bog.gov.gh/supervision-regulation/registered-institutions/banks/>

- e. Duly completed Personality Note Form (PNF) by at least five (5) directors (two of whom should be independent directors), shareholders and key management staff of the said business, The majority shareholder should not be the board chairman or the Chief Executive Officer of the company.
- f. Tax Clearance Certificate of Directors, shareholders and key management personnel.
- g. Curriculum vitae of directors, shareholders and key management personnel.
- h. Financial data including financial statement and feasibility reports which should contain among others:
 - A business plan and financial projections (income statement, balance sheet and cashflow) for the first five (5) years of operations;
 - Details of assumptions upon which the financial projection has been made;
 - Objectives and aims of the proposed Microfinance Institution;
 - Justification for the establishment of the Microfinance Institution;
 - Organizational structure of the company setting out in detail the functions and responsibilities of the top management team.
- i. Other information that relates to the viability of the business:
- j. Information on capital and documentary evidence of sources of funds;
- k. Information on other matters that applicant considers relevant for the determination of the application;
- l. Such other additional information or particulars which the Bank of Ghana considers relevant or may require for the determination of the application.
- m. Evidence of payment of a non-refundable processing fee of GH¢500.00 or as determined by the Bank of Ghana; and
- n. Evidence of request for police clearance for shareholders, directors and key management staff.

Shareholding of deposit taking microfinance institutions is restricted to only Ghanaians. Shareholding in non-deposit taking microfinance institutions may be exclusively Ghanaian, exclusively foreign or jointly Ghanaian and foreign. Foreign capital should be registered at the Ghana Investment Promotion Centre.

Non-Bank Financial Institutions

An application for a licence to provide a service specified must be made in writing in the form determined by the Bank of Ghana for that purpose, and submitted to the Bank of Ghana for consideration.

The application must be accompanied with:

- a. Certified copies of its regulations or other instruments of incorporation of the applicant;
- b. Full particulars of and detailed and clear definition of activities it proposes to carry out;
- c. Details of registered place of business, a principal place of business accessible to the public and suitable for the services contemplated and a description of other places where it proposes to do business, and the areas it proposes to serve;
- d. Financial data which include financial statements and feasibility reports which contain among others a business plan and financial projections for the first five years of operations;
- e. Documentary evidence of sources of funds for the proposed business;
- f. Names, addresses, occupations and corporate affiliations of persons who hold or intend to hold significant shareholdings directly or indirectly, in the proposed business and the respective values of their shareholdings or proposed shareholdings;
- g. Particulars, including backgrounds and business interests, of directors and key management personnel concerned with the management of the business;
- h. Other information that relates to the viability of the business;
- i. Information on other matters that the applicant considers relevant to its application;
- j. Other additional information which the Bank considers relevant for the determination of the application; and
- k. A nonrefundable application fee specified by the Bank.

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

13. **Are there any restrictions or requirements for foreign currency loans?**

Yes, a customer who earns Ghana Cedis cannot apply for a Dollar denominated loan.

14. **Are there any restrictions on the interest rate that can be charged?**

The Bank of Ghana (BoG) sets the prime rate as the basis.

15. **Are there any restrictions on the purposes for which money may be lent?**

Yes. The Anti-Money Laundering Act, 2020 (Act 1044) specifically prohibits any form of transaction meant to promote the business of money laundering.

Also, the Anti-Terrorism Act, 2008 (Act 762) specifically prohibits any form of transaction that directly or indirectly funds terrorist activities in Ghana and outside Ghana.

16. **Are there any requirements foreign lenders must meet when advancing loans to domestic borrowers?**

No, but the loan documents have to be stamped.

17. **Are there any obligations domestic corporate borrowers must meet when entering into foreign loans?**

No.

18. **Are companies restricted in any way when remitting funds abroad to foreign lenders?**

Yes. All repayments must go through a bank and all supporting agreements must be provided.

19. **What forms of security are provided for in local law?**

The forms of security in Ghana include;

- Lien
- Pledge
- Mortgage
- Charges (floating and fixed)

- Promissory note
- Joint and several guarantee
- Partial credit guarantee
- Any other negotiable securities for money

20. **What asset types can be secured and what type of security can be applied to each?**

- Immovable property – Mortgage
- Movable property – Fixed or floating charge
- Stock-in-trade/receivables – Assignment/floating charge
- Shares – Charge
- Bank accounts – Charge/ lien
- Intellectual property – Assignment

21. **Are there any types of assets over which security cannot be granted or, if granted, is difficult to enforce?**

Unregistered securities (mortgages, assignments, charges) are difficult to enforce.

22. **What are the broad challenges faced by the banking and financial services sector in Ghana?**

- Failure of borrowers to repay loans;
- Prolonged litigation in the event that a court action is instituted when borrower defaults;
- Issues of the same property being used to secure multiple loans and the non-perfection of securities.

23. **What has been the impact of the Covid-19 pandemic on lending laws in Ghana? For example, has government promulgated laws to help lenders or borrowers?**

No new laws have been promulgated by the government.

24. **How did banks and other financial institutions adapt to the impact of Covid-19 in Ghana?**

In addition to expanding online services to customers during the Covid-19 pandemic, banks in Ghana also had to invest in their IT departments to ensure that their online banking systems could operate smoothly because of the increase in consumer online transactions and queries.

25. **What new innovations and technologies, if any, are being developed by the banking and financial services sector in Ghana?**

Over the past few years, the government together with banks and specialized deposit-taking institutions have been encouraging cashless transactions. This has led to a rise in the financial technology (Fintech) industry. Ghana's fintech industry has shifted from a primarily trading platform to a high-tech financial means of transacting business in Ghana. Now business in Ghana is transacted through digital technology with the advantage of having universal access and prompt services. This has boosted Ghana's desire to become cashless and digitalized.

