

BANKING AND FINANCE

THE LAW DIGEST

TOPIC: THE PROCESSES FOR APPLYING AND SECURING A
MICROFINANCE OPERATING LICENCE IN GHANA

Contributor

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INTRODUCTION

To obtain a License in Ghana for the operation of the business of microfinance (moneylending), one has to go through a three-pronged process.

The applicant, with the assistance of Legalstone Solicitors LLP, would have to ensure that the regulatory regime in 3 key government of Ghana agencies is adhered to. These are as follows:

1. Registrar General's Department of Ghana
2. Ghana Investment Promotion Centre
3. Bank of Ghana (BoG)

REGISTRATION WITH REGISTRAR GENERAL'S DEPARTMENT

To operate a Microfinance (Moneylending) business in Ghana, one of the conditions that the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930) provides, is that an entity must be a limited liability company. The Companies Act, 2019 (Act 992), governs the organization of companies in Ghana. Companies in Ghana may be either public or private (not more than 50 members or debenture holders) and unlimited, limited by shares or limited by guarantee.

Since the Act, that is Specialised Deposit-Taking Institutions Act, 2016 (Act 930), demands that the special purpose vehicle for the acquisition of a license shall be a private limited liability company, our focus shall be limited to such type of company.

Company Limited by Shares- an incorporated company with share capital that cannot offer its shares to the public. This is the most popular company structure in Ghana. Generally, a member's liability is limited to the amount unpaid, if any, on the shares they hold. The company's Board of directors manages its day-to-day activities.

To incorporate a private limited liability company limited by shares with the business of operating microfinance in Ghana, one must decide the following;

Decide who will act as the company's first directors. A company incorporated and registered in Ghana must have a minimum of two directors, both natural persons over 21 years, one of whom must be a permanent resident of Ghana.

The directors must also appoint the company secretary, who may be a natural person or a body corporate. As part of the new prescription by the companies act, among the persons qualified to be appointed a company secretary is a barrister or solicitor in good standing in the Republic of Ghana.

The directors are also mandated to appoint the first auditors of the company.

The company must choose a business name and must confirm whether the business name is available for use by the company.

The company must as well register with the Ghana Revenue Authority for the issuance of tax identification number (TIN)

The regulation of the company must be prepared. The regulation must be signed by one or more of the initial subscribers in the presence of an independent adult witness and must state:

1. The name of the company
2. The company's objects or authorized business
3. That the company can enter into a legally binding agreement
4. The name of the first directors of the company
5. That the powers of the directors are limited in accordance with the law
6. The number of shares in which the company is registered
7. The number of shares each subscriber will own on incorporation and the amount payable for the shares
8. A declaration that the liability of the members of the company is limited

If the Registrar is satisfied that the information contained in the application and the supporting documents are accurate, a certificate of incorporation will be issued.

Legalstone Solicitors would assist your organization to go through the registration process at the Registrar General's Department. Kindly note that there are fees and charges payable to the Registrar General's Department for administrative purposes.

REGISTRATION WITH THE GHANA INVESTMENT PROMOTION CENTRE (GIPC)

After the said certification from the Registrar Generals Department, we will apply for a certificate of compliance from the Ghana Investment Promotion Centre (GIPC). The Ghana Investment Promotion Centre Act, 2013 (Act 865), requires all entities with foreign participation to register with the centre. Registration with the centre guarantees some benefits to the foreign shareholder, including guarantees against expropriation, investment guarantees, transfer of capital, profits, and personal remittances. This Act, more importantly, sets the minimum capital requirement for the entity as well as the benefits of an automatic work quota that comes with it.

The law requires that, where all the equity of the company is wholly held by the foreign investor in a company incorporated to offer services, the investor must invest a minimum of not less than FIVE HUNDRED THOUSAND UNITED STATES DOLLARS (USD500,000.00). The minimum capital requirement for money lending business (which is the business of services) under the GIPC Act shall be US\$500,000.00.

However, where the foreign investor intends to engage in the business of services and the said foreign investor has a Ghanaian partner, the foreign investor is required to invest a foreign capital of less than TWO HUNDRED THOUSAND UNITED STATES DOLLARS (USD200,000.00) in cash, or capital good relevant to the investment or a combination of both by way of equity participation and the person who is a citizen of Ghana must hold not less than 10% of the equity.

The minimum capital requirement under the GIPC Act must be contrasted with that under the Bank of Ghana regulations. The Bank of Ghana demands companies under TIER 3 to have a minimum capital of not less than GH¢2,000,000 [Two million Ghana Cedis only]. To this extent, whether the yet to be incorporated business shall be arranged under a joint venture or not, the minimum capital shall be US\$500,000.00.

INCENTIVES AND BENEFITS UNDER THE GIPC ACT

The GIPC Act provides for automatic incentives and benefits as follows:

1. Customs Import Duty Exemptions (There are custom duties exemption for plant, machinery, equipment, and parts thereof)
2. Various Tax benefits (Subject to some conditions)
3. Investment Guarantees (Free Transferability of Capital, Profits and Dividends and immigrant quotas depending on the amount of paid-up capital of the enterprise)

CONDITIONS FOR THE APPLICATION OF THE LICENSE FROM THE BANK OF GHANA (BOG)

Restricting Eligibility to Licensed Corporate Bodies

1. No person other than a body corporate incorporated in Ghana shall be eligible to apply for a Licence to carry on the business of deposit-taking microfinance institutions.
2. No person shall carry on the business of microfinance unless the Bank of Ghana licenses it.

RESTRICTIONS ON SHAREHOLDING

1. Shareholding of deposit-taking microfinance institutions such as microfinance companies, Susu companies, deposit-taking, and profit-making Financial NGOs (FNGOs) (TIER 2 institutions) shall be restricted to only Ghanaians.
2. Shareholding in non-deposit taking microfinance institutions such as money lenders and non-deposit-taking FNGOs (TIER 3 institutions) may be exclusively Ghanaian, exclusively foreign or jointly Ghanaian and foreign. Foreign capital should be registered at the Ghana Investment Promotion Centre.
3. There shall be at least two (2) shareholders, with none of the shareholders holding not less than 10% of the total number of shares. The Bank of Ghana has the right to request for dilution of shareholding.

INTERVIEW

The Other Financial Institutions Supervision Department located at the Cedi House [Bank of Ghana Annex] may first interview the applicant. A licensing fee of GH¢1,000.00 [one thousand Ghana Cedis] or so determined by Bank of Ghana, would be paid if the application is approved for the issuance of the license.

APPLICATION FOR LICENCE

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 true certified copy of the Certificate of Incorporation and company's Regulations 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, Money Lending, or FNGO as the case may be or the type of license being applied for.
- b. full particulars of and detailed and precise definition of activities it proposes to carry out.
- c. details of the 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.
- e. Duly completed Personality Note Form (PNF) by at least five [5] directors (two (2) of whom should be independent directors), shareholders and key management staff of the said business, the majority

- shareholder should not be the board chairman and 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.
 - i. a business plan and financial projections (income statement, balance sheet, and cash flow) for the first five (5) years of operations.
 - j. Details of assumptions upon which the financial projection has been made.
 - k. Objectives and aims of the proposed Microfinance Institution.
 - l. Justification for the establishment of the Microfinance Institution
 - m. The organizational structure of the company setting out in detail the functions and responsibilities of the top management team.
 - n. Other information that relates to the viability of the business.
 - o. Information on capital and documentary evidence of sources of funds;
 - p. Information on other matters that applicant considers relevant for the determination of the application and
 - q. Such other additional information or particulars which the Bank of Ghana deems appropriate or may require for the determination of the application and
 - r. Evidence of payment of a non-refundable processing fee of GH¢500.00 or as determined by the Bank of Ghana.
 - s. Evidence of request for Police clearance for shareholders, directors, and key management staff.

PLEASE NOTE that submission of the above requirements does not constitute an APPROVAL.

MINIMUM PAID-UP CAPITAL

TIER 2 AND 3 COMPANIES

All Tier 2 and 3 entities (comprising microfinance companies and moneylending companies) excluding FNGOs shall require not less than GH¢2,000,000 [Two million Ghana Cedis only] as minimum paid capital.

All FNGOs shall require not less than GH¢300,000 [Three hundred thousand Ghana Cedis only] as minimum paid capital (owners' contribution).

NOTE: Not more than 25% of the initial paid-up capital shall be spent on property, plant, and equipment (capital expenditure). That is, at least 75% of the initial paid-up capital shall be in liquid cash resources to support operations.

APPROVAL IN PRINCIPLE

The Bank of Ghana may issue an 'approval-in-principle' for six months to the applicant on such terms and conditions as it may consider necessary and appropriate if it is satisfied that:

- [a] the applicant would carry on the business with integrity, prudence, and the required professional competence; and
- [b] the applicant has the capacity to raise the initial paid-up capital required to hold a license.

NOTE: Approval in Principle DOES NOT CONSTITUTE a final license, as such applicants CANNOT commence operations.

PRE-OPERATING CONDITIONS

The Central Bank may issue the final approval and license to the applicant after satisfying itself that the following pre-licensing conditions have been met;

1. Minimum paid-up capital – the company has raised the minimum paid-up capital
2. Premises: The company
 - a. has provided evidence of title deeds/lease agreements
 - b. has approvals by relevant authorities
 - c. has adequate business premises, staff operating area, ventilation, lighting, etc.
 - d. Display of name of the company as contained in the certificate of incorporation and logo where appropriate
 - e. Has demonstrated security of the premises, including the adequacy of alarm systems, fire extinguishers, vaults or safes, etc.
 - f. Has in place up to date insurance covers – fire, burglary, fidelity guarantee, cash, etc.
 - g. Has in place up to date serviced fire extinguishers supported by a fire certificate.
 - h. Possesses operational plans and policies approved by the Board.
 - i. Has accounting and operating manuals, appropriate management information systems (computers, necessary software), internal controls and training manuals, etc.
 - j. Has in place adequately trained and sufficiently experienced staff as well as competent key personnel;
 - k. Has submitted its first-year pre-operating financial statement of affairs and budget.
 - l. The minimum paid-up capital/shareholders' funds of the relevant category being applied for is acceptable, and the source is verifiable and found to be satisfactory to the Bank of Ghana.
 - m. Has met any other conditions imposed by the Bank of Ghana

ROLE OF LEGALSTONE SOLICITORS LLP

The law offices of Legalstone shall ensure adequate compliance with the laws of the Republic of Ghana in the acquisition of the license for Microfinance business in Ghana.

NOTES ON CONTRIBUTOR



Mr David Yaw Danquah is the founder and Managing Partner of Legalstone Solicitors LLP, a boutique law firm in Ghana with a concentration on Corporate and Commercial, Mining and Infrastructure, Debt Recovery and Restructuring, Real Estate and Construction Law, and Commercial Arbitration.

He heads the firm's practice areas of focusing are Corporate and Commercial, Mining and Infrastructure, Debt Recovery and Restructuring, and Commercial Arbitration.

David has advised on numerous investment and mining-related transactions. He also has assisted countless international entities in establishing their operations in Ghana, and through his firms, offers support services to those entities. He has an impeccable record of providing technical savvy and exceptional client services.

David is a graduate of Kwame Nkrumah University of Science and Technology (KNUST), Kumasi, where he received his Bachelor's Degree in Law (LL. B) and the Ghana School of Law, where he studied and received a Post Graduate Qualifying Certificate in Law (PQCL). He holds a Certificate in Negotiation Mastery from Harvard University. Presently, he is pursuing an LL.M Degree in International Dispute Resolution at the prestigious Queen Mary University of London, United Kingdom.

David is a member of the Ghana Bar Association, Association of International Petroleum Negotiators (AIPN) and Institute of Energy Law (IEL) based in Houston, U.S.

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