



**GHANA BAR ASSOCIATION ANNUAL GENERAL CONFERENCE
CONTINUING LEGAL EDUCATION SESSION ON GHANA'S BANKING
CRISIS**

"BANKING CRISIS – THE ROLE OF THE REGULATOR"

**SPEECH DELIVERED BY
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Honourable President of the Ghana Bar Association

Colleague members of the Bar

Distinguished Ladies and Gentlemen

1. Good afternoon! I am indeed honoured to be given this opportunity to dialogue with my colleague members of the Bar on recent developments in our banking sector. I deem it a unique privilege to be able to help with the nation-building effort at this time of our history, and I recognise the role that the Bar continues to play in that regard. The recent developments in our financial sector are closely related to the rule of law, which those of us gathered here today are devoted to promoting. My remarks will focus on the perspective of the Bank of Ghana as regulator.
2. Colleagues, as you know, the 1992 Constitution (and indeed all Republican Constitutions before it) recognizes the Bank of Ghana as the nation's Central Bank. Under the Constitution, the Bank of Ghana is required to achieve the two broad objectives of (i) promoting and maintaining the stability of the Ghanaian currency in the interest of the economic progress of Ghana; and (ii) promoting economic development and the efficient utilization of the resources of Ghana through effective and efficient operation of a banking and credit system in Ghana. The Bank of Ghana is mandated to operate as an autonomous body, independent of instructions from the government or any other authority.
3. The Bank of Ghana Act of 2002 (Act 612) which repealed the earlier Bank of Ghana Law of 1992 (P.N.D.C. Law 291), reiterates the Bank of Ghana's primary objective of maintaining stability in the general level of prices (a price stability mandate), as well as the objective of promoting the economic growth and efficient operation of banking and credit systems in the country.
4. In August 2016, the Bank of Ghana Act was amended by Act 918 to, among other things, explicitly include a financial stability objective - specifically, the promotion and maintenance of financial stability in the country.

5. In furtherance of its financial stability objective, the Bank of Ghana has a number of statutory duties including, regulating and supervising banks and specialized deposit-taking institutions, acting as lender of last resort to regulated institutions under certain conditions, and resolving insolvent institutions, among others. The Bank of Ghana carries out these duties through licensing, off-site and on-site micro prudential supervision of licensed institutions to promote their safety and soundness, and through macro-prudential assessments of system-wide risks and their impacts on licensed institutions and vice versa.

Ghana's Banking Sector and Legacy problems

6. Deposit-taking financial institutions (banks, savings and loans companies, finance houses, microfinance institutions, and others) take deposits from the public by offering a variety of products such as savings accounts, current accounts, and fixed deposit accounts. These institutions make money primarily by using deposits mobilized from the public (peoples' money) to lend to individuals, businesses, governments, and others who need money to meet important economic needs. To ensure that depositors continue to have access to their deposits and other funds in their bank accounts, deposit-taking institutions have a major responsibility to ensure that they manage these funds prudently and engage in practices and behaviour that keep them safe and sound.
7. Banks currently hold over 80% of the total assets of Ghana's financial system. It is therefore incumbent on them to understand their critical role and the risks they introduce into the financial system and the economy. In their daily business practices, these institutions must manage their risks prudently.
8. Underlying the legacy problems in the banking sector which we have recently witnessed, were years of poor corporate governance, poor risk management practices, related party transactions that were not above board, regulatory non-compliance, and poor supervision, leading to a significant build-up of vulnerabilities in the sector.
9. **In banking, the chickens always come home to roost.** Poor governance and management practices result inevitably in losses which negatively affect liquidity

and/or solvency. Problems may be hidden for a while, but the truth will eventually become evident, leading eventually to collapse if remedial actions are not promptly taken.

10. In the past year, the Bank of Ghana has taken a critical look at the banking sector. Persistent liquidity challenges that were being experienced by some banks raised red flags that made it imperative for us to take a deeper dive in examining banks, in line with our renewed emphasis on the risk-based supervisory approach.

11. Our deep dives uncovered shocking realities. Among other things, a number of banks had been dealt fatal blows by some of their own shareholders, some directors, and sometimes senior managers through practices that jeopardized the interests of these banks as legal persons in their own right, and those of depositors, creditors, employees, and other stakeholders. For example:

- Shareholders, and related and connected parties had taken out of some banks large amounts of money which were neither granted through the normal credit delivery process nor reported as part of the bank's loan portfolio.
- Significant amounts had been given out to shareholders, and related and connected parties in the form of loans and advances without due process and in breach of relevant provisions of the law. In many cases, such loans and advances were not properly documented, attracted no interest charges, were not secured, and were not being serviced by the beneficiaries.
- What is more, accounting entries were passed to conceal the true state of affairs at some of these banks, to circumvent single obligor limits, conceal related party exposure limits, and overstate their capital position.
- Reports submitted to the Bank of Ghana monthly were sometimes based on false data, distorting the true state of affairs by large proportions.

12. As you know, the Bank of Ghana began to take steps in August last year to sanitize the banking sector. In all, seven banks have lost their licenses to date. Four of the seven banks were identified during the Asset Quality Review commissioned by the Bank of

Ghana in 2015 and updated in 2016 to be significantly undercapitalized, and thereafter became insolvent. Three of the defunct banks obtained their licenses by false pretences through the use of suspicious and non-existent capital, which rendered them significantly undercapitalized and/or insolvent.

13. Colleagues, these revelations were difficult for us at the Bank of Ghana, for a number of reasons. First of all, it was heartbreaking to see the integrity of our banking system being so consciously undermined. The misapplied energy could have been put to better use in building strong banks that could have competed with their peers around the world. Secondly, it was unfortunate that a culture of regulatory forbearance at the Bank of Ghana in the preceding years had encouraged such atrocious practices. Thirdly, the decision to close the seven banks was difficult for us because we are Ghanaians too, and are part of the wider community that the individuals who owned, governed, or managed these banks operated in. I can assure you that closing a bank is not the kind of decision one takes, unless it is absolutely necessary in the circumstances.
14. The period leading up to these regulatory actions caused us many sleepless nights, as we pondered the very complex situation we had on our hands. We had hoped that shareholders, directors, and senior managers would find a way to address the severe problems that plagued their banks. But alas, we waited in vain, and there comes a time when one must in good conscience take such an action, in the greater interest of the entire public.

The Clean-up Exercise: A Delicate Balancing Act

15. Colleagues, in arriving at our regulatory decisions, we are called upon to balance a number of objectives as well as interests.
16. To be clear, failed banks should not be allowed to remain in the financial system. Such banks become serious sources of risk for the entire financial system and the economy as a whole; a silent canker that will soon bring the entire financial system and the economy to its knees. We have witnessed around the world how the phenomenon of banks being "Too Big to Fail" led to so-called "zombie" banks that guzzled significant amounts of taxpayer money while being kept afloat for fear that their exit from the

market would lead to severe socio-economic challenges. We have learned that “zombie” banks are no good to anyone, and that in time they cost the taxpayer dearly.

17. **Colleagues, no one wins when a bank fails**, and there are usually no pretty outcomes. Depositors could lose their savings (including pensions and investment funds held by these banks), and creditors (including other financial institutions) of the bank could lose the funds they have lent to the bank. Jobs are lost, and the economic future of employees (and their dependents) suddenly becomes uncertain. Shareholders’ equity is long eroded as a result of insolvency. Suppliers and other counterparties are impacted, as their sources of revenue dwindle, and affiliates suffer economic and reputational damage. The potential effects do not stop there. Other banks could suffer runs by their depositors, as a general sense of mistrust in the banking sector builds up.

18. As the regulatory authority, we are always mindful of these potential fallouts when we use our resolution powers. We therefore strive to implement them in a manner that mitigates the potential socio-economic impacts of the closure of banks. In taking these actions, we must balance the interests and rights of individual shareholders, creditors, and employees, **with the public interest objective of promoting and maintaining financial stability**.

19. Learned friends, the Banks and Specialised Deposit-Taking Institutions Act of 2016 (Act 930) introduced a special resolution regime for banks, which recognizes that bank failure must be resolved differently from ordinary corporate insolvency proceedings. All over the world, a new international standard has emerged following the global financial crisis, which empowers banking regulatory authorities to take administrative steps to put a failing bank under public control, and ensure its orderly exit from the market place, to protect deposits and promote the stability of the entire financial system.

20. Underlying the resolution powers granted to the Bank of Ghana under Act 930 is the recognition that the public interest prevails over other considerations, and that when shareholders have failed to take remedial action within a reasonable time to address risks their banks pose to depositors and the financial system, their banks no longer deserve the privilege to hold a banking licence. At the point of insolvency, ladies and

gentlemen, the bank is holding deposits of the public as well as other liabilities, for which it has insufficient assets to repay, thereby exposing these claimants as well as the entire financial system to significant risks.

21. The receivership process that follows after licence revocation, helps to ensure that the interests of depositors are protected, without disregard for the rights of creditors, employees, the State, and shareholders. The creditor hierarchy established under section 135 of Act 930, sets out the order in which claims of various stakeholders must be paid, to the extent that assets are realized from the assets in the receivership. This order of priorities reflects a carefully-crafted legal mechanism for balancing the interests of stakeholders in a manner that promotes trust and confidence in the financial system while mitigating potential moral hazard.
22. The use of the "Purchase and Assumption" or "P & A" tool provided under Act 930 to facilitate the transfer of deposits to an acquiring bank, is designed to ensure that deposits, which are the most systemically-important claims on a bank, are protected first when a bank fails, and that depositors continue to have access to critical banking services for their economic transactions. In the case of the two banks that were closed last year, GCB acted as the acquiring bank under the P & A transaction approved by the Bank of Ghana. For the five banks closed recently, the "bridge bank" tool was deployed pursuant to section 127 (11) of Act 930, to enable the Government to establish a limited liability company called Consolidated Bank Ghana Limited, which was then licensed by the Bank of Ghana to acquire and operate with the deposit liabilities of each of the failed banks. The law recognizes that sometimes finding an existing bank to acquire huge deposits may be a challenge, and that a new one may have to be set up quickly in order to help achieve the public policy objective of financial stability.
23. In the case of all seven banks, their deposit liabilities as transferred to the acquiring banks had to be matched by assets to balance the books of the acquiring banks. Unfortunately, these banks had mostly bad assets, and very few assets that could be transferred to the acquiring banks. That meant that while GCB and Consolidated Bank had acquired deposit liabilities, there was no corresponding value of assets from the defunct banks to allow them to pay out depositors who needed their money. In both cases, the Government of Ghana was called upon to provide funding to the acquiring

banks to enable them to make good on Government's promise that "all deposits were safe".

24. These policy interventions were necessary to help mitigate the socio-economic impacts of the failure of the banks. It is important that the costs of these interventions, borne by taxpayers, are recovered to the extent possible, through recoveries from debtors, shareholders, and related and connected parties who took money from the defunct banks. **Indeed, justice demands this.**

25. As we have said many times recently, the Bank of Ghana will not shield anyone found complicit in the failure of these banks. That commitment still holds. We expect the receivers of the failed banks to continue their recovery efforts relentlessly. We have also handed over dossiers on all seven banks to the Economic and Organised Crimes Office (EOCO) for investigations to continue and possible prosecutions initiated by relevant State agencies. Our own internal investigations into the conduct of Bank of Ghana officials have begun with the establishment of the Office of Ethics and Internal Investigations. Any officials (current and former) found culpable will neither be spared nor shielded by Management.

Moving Forward – Rebuilding Trust and Confidence for a Resilient Banking Sector

26. The Bank of Ghana remains committed to restoring trust and confidence in the banking system, and to promoting the stability and integrity of the sector. This is critical for Ghana's economic future.

27. To this end, we have embarked on a number of regulatory reforms to strengthen the banking industry. I will mention a few of such reforms here:

- a. As you may know, banks are required to increase their minimum capital to GHC 400 million by 31st December of this year. This will help ensure that banks are better capitalized and positioned to support the much-needed economic transformation Ghana needs.
- b. We are strengthening our regulatory framework, through a number of Directives meant to fully implement the provisions of the Act 930. So far, we

have issued a Capital Requirement Directive (CRD) which makes implementation of the Basel II/III capital regime (pillar 1) mandatory for banks as of 1st January 2019. We have issued a Directive on Corporate Governance as of March 2018, whose transitional provisions are still under discussion with the industry. We also issued a Directive on Mergers and Acquisitions in June 2018 after extensive consultation with the industry. We have recently issued exposure drafts of Directives on “Fit and Proper Person” assessments, voluntary liquidation, cyber and information security, and others. We are working on issuing Directives on Risk Management, Financial Holding Companies, and others.

- c. We are strengthening our regulatory and supervisory capacity through improved systems, processes, accountability, and training, to enable us to better identify violations and early warning signs, enforce the law, and ensure that banks take prompt corrective action to address emerging risks. We are also strengthening our crisis management framework to help us contain, manage, and resolve crises promptly.
- d. We are moving ahead with implementation of the deposit protection scheme established under the Ghana Deposit Protection Act, 2016 (Act 931) as amended, to provide a safety net for vulnerable depositors in the event of a bank failure.

Conclusion

28. Learned friends, it is important to stress that not all banks were wayward, and not everyone who was associated with the failed banks was complicit. Unfortunately, a few bad nuts created bad press for the industry as a whole. Thankfully, a good number of banks remain healthy and robust, and have met or are poised to meet the new minimum capital requirement of GHC 400 million by 31st December 2018. There are many success stories in the industry that continue to encourage us to remain resolved to promote a first-class banking sector in Ghana.

29. The turmoil that was created by the seven banks that failed, was reflective of a creeping culture of disrespect for the rule of law, ethics, and systems. To be fair, banks, and indeed businesses in general, fail for all manner of reasons. The bank failures we have

witnessed in Ghana in the recent past were, however, not caused by idiosyncratic forces external to these banks and neither were they caused by *force majeure*. Several other banks operated in the same economic environment, but not all banks failed.

30. **While some have called it a banking crisis, I choose to call it a moral crisis.** A crisis characterized by a breakdown in values, unethical behaviour, disrespect for the sweat and hard work of others who toiled to put their savings in banks, disrespect for employees who toiled day and night to meet targets set for them, a culture of borrowers not paying their debts, a culture of turning the other eye when the wrong things were being done because we are either too nice, too afraid, or stand to benefit from the wrong doing, and a culture of building personal empires at the expense of others. These are the real issues that were at play.
31. The resulting costs to the nation are staggering. We must, as a nation, resolve that never again will we allow this to happen. We must call out bad behavior regardless of who is involved and be united around a set of values and standards to which we will hold banks and everyone else. We must resolve that we will put our tax cedis to better uses than to mop up the mess that others leave behind.
32. As a profession, we must stand firmly behind the principles that we swore to uphold when we were privileged to be called to the Bar. We can do this by helping banks understand the legal and regulatory environment in which they operate and the consequences of non-compliance, by helping shareholders, directors, and employees understand their respective roles in good corporate governance, by encouraging borrowers to pay their debts and not to employ schemes to frustrate banks, and by helping the courts develop the jurisprudence that would promote economic governance at this critical juncture of our nation's history. Our common good as a People depends on all of these different efforts.
33. I am hopeful that with the help of all stakeholders, what we have witnessed in recent times in our banking sector will not be repeated, and that we will all chart a path forward that promotes a stable and resilient banking sector for generations to come.
34. God bless Ghana, God bless the Ghana Bar, and God bless us all.