

**Borrowers and Lenders Act, 2008
(Act 773)**

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THE SEVEN HUNDRED SEVENTY-THIRD
ACT

ENTITLED

BORROWERS AND LENDERS ACT, 2008

An Act to provide the legal framework for credit, to improve standards of disclosure of information by borrowers and lenders, to prohibit certain credit practices, to promote a consistent enforcement framework related to credit, and to provide for related matters.

DATE OF ASSENT: 23rd December 2008.

ENACTED by the President and Parliament:

Preliminary matters

Application

1. (1) This Act applies to

(a) a credit agreement between parties who deal at arm's length except

(i) a credit agreement covering an amount of less than one hundred Ghana cedis (GH¢100) or an amount determined by the Bank of Ghana;

(ii) any other credit agreement exempted by the Bank of Ghana by notice under this Act.

(b) a credit guarantee where the guarantee is only in respect of a credit facility or credit transaction covered by this Act;

(2) This Act applies to a credit agreement or proposed credit agreement whether the lender resides or has its principal office within or outside the country, or is

(a) an institution of state,

(b) an entity controlled by an institution of state, or

(c) an entity created by an enactment.

(3) Where this Act applies to a credit agreement

(a) it continues to apply to that agreement even if a party to that agreement ceases to reside or have its principal office within the country; and

(b) it applies in relation to every transaction, act or omission under that agreement, whether or not that transaction, act or omission occurs within or outside the country.

(4) For purposes of this Act parties are not dealing at arm's length in the case of

(a) a shareholder loan or other credit agreement between a corporate body as borrower and a person who has a significant shareholding in that corporate body, as lender;

(b) a loan to a shareholder, or other credit agreement between a corporate body, as lender, and a person who has a controlling interest in that corporate body, as borrower;

(c) a credit agreement between persons who are in a familial relationship;
or

(d) any other arrangement that is of a type that has been held in law to be between parties who are not dealing at arm's length.

Meaning of credit agreement

2. For the purpose of this Act a credit agreement is an agreement in the nature of a credit facility, a credit transaction, a credit guarantee or any combination of these which the lender

(a) resides or has its principal office within or outside the country;

(b) an institution of state;

(c) an entity controlled by an institution of state; or

(d) is an entity created by an enactment.

Meaning of credit facility

3. An agreement is a credit facility if in that agreement the lender undertakes

(a) to lend stipulated amounts within a specified period or at specified intervals agreed on with the borrower

(i) to the borrower,

- (ii) on behalf of the borrower, or
 - (iii) at the direction of the borrower; and
- (b) to either
- (i) defer the borrower's obligation to repay the stipulated amount in paragraph (a) to the lender,
 - (ii) bill the borrower periodically for the amount stipulated in paragraph (a) whether or not a charge, fee or interest is payable to the lender in respect of the arrangements.

Meaning of credit transaction

- 4.** An agreement is a credit transaction if it is
- (a) a pawn transaction;
 - (b) an installment agreement;
 - (c) a mortgage or secured loan; or
 - (d) a finance or operating lease
- and it is not a credit facility or credit guarantee

Meaning of credit guarantee

- 5.** An agreement is a credit guarantee if in that agreement a third party undertakes or promises to satisfy on demand an obligation of a borrower in a credit facility or credit transaction to which this Act applies.

Supervisory and enforcement role of Bank of Ghana

Functions of the Bank of Ghana

- 6.** (1) In furtherance of this Act, the Bank of Ghana shall
- (a) promote and support the development of a fair, transparent, competitive, and accessible credit market;
 - (b) receive complaints in writing about alleged contraventions of this Act;
 - (c) monitor the credit market to detect and prevent conduct prohibited by

this Act;

(d) institute proceedings in case of contravention of this Act;

(e) conduct investigation to ensure compliance with this Act;

(f) issue and enforce compliance orders;

(g) promote public awareness of credit matters, through

(i) public education, the design and dissemination of information to the public; or

(ii) the provision of guidance to the credit market and industry;

(iii) adoption of other measures to develop public awareness of the provisions of this Act;

(h) advise the Minister on matters of national policy related to credit and on the determination of standards as regards protection of the rights of borrowers and lenders in terms of this Act; and

(i) report to the Minister annually on the volume and cost of different types of credit products, market practices relating to those products, and their implications for borrower choice and competition in the credit market.

(2) In furtherance of subsection (1) the Bank may

(a) have regard to international developments in the field of credit and financing;

or

(b) consult a person, organisation or institution about a matter.

Rules by Notices

7. The Bank may by Notice make rules for the effective implementation of this Act.

Investigation

8. Where the Bank has reason to suspect that a person has committed an offence under this Act or has been found guilty of fraud or dishonesty in relation to any credit agreement, the Bank may conduct investigations as it considers necessary in pursuance

of this Act.

Examination by Bank of Ghana

9. (1) The Bank may examine the books, accounts, documents and transactions of a lender.

(2) The Bank may appoint a person to perform the function in subsection (1) on terms and conditions determined by the Bank.

(3) A person appointed by the Bank may make copies or take possession of records of a lender.

(4) A lender, a borrower, or other person shall give the Bank access to and shall produce books, accounts, documents and information required to conduct the inspection.

(5) A person who fails, without reasonable excuse, to furnish the Bank with the information required commits an offence and is liable on summary conviction to a fine of not more than two thousand penalty units or to a term of imprisonment of not more than four years or to both.

(6) A person shall not disclose information obtained from the books produced under this section without the previous consent in writing of the person who has custody

or control of the books, except to the Bank of Ghana and its officers and employees, unless the publication or disclosure is required for the purposes of criminal proceedings or other action under this Act.

Order for search of premises

10. Where the Bank has reasonable grounds to suspect that

(a) an action prohibited by this Act has taken place, is taking place, or is likely to take place on or in the premises;

(b) an article connected with an investigation into the prohibited conduct is in the possession of, or under the control of, a person who is on or in the premises; or

(c) books, the production of which have been requested by the Bank and have not been produced in compliance with the direction are in the possession or under the control of a person who is on or in the premises;

the Bank may apply to court for the issue of a warrant authorising the Bank or a person named in the warrant to enter and search the premises.

(2) A person authorised to enter and search premises may

(a) search the premises;

(b) search any person on the premises if there are reasonable grounds to believe that the person has personal possession of an article or document that has a bearing on the investigation;

(c) examine an article or document that is on or in the premises and has a bearing on the investigation;

(d) request information about an article or document from the owner of, or person in control of the premises or from a person who has control of the article or document, or from any other person who may have the information;

(e) take extracts from, or make copies of, any book or document that is on or in the premises and has a bearing on the investigation;

(f) use any computer system on the premises, or require assistance of person on the premises to use that computer system, to

(i) access any data contained in or available to that computer system;

(ii) reproduce any record from that data;

(iii) seize an output from that computer for examination and copying; and

(iv) attach, and if necessary, remove from the premises for examination and safekeeping, any item that has a bearing on the investigation.

(3) The powers conferred under subsection (1) are in addition to, and not in derogation of, any other powers conferred by the Criminal Offences Act, 1960 (Act 29) or a law related to search of premises.

(4) In this section "premises" includes structure, building, place, aircraft, vehicle and vessel.

Power of Court to make certain orders

11. (1) Where on the application of a person alleging infringement under this Act, it appears to a court that a person

(a) has committed an offence under this Act,

(b) has contravened the conditions or restrictions of a licence or a code of conduct issued by or with the permission of the Bank, or

(c) is about to do an act that, if done, would be an offence or contravention of this Act,

the Court may, without limitation to any other orders it may make, make an order to secure compliance with any other order under this section, and direct a person to do or refrain from doing a specified act.

(2) A person who, without reasonable excuse, contravenes or fails to comply with an order under subsection (1) commits an offence and is liable on summary conviction to a fine of not more than five thousand penalty units or to a term of imprisonment of not more than ten years or to both.

Administrative fines

12. The Bank may impose an administrative fine of not more than five thousand penalty units and in the case of a continued breach an additional fine of not more than fifty penalty units for each day the breach continues.

Borrower rights

Right to apply for credit

13. (1) A person who has a legal capacity to enter into a contract may apply to a lender for credit.

(2) A lender may refuse to enter into a credit agreement with a prospective borrower on reasonable commercial grounds consistent with the lender's customary

risk management and underwriting practices.

(3) This Act does not establish a right of a person to require a lender to enter into a credit agreement with that person.

Protection against discrimination in respect of credit

14. (1) A lender shall not discriminate against a person on the grounds of race, gender, ethnicity, political affiliation, or religion to

- (a) assess the ability of the person to meet the obligations of a proposed credit agreement;
- (b) decide whether to refuse an application to enter into a credit agreement, or to offer or enter into a credit agreement;
- (c) determine an aspect of the cost of a credit agreement to the borrower;
- (d) propose or agree on the terms and conditions of a credit agreement;
- (e) assess or require compliance by the person with the terms of a credit agreement;
- (f) exercise any right of the lender under a credit agreement, this Act or any legislation relating to credit; or
- (g) determine whether to continue, enforce, seek judgment as regard a credit agreement or terminate a credit agreement.

(2) A person aggrieved by a decision of a lender may make a complaint to the Bank for redress.

Delivery of documents

15. A lender shall deliver a document required to be delivered to a borrower

- (a) in person;
- (b) by ordinary mail;
- (c) by facsimile;
- (d) by electronic-mail;
- (e) by printable web-page; or
- (f) any other means agreed between the lender and the borrower.

Protection of borrower credit rights

16. (1) A lender shall not in response to a borrower's exercise of a right under this Act

- (a) penalise the borrower;
- (b) alter, or propose to alter the terms or conditions of a credit agreement with the borrower to the detriment of the borrower; or
- (c) take an action to accelerate, enforce, suspend or terminate a credit agreement with the borrower.

(2) Where a credit agreement or the provision of a credit agreement is

- (a) declared unlawful, or
- (b) severed from the agreement,

the lender in that agreement shall not, in response to that decision

- (i) alter the terms or conditions of other credit agreement with a party to the impugned agreement, except to the extent necessary to correct a similarly unlawful provision; or
- (ii) take an action to accelerate, enforce, suspend or terminate another credit agreement with another party to the impugned agreement.

Confidentiality, personal information and borrower credit records

17. A lender or a person who acts on behalf of a lender shall not disclose information obtained from a borrower unless the information is required under the Credit Reporting Act, 2007 (Act 726) under any other law or by a court.

Disclosure of information

Pre-agreement disclosure

18. (1) A lender shall not conclude a credit agreement with a prospective borrower unless the lender provides the prospective borrower with a pre-agreement statement

and quotation in the form specified in the Schedule.

(2) A pre-agreement statement shall specify

- (a) the principal amount;
- (b) the proposed disbursement schedule of the principal debt;
- (c) the interest rate;
- (d) other credit costs;
- (e) the total amount involved in the proposed agreement,
- (f) the proposed repayment schedule; and
- (g) the basis of any cost that may be assessed if the borrower breaches the contract.

(3) A lender who contravenes this section is liable to an administrative sanction imposed by the Bank.

(4) In furtherance of subsection (3), a borrower may sue a lender for damages for loss suffered as a result of the contravention.

Marketing information

19. (1) Any written solicitation to induce a person to apply for or obtain credit shall include

- (a) the name and business address of the lender;
- (b) the nature of the proposed credit agreement;
- (c) the lender's current annual interest rate and other costs of credit;
- (d) whether deposit or security is required;
- (e) whether residual payment will be required;
- (f) whether other restrictions apply; and
- (g) any other information determined by the Bank.

(2) A person who makes an oral solicitation to induce a person to apply for or obtain credit shall provide a written statement which contains the information set out in subsection (1).

Repayment and recovery of debt

Borrower's or guarantor's obligations

20. (1) A borrower or guarantor may settle the credit amount at any time, subject to notice requirements as the conditions provided for in a credit agreement.

(2) A credit agreement may provide for the terms and conditions of any prepayment and the order in which advance payments are to be applied;

(3) Unless otherwise agreed by the parties, the amount required to settle a debt agreement is the total of

(a) the principal amount;

(b) the accrued interest charges;

(c) a prepayment charge, if any, agreed between the borrower and the lender; and

(d) the other fees and charges payable by the borrower to the lender up to the date for settlement.

(4) Subject to notice requirements provided in a credit agreement, a lender shall accept any payment under a credit agreement when it is tendered, even if that is before the date on which the payment is due.

(5) A lender shall credit each payment made under a credit agreement to the borrower as of the date of receipt of the payment.

Collateral registry and registration of charges

Collateral Registry

21. There is established by this Act a registry known as the Collateral Registry.

Object of the Registry

22. The object of the Registry is to register charges and collaterals created by borrowers to secure credit facilities provided by lenders.

Functions of the Registry

23. The Registry shall register charges and collateral and perform other functions as determined by the Bank.

Appointment of collateral Registrar

24. The Bank shall appoint a Registrar of charges and collateral on terms and conditions specified in the letter of appointment.

Registration of charges

25. (1) A borrower or a person interested in a charge shall register a certified copy of a charge or collateral created by the borrower in favour of a lender with the Collateral

Registry within twenty-eight days after the date of the creation of the collateral or charge.

(2) Where a charge is created by a company, the requirement to register charges with the Collateral Registry under this section shall be in addition to the requirement under section 107 of the Companies Act, 1963 (Act 179) to register charges with the Registrar of Companies.

(3) A charge which is not registered in accordance with subsection (1) is of no effect as security for a borrower's obligations for repayment of the money secured and the money secured shall immediately become payable despite any provision to the contrary in any contract.

Procedure on registration

26. (1) The Collateral Registrar shall specify in the register

- (a) the name of the borrower;
- (b) the name of the lender;
- (c) the nature of the charge;
- (d) the date of creation of the charge;
- (e) the amount secured by the charge,

(f) short particulars of the property charged; and

(g) in the case of a floating charge, the nature of any restriction on the power of the borrower or chargor to grant further charges that rank in priority to or with the charge created.

(2) This section does not affect the provisions of other enactment related to the registration of charges.

(3) In furtherance of this section, the Registrar shall keep, with respect to each borrower; a register of the particulars of the charge delivered for registration.

(4) The Registrar shall issue a certificate of the registration of particulars of any charge registered to the borrower.

(5) The certificate shall be evidence in the absence of a copy of the document on the charge.

Registration of satisfaction of debt

27. (1) The Registrar shall, on application in the prescribed form and on proof of
(a) payment in whole or in part for the debt for which the charge was created,
or

(b) the release of the whole or part of the property charged,
enter a memorandum of release of debt in the Register and furnish the borrower with a copy of the memorandum.

(2) The memorandum shall specify whether the charge is released in whole or in part.

Expiry of time for registration

28. (1) The Registrar may accept for registration particulars of a charge submitted later than the time specified in section 25 on satisfaction that

(a) the failure to register particulars of the charge within the specified time shall not prejudice the position of creditors or shareholders of the borrower,
or

(b) it is just and equitable to allow the registration on terms that the Registrar considers just and expedient to extend the time for registration.

(2) The extension of time for registration of charge

(a) shall not, unless otherwise decided by a court adversely affect the right of a person who, prior to the date of actual registration of particulars of the charge, may have acquired proprietary rights in, or a fixed or floating charge on, the property subject to the charge, and

(b) is of no effect against a liquidator, official trustee, and creditors of the borrower, if insolvency or winding-up proceedings that affect the borrower commences before the date of actual registration of the charge.

Appointment of receiver or manager

29. A lender in whose favour a charge is created may

(a) appoint a receiver or manager, or

(b) apply to court for the appointment of a receiver or manager to

(i) take possession of and protect the property,

(ii) receive the rents and profits and discharge the outgoings of the property, or

(iii) realise the security on behalf of the lender.

Registration of appointment or removal of receiver

30. (1) A person who

(a) appoints a receiver or manager,

(b) obtains an order for the appointment of a receiver or manager, or

(c) enters into possession of the property under the powers contained in a charge, shall, within ten days after the date of the appointment, order or entry into possession give notice of the fact to the Registrar.

(2) The Registrar shall enter the notice of appointment of receiver or manager in the register of the particulars of charges relating to the borrower.

(3) Where a

(a) person appointed receiver of the property of the lender ceases to act as receiver or manager, or

(b) person who has entered into possession goes out of possession

the lender shall, within ten days of the occurrence' of the events in paragraph (a) or

(b), give notice to that effect in the prescribed form to the Registrar who shall enter the notice in the register of particulars of charges.

(4) A person who fails to give notice under this section commits an offence and is liable on summary conviction to

(a) in the case of an entity, a fine of not more than one thousand penalty units, or

(b) in the case of an individual, two hundred and fifty penalty units or to a term of imprisonment of not less than two years or to both.

Notices to be published in Gazette

31. The Registrar shall cause a copy of the notice given under section 30 to be published in the Gazette.

Enforcement of borrower's obligations

Default in payment

32. (1) Where a borrower fails to make payment on the due date for a payment, the lender shall give notice of default to the borrower in writing and request the borrower to pay the amount due within thirty days.

(2) The lender may send the notice by

(a) hand,

(b) courier service,

(c) registered mail, or

(d) other means determined by the lender in consultation with the borrower.

(3) Where the notice is delivered

(a) by hand, it shall take effect on the date it is received by or on behalf of the borrower; and

(b) by courier service or registered mail, it shall take effect on the day it is officially recorded as delivered by return receipt or its equivalent.

(4) If a borrower fails to pay or make satisfactory arrangements to pay the amount outstanding to the lender within thirty days after the date of receipt of the notice, the lender may enforce the rights provided for under this Act.

Remedies of lender on default

33. Where a borrower fails to pay an amount secured by a charge under this Act, the lender may

(a) sue the borrower on any covenant to perform under the credit agreement,
or

(b) realise the security in the property charged on notice to the person in possession of the property.

Lender's right to possession

34. (1) In the exercise of right of possession of property that is subject to a charge to secure a borrower's obligations under a credit agreement, a lender is not obliged to initiate proceedings in court to enforce the right of possession.

(2) Where a lender is unable to enforce a right of possession in a peaceable manner, the lender may use the services of the police to evict the borrower or other person in possession pursuant to a warrant issued by a court.

(3) A person who

(a) fails without reasonable excuse, to vacate premises being foreclosed by a lender under subsection (1) when duly requested to do so, or

(b) obstructs a lender in the lawful exercise of power conferred on the lender by this section,

commits an offence and is liable on summary conviction to a fine of not more than five hundred penalty units or to a term of imprisonment of not more than six months or to both; and in the case of a continuing offence, to a further fine not exceeding fifty penalty units in respect of any day on which the offence continues.

Mortgages

35. (1) The Mortgages Act, 1972 (NRCD 96) does not apply to the rights of a lender under this Act in the event of default on the part of a borrower.

(2) Where there is a conflict between the provisions of this Act and the provisions of the Mortgages Act or other laws or rules applicable to the enforcement of a lender's rights, the provisions of this Act shall prevail.

Miscellaneous

Annual report

36. (1) The Bank shall, within six months after the expiration of each financial year, submit to the Minister an annual report on the administration of this Act.

(2) The annual report shall include

(a) a record of violations and remedial actions taken,

(b) volumes of different types of credit products, and

(c) proposals for ongoing improvement for the effective administration of this Act.

Regulations

37. The Minister may, in consultation with the Bank, by Legislative Instrument make Regulations for the effective implementation of this Act.

Interpretation

38. In this Act, unless the context otherwise requires

"Bank" means the Bank of Ghana continued in existence in section 1 of the

Bank of Ghana Act, 2002 (Act 612);

“borrower” means a person who has concluded a credit agreement with a lender;

“charge” means charge, mortgage, security, interest, lien, pledge, assignment by way of security, covenant, restriction, reservation, lease, trust, order, decree, judgment, title defect (including retention of title claim), or any other encumbrance of any nature other than liens arising by operation of law;

“chargor” means a lender in whose favour a charge is created;

“lender” means a person who, as part of business, advances loans and other credit facilities including micro credit facilities;

“person” includes an individual, a company, a partnership, an association, and any other group of persons acting in concert, whether incorporated or not;

“premises” includes any building, structure, land or other place;

“prescribed” means prescribed by Regulations, Rules, Notices, or Directives made or issued under this Act;

“property” includes movable and immovable property and choses in action;

“receiver” means a person appointed as receiver in accordance with the provisions of this Act, including a receiver and manager or similar officer;

“Registrar” means the Registrar of Collateral appointed under section 24 of this Act;

“significant shareholding” means a direct or indirect holding in a non-bank financial institution

(a) which represents ten per cent or more of the capital or of the voting right, or

(b) which makes it possible to exercise a significant influence over the management of the institution in which a holding subsists.

SCHEDULE

PRE-AGREEMENT TRUTH IN LENDING DISCLOSURE

STATEMENT: SECTION 18 (1)

(This is neither a Contract nor a commitment to Lend)

Lender's Name:

Applicant Prepared by:

Address:

Application No:

Date Prepared:

**ANNUAL
PERCENTAGE
RATE
FINANCE
CHARGE
AMOUNT
FINANCED
TOTAL OF
PAYMENTS**

The cost of your credit at a yearly rate %

The amount the credit will cost you (specify currency and amount) US\$/GH¢

The amount of credit provided to you or on your behalf US\$/GH¢

The amount you will have paid after making all payments as scheduled US\$/GH¢

REQUIRED DEPOSIT PAYMENTS:

Your payment schedule will be:

Number of Payments Amount of Payments When Payments Due

DEMAND FEATURE: This obligation has a demand feature

VARIABLE RATE FEATURE: This loan contains a variable rate feature.

A variable rate disclosure has been provided earlier.

INSURANCE: The following insurance is required to obtain credit:

Credit life insurance Credit disability Property insurance Flood insurance

You may obtain the insurance from anyone you want that is acceptable to creditor. If you purchase property, flood insurance from creditor, you will pay US\$/GH¢ for a one year term.

SECURITY: You are giving a security interest in:

The goods or property being purchased Real property you already own

FILING FEES: US\$/GH¢

LATE CHARGE: If a payment is more than [] days late, you will be charged %

PREPAYMENT: If you pay off early, you will/will not have to pay a penalty of [] may/may not be entitled to a refund of part of the finance charge.

Date of Gazette notification: 9th January, 2009