

60 YEARS OF BANKING IN GHANA: LANDMARKS OF  
THE PAST AND LESSONS FOR THE FUTURE

GODWIN DJOKOTO\*

ABSTRACT

*This contribution gives a comprehensive overview and account of the evolution of the legal framework on the banking sector in Ghana in the last 60 years, paying close attention to some major landmarks, which have defined the banking and financial sector and highlighting lessons for the future. This paper argues that regulation of the banking sector must engender confidence in the sector and among industry players.*

**Introduction**

Financial intermediation, which is the province of banking in particular and the financial sector in general, is the fulcrum around which every economy revolves and the economy of Ghana is no exception. The year 2017 marked 60 years of Ghana's independence from foreign domination. In this paper, I give a brief account of the banking sector in the last 60 years (and a little more), paying close attention to some major highlights which have defined the banking and financial sector and lessons for the future.

The paper is divided into four (4) main sections. Part I deals with the history of banking in Ghana in four (4) epochs, as well as the various underlying philosophies of each of these eras. This part traces the history of banking from the colonial period through the early days of independence, all the way to the period of the Economic Recovery Programme regime. It ends with a discussion relating to the recent regime, that is, from the turn of the 21<sup>st</sup> Century, which has been dominated by globalisation, intense competition and technological drive. Part II provides a general overview of major constitutional and legislative interventions in Ghana that have shaped the course of banking over the 60 - year period. This part also discusses some relevant judicial decisions which have sought to interpret and provide clarity on some grey spots and unresolved conflicts in our banking laws. The key enactments discussed include the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930); Ghana Deposit Protection Act, 2016 (Act 931); Borrowers and Lenders Act, 2008 (Act 773); Home Mortgage Finance Act, 2007 (Act 770); the Payment Systems Act, 2003 (Act 662), Payment Systems and Services Act, 2019 (Act 987); Bills of

\* LLB, BL (Ghana); LLM (Dalhousie). The author is a Lecturer at the University of Ghana School of Law, Legon.

Exchange Act, 1961 (Act 55); the Anti-Money Laundering Act, 2008 (Act 749) and the Anti-Terrorism Act, 2008 (Act 762). This section ends by situating Ghana in the context of the global space of banking regulation. To this end, the chapter briefly discusses the Basel Committee on Banking Supervision Rules, 1988, 2004 and 2010.

Part III provides a snapshot of some major events in the banking industry which have challenged the *status quo*, shaped the course of banking over the period and continue to guide the banking industry into the future. This part discusses the redenomination exercise which was undertaken by the Bank of Ghana in July 2007, insolvencies of banks and other non-bank financial institutions, such as the collapse of the erstwhile Bank for Housing and Construction (BHC), the Cooperative Bank Limited, the UT Bank Limited, Capital Bank Limited, Unibank Ghana Limited, Heritage Bank Ghana Limited, DKM Microfinance Limited and others. It also discusses the recent radical reforms introduced by the Bank of Ghana to ensure a holistic and robust financial sector. This segment also discusses the merger of banks such as the Ecobank and the Trust Bank; technological advances in the banking sector, particularly the advent of mobile money and electronic banking. It also discusses the various challenges that banking laws have had to grapple with, including that of corporate governance. The segment ends with a discussion of human capital challenges facing banks, particularly bank fraud and measures to curb such incidents in order to engender confidence in the banking sector. The final part of this paper deals with recommendations to strengthen and make the banking sector more robust and concludes that banking regulation must engender confidence in the sector and amongst key players.

### **Part I - Brief Legal History of Banking in Ghana**

Currently, the financial intermediation sector (including the banks and non-bank financial institutions) in Ghana is made up of the Central bank, the Bank of Ghana, the universal banks, Bank Holding Companies, the ARB Apex Bank and Rural and Community banks, Savings and Loans companies, Microfinance institutions as well as the Credit Unions.

The financial laws, particularly, banking laws in Ghana, are the product of economic, social, political and legal forces at play as well as deliberate policies formulated and carried into effect by various Governments. The evolution of banking laws in Ghana may be said to straddle four main epochs, namely, *firstly*, the colonial period (1896-1957); *secondly*, the era of dual banking (capitalist and socialist era) from 1957 to 1983; *thirdly*, the Economic Recovery Programme Era (1983-2000); and *finally*, the era of globalization, intense competition and technological advancement in finance from the year 2000 thereabout until present.

### The Colonial Period

The undergirding banking policy during the colonial times was to promote the colonial agenda of providing banking services to the British colonial administration and to provide a currency structure through the West Africa Currency Board (1912-1957) in order to transform the pre-colonial economy from a barter system to a cash economy.<sup>1</sup> Consequently, only two British banks with branches in the Gold Coast, namely, the Bank of British West Africa<sup>2</sup> and Barclays Bank (DCO) provided banking services. These two banks were in charge of banking business and were both controlled from London. The ownership of banks was exclusively in the hands of foreigners, and Africans were proscribed from incorporating companies to engage in the business of banking.<sup>3</sup>

During this period, banking was rudimentary- there was no regulator and no legal and regulatory regime to license, regulate and develop the industry. The historical records show that the business of banking was first introduced in the Gold Coast by an agreement made on 16 June 1896 between the Gold Coast Colonial Government and the Bank of British West Africa.<sup>4</sup> By virtue of this agreement, a branch of the bank, which had its headquarters in Liverpool, England, was opened in Accra to provide banking services to the colonial Government and to import and distribute coins on behalf of the colonial administration.<sup>5</sup> In 1917, the Colonial Bank (which later became Barclays Bank Dominion, Colonial & Overseas (DCO) in 1925) also started banking operations in the Gold Coast.<sup>6</sup> In 1905, the Post Office Savings Bank was also founded to provide deposit services for small savers.<sup>7</sup>

The exclusion of Ghanaians from engaging in banking business, coupled with complaints of denial of bank credit to Africans, provoked a nationalist agitation for the establishment of both indigenous national banks (to cater for the needs of African traders, farmers etc) and a central bank for the Gold Coast. The Colonial response was the appointment of the

<sup>1</sup> WT Newlyn and DC Rowan, *Money and Banking in British Colonies* (Oxford Clarendon Press 1954).

<sup>2</sup> British West Africa Bank became Standard Chartered Bank in 1985.

<sup>3</sup> See the Companies Ordinance 1907.

<sup>4</sup> See for example, S Mensah, 'Banking and Capital Markets, The Evolution of Ghana's Financial Sector and Future Prospects' in E Aryeetey and R Kanbur (eds), *The Economy of Ghana Sixty Years after Independence* (Oxford University Press 2017) 118.

<sup>5</sup> K Addeah, *Financial Services Law of Ghana, Stakeholders Handbook* (Waterville Publishing House 2010) 5.

<sup>6</sup> See S Mensah, 'Banking and Capital Markets; The Evolution of Ghana's Financial Sector and Future Prospects', *ibid* (n 4) 118.

<sup>7</sup> *ibid*.

Sir Cecil Trevor Committee,<sup>8</sup> whose recommendations led to the birth of the Bank of the Gold Coast, which became Ghana Commercial Bank (and now GCB Bank Limited) through the passage of the Bank of the Gold Coast Ordinance, 1952.

### **The Era of Dual Banking (1957 - 1983)**

On attaining independence in 1957, the economic policy during this period was the creation of a socialist society where the key factors of production, including the provision of banking and other financial services were controlled and owned by the State. These banks were seen as objects of socialist development, hence the establishment by law of development, investment and commercial banks. The ideological stance coupled with the pre-independence nationalist and political agitations to provide banking services for the various indigenous social interest groups resulted in the passing of various banking and financial laws during this period. One of the most important developments during this period was the establishment of the central bank, the Bank of Ghana, in 1957 by virtue of the Bank of Ghana Ordinance (No 34 of 1957). This was after a new Select Committee was established in early 1955 to take another look at the Trevor Report for the establishment of a central bank in Ghana. The Bank of Ghana Ordinance (No 34 of 1957) was subsequently amended by the Bank of Ghana Act, 1963(Act 182). Act 182 was also amended by the Bank of Ghana (Amendment) Act, 1965(Act 282).<sup>9</sup>

To give true meaning to Dr Kwame Nkrumah's policy of industrialization, several developments and local investment-oriented banks were established. These included the establishment of the National Investment Bank by the enactment of the National Investment Bank Act, 1963 (Act 163) as amended; the establishment of the Agricultural Credit and Co-operative Bank by the passage of the Agricultural Credit and

<sup>8</sup> See the Sir Cecil Trevor Report on Banking Conditions in the Gold Coast and on the question of setting up a National Bank, (Government Printer 1951). The Sir Cecil Trevor Committee observed *inter alia* that '*the feeling was prevalent (among Africans) that the existing banking system favours the European, Levantine and Asiatic Communities to the detriment of Africans...[who] experienced difficulty in obtaining their financial requirements at reasonable rates, owing to lack of confidence by the banks in their credit worthiness.*' On the need for a Central Bank, the Report recommended that a bank of issue was not desirable since the Gold Coast was adequately provided for by the West African Currency Board. The Report also emphasised that a Central Bank should only be set up when all the ingredients necessary for an advanced economy were in place; See also Y Bangura, *Britain and Commonwealth Africa -The Politics of Economic Relations-1951-57* (Manchester University Press 1983) 50-51; For a criticism of Sir Cecil Trevor's report see D Rowan, 'Banking Adaptation in the Gold Coast -A critique of Recent report by Sir Cecil Trevor' (1952) 20(4) *South African J of Economics*, 345-365.

<sup>9</sup> In 1992, the Bank of Ghana Law was enacted which among others repealed both Acts 182 and 282.

Co-operative Bank Act, 1965 (Act 286) as amended by the Agricultural Development Bank Act, (Amendment) Decree, 1967 (NLCD 182) and the Agricultural Development Bank (Amendment) Act, 1970 (Act 352); the Bank of the Gold Coast Ordinance, 1952, Ghana Commercial Bank Decree, 1966 (NLCD 66) and the Savings Bank Act, 1962 (Act 129). This period also saw the enactment of the Co-Operative Societies Act, 1968 (NLCD 252) and the Bank for Housing and Construction Act, 1972 (NRCD 135).

It is significant to point out that during this period not only did the laws relating to banking change but ownership as well. For example, in 1975, the Government of Ghana acquired a 40% ownership interest in both Barclays Bank and Standard Chartered Bank.<sup>10</sup> Also, the foreign banks in existence before the attainment of independence such as Bank of British West Africa and Barclays Bank DCO did not only continue in operation, but mounted an accelerated branch expansion drive. For example, it is reported that Barclays Bank expanded its branches from twelve (12) to sixty (60) and British Bank of West Africa from fifteen (15) to forty-five (45).<sup>11</sup> The era of dual banking continued until 1983, when the Economic Recovery Programme of the Provisional National Defence Council (PNDC) Government was ushered in.

### **The Economic Recovery Era (1983 - 2000)**

As a result of the near virtual collapse of the economy in the early 1980s, the Provisional National Defence Council (PNDC) Government in 1983 introduced an Economic Recovery Programme (ERP) aimed at restoring macroeconomic stability. As part of the economic reforms, a Financial Sector Reform Programme (FINSAC I) was introduced in 1988 by the Government with financial support from the World Bank. The objectives of this first major financial sector reform were to undertake the restructuring of financially distressed banks; enhance the soundness of the banking system through an improved regulatory and supervisory framework; and to promote the development of non-bank financial institutions.<sup>12</sup> The records show that by the end of FINSAC I, the Ghanaian banking system had gained stability and the banking environment had become liberalised.<sup>13</sup>

<sup>10</sup> J Abor, *Financial Markets and Institutions: A Frontier Market Perspective* (Digibooks 2016) 81.

<sup>11</sup> S Mensah, 'Banking and Capital Markets, The Evolution of Ghana's Financial Sector and Future Prospects' in E Aryeetey and R Kanbur (eds), *The Economy of Ghana Sixty Years after Independence* (Oxford University Press 2017) 120.

<sup>12</sup> *ibid* 124.

<sup>13</sup> World Bank Report, 'Project Completion Report, Republic of Ghana, Financial Sector Adjustment Credit 2, (Credit 1911-GH)' Report No 14158 (29 March 1995).

A second phase of the Financial Sector Adjustment Programme (known as FINSAC II) was aimed at consolidating the gains made under FINSAC I and completing a number of outstanding assignments. Secondly, it also sought to eliminate some outstanding policy distortions in the financial sector and to introduce new sectorial reforms.<sup>14</sup> FINASAC II also reduced state shareholding in some Ghanaian banks and intensified the recovery of non-performing loans by the establishment of a Non-Performing Assets Recovery Trust.<sup>15</sup> From about 1992, the Government set in motion a process to privatise some of the State-Owned banks and the liberalisation of the financial sector.<sup>16</sup> Liberalisation under the Financial Sector Reform Programme and the Financial Sector Strategic Plan led to improved savings, enhanced deposit mobilization and competition in the banking sector.<sup>17</sup> The key financial laws that were enacted during the Economic Recovery Era included: the Banking Law, 1989 (PNDCL 225); Banking (Capital, Audit and Prudential Requirements) Regulations, 1988(LI 1989); and the Non-performing Assets (Loans, Investments) Recovery Law, 1990 (PNDCL 242) (later replaced by Act 518, 1996).<sup>18</sup>

### **Era of Globalization, Technological Drive and Intense Competition (2000 - present)**

The Government introduced the Financial Sector Strategic Plan (FINSSP), which focused on reviewing some earlier financial laws and filling statutory gaps that were not addressed in earlier programmes. This involved, among others, the operational independence of the financial regulators such as the Bank of Ghana and replacing outdated laws with new ones that met international standards and local needs.<sup>19</sup>

Apart from the Constitution, 1992, some of the statutes passed during this period included the following: Bank of Ghana Act, 2002 (Act 612); Payment Systems Act, 2003 (Act 662), which was recently repealed and replaced by the Payment Systems and Services Act, 2019 (Act 987); Court

<sup>14</sup> World Bank, 'Implementation Completion Report: Republic of Ghana Second Financial Sector Adjustment Credit-FINSAC II', Report No 17249 (1997).

<sup>15</sup> *ibid.*

<sup>16</sup> J Abor, *Financial Markets and Institutions* (n 10) 81.

<sup>17</sup> *ibid.*

<sup>18</sup> Others were: the Unit Trust (Home Finance Company) (Authorisation) Instrument, 1991(LI 1516); the Constitution of the Republic of Ghana, 1992(Article 183); Bank of Ghana Law, 1992(PNDCL 291); Statutory Corporations (Conversion Companies) Act, 1993(Act 461); Financial Institutions (Non-banking) Act 1992 (PNDCL 238); Securities Industry Act, 1993(PNDCL 333); Finance Lease Act, 1993(PNDCL 331); and the Home Mortgage Finance Act, 1993(PNDCL 329).

<sup>19</sup> See, for example, the Constitution of the Republic of Ghana, 1992 and Bank of Ghana Act, 2002(Act 612).

(Award of Interests and Post Judgment Interest) Rules, 2005 (CI 52); Banking Act, 2004 (Act 673) as amended by the Banking Amendment Act 2007 (Act 738); Foreign Exchange Act, 2006 (Act 723); ARB-Apex Bank Limited Regulations, 2006 (LI 1825); Credit Reporting Act, 2007 (Act 726); Anti-Money Laundering Act, 2007 (Act 749); Anti-Money Laundering Regulations, 2011 (LI 1987); Home Mortgage Finance Act, 2007 (Act 770); Anti-Terrorism Act, 2008 (Act 762); Borrowers and Lenders Act, 2008 (Act 773); Non-Bank Financial Institutions Act, 2008 (Act 774); Credit Union Regulations; Guidelines to the Borrowers and Lenders Act, 2012; Non-Bank Financial Institutions Act, 2008 (Act 774); Electronic Transactions Act, 2008 (Act 772); Mobile Money Regulations, 2015; Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930); Ghana Deposit Protection Act, 2016 (Act 931); and the Security Industry Act, 2016 (Act 929).

This era has witnessed the introduction of major technological innovations into the banking space such as electronic banking, development of banking applications and soft wares, mobile money platforms and transactions, the deployment of advanced Automated Teller Machines (ATMs) which have revolutionised banking and created convenience in banking.

Furthermore, the early 2000s witnessed the entry of foreign banks, especially from Nigeria, into the Ghanaian banking space. This occasioned intense competition amongst banks, which extended the frontiers of banking in Ghana. Some of these banks are Zenith Bank, United Bank of Africa (UBA), Intercontinental Bank, Access Bank, First Atlantic Bank, GT Bank and the FNB Bank. These banks introduced the aggressive marketing modules under which banks were prepared to extend their services to the door-step of the customer, coupled with the introduction of cutting edge electronic products and better conditions of service for staff. This led to increases in deposit mobilization and the granting of credit to businesses, particularly Small and Medium Enterprises (SMEs). These aggressive marketing techniques and new levels of service provision have challenged the status quo maintained by the traditional Ghanaian banks and offered customers more options.

## Part II - Summary of Current Laws

The Constitution 1992 makes the Bank of Ghana the regulator of the banking industry and the only authority to issue the currency of Ghana.<sup>20</sup> The Bank of Ghana's primary objectives are to maintain stability in the general level of prices,<sup>21</sup> to support the general economic policy of the

<sup>20</sup> Article 183(1), 1992 Constitution.

<sup>21</sup> Section 3(1) Bank of Ghana Act, 2002 (Act 612).

Government, and to promote economic growth and effective and efficient operation of banking and credit systems in the country, independent of instructions from the Government or any other authority.<sup>22</sup>

The Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930) is the current law which regulates the activities of all banks, deposit-taking institutions, financial holding companies, the affiliates of banks, financial holding companies deposit-taking institutions and microfinance companies.<sup>23</sup> The Act does not apply to the licensing and supervision of Credit Unions, which are governed by the Non-Bank Financial Institutions Act, 2008 (Act 774), directives<sup>24</sup> and in practice by the Cooperative Unions Association (CUA). The Act defines 'deposit-taking business' as the business of taking money on deposit and making loans and other advances of money and financial activities prescribed by the Bank of Ghana.<sup>25</sup> This law amends and consolidates the laws relating to deposit-taking as defined in the law and regulates institutions that carry on the business of deposit-taking. The utility of the current law is that, with the exception of Credit Unions, all the financial institutions such as Banks, Savings and Loans companies, Microfinance institutions and Rural and Community Banks are regulated by the same piece of legislation. This is an improvement of the previous piecemeal approach where banks were regulated by the Banking Act and its subsequent amendments, while others like the Savings and Loans Companies were regulated by the Non-Bank Financial Institutions Act, 2008 (Act 774). Prior to the enactment of Act 930, save for occasional Notices and Directives, it was not clear which laws were applicable to microfinance institutions. The Banks and Specialised Deposit-Taking Institutions Act, 2016 repealed the Banking Act, 2004 (Act 674) and the Banking (Amendment) Act, 2007 (Act 738).<sup>26</sup>

<sup>22</sup> Section 3(2) Bank of Ghana Act, 2002 (Act 612); See also ss 3 and 4 of Act 612.

<sup>23</sup> Section 1 of the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930).

<sup>24</sup> For example, Notice to Co-Operative Credit Unions, Co-Operative, Financial Institutions and the General Public Notice No. BG/Gov/Sec/2017/05, Requirements for Licence to Operate Co-Operative Credit Unions/ Co-Operative Financial Institutions (CFI).

<sup>25</sup> Section 4 of the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930).

<sup>26</sup> The point of interest with Act 738 was the fact that for the first time in Ghana's banking history, it authorised offshore banking. It was only Barclays Bank Ghana Ltd which was granted a General Banking Licence to operate both as universal bank and an offshore bank. This licence was revoked in 2008/9 due to concerns that Ghana's Anti-Money Laundering legal infrastructure was not well-developed and Ghana would be made a safe haven for money laundering activities. The Banking (Amendment) Act, 2007 (Act 738) classified banking business into three categories, namely, (a) *General banking* business which is conducted under a General Banking Licence (b) *Class I banking* business, which is conducted under a Class I Banking Licence (c) *Class II banking*, business (offshore banking) which is conducted under a Class II Banking Licence from within Ghana. *Class II banking business* refers to banking business or investment banking business conducted in currencies other

A significant initiative towards the protection of depositors was taken with the enactment of the Ghana Deposit Protection Act, 2016 (Act 931), which provides for a Deposit Protection Scheme; a Deposit Protection Fund; and a Deposit Protection Corporation. It applies to all banks and deposit-taking institutions licensed by the Bank of Ghana. The object of this law is to protect small depositors from loss incurred by the occurrence of an insured event, such as revocation of licence and the appointment of a receiver.<sup>27</sup> The law provides that the Deposit Protection Corporation shall not pay more than an amount of Six Thousand, Two Hundred and Fifty Ghana Cedis (GH¢6,250.00) to each depositor where the institution involved is a bank; and with regard to a specialised deposit-taking institution, an amount not exceeding One Thousand, Two Hundred and Fifty Ghana Cedis (GH¢1,250.00).<sup>28</sup> The Deposit Protection Corporation is mandated to review the maximum thresholds of payments to depositors not earlier than three years of the commencement of the law to reflect economic conditions in Ghana and to provide data relating to development of insured deposits.<sup>29</sup> This law was passed in apparent response to the high incidence of collapse of microfinance institutions in Ghana such as the DKM Microfinance Limited situation, and the 'God is Love Club'. The collapse of these financial institutions has been attendant with loss of life, increase in poverty in the life of the affected depositors, particularly the poor and vulnerable in society. The corollary is that persons of substance must find ways of mitigating their losses, if the institutions in which they have invested money should fail.

The Borrowers and Lenders Act, 2008 (Act 773) seeks, among others, to provide the legal framework for credit; improve standards of disclosure of information by borrowers and lenders; prohibit certain credit practices; and to promote a consistent enforcement framework related to credit.<sup>30</sup> One of the unique features of this law is the establishment of the Collateral Registry<sup>31</sup> under the supervision of the Bank of Ghana where borrowers or other persons interested in property used as security for a credit facility must register same at the Collateral Registry within 28 days of its

than the Ghanaian currency except to the extent permitted by the Bank of Ghana for trading on the foreign exchange market of Ghana and investment in money market instruments. *Class I banking* means banking business other than Class II banking business (ie conducting business not exclusively in foreign currency ie in Ghana Cedis and others). *General banking business* means Class I and Class II banking business;

<sup>27</sup> Sections 3 and 53, Act 932.

<sup>28</sup> Section 20, Act 932.

<sup>29</sup> Section 20(8), Act 932.

<sup>30</sup> Preamble, Act 773.

<sup>31</sup> Sections 21-28, Act 773.

creation.<sup>32</sup> Where all the requirements of the law are satisfied, a lender need not proceed with court action before he or she is able to realize any property used as security for a credit facility. This is intended to speed up the rate of realization of properties used as security without resort to judicial proceedings which tend to be time-consuming, if not time wasting. In terms of the relationship between this Act and the Mortgages Act, 1972(NRCD 96), the law makes it clear that the Mortgages Act does not apply to the rights of a lender under this Act in the event of default on the part of a borrower.<sup>33</sup> This provision is significant because prior to the passage of Act 773, there could be no realization of a mortgage except under judicial authority.<sup>34</sup> Act 773 further provides that where there is a conflict between the provisions of Act 773 and the provisions of the Mortgages Act or other laws or rules applicable to the enforcement of a lender's rights, the provisions of Act 773 shall prevail.<sup>35</sup>

The Home Mortgage Finance Act, 2007 (Act 770) regulates home mortgage financing in Ghana. This Act applies to transactions between financial institutions and their customers for the provision of finance for (a) the construction or purchase of a residential property, (b) the completion of a residential property; (c) extension to or renovation of a residential property; (d) improvement to a residential property for ownership, sale or rental; (e) construction of residential properties for sale or rental; or (f) purchase of fixtures and chattels related to residential properties. The striking feature of this Act is that where due process of law, as stipulated by this law is faithfully complied with, a lender is not obliged to take legal proceedings to realize a mortgaged property.<sup>36</sup> In terms of the relationship between the Mortgages Act, 1972 (NRCD 96) and Act 770, the latter is additional to NRCD 96 and does not derogate from the provisions of the former, except as otherwise provided in the Act.<sup>37</sup> However, where there is any inconsistency between this law and the Mortgages Act, Act 770 prevails.<sup>38</sup>

In 2003, Parliament enacted the Payment Systems Act, 2003 (Act 662) which provided for the establishment, operation and supervision of electronic and other payment, clearing and settlement systems; the rights and responsibilities of transacting and intermediating parties and other

<sup>32</sup> Section 25, Act 773.

<sup>33</sup> Section 35(1), Act 773.

<sup>34</sup> Section 18, NRCD 96.

<sup>35</sup> Section 35(2), Act 773.

<sup>36</sup> Section 20, Act 770.

<sup>37</sup> Section 2(1), Act 770.

<sup>38</sup> Section 2(2), Act 770.

related matters. This enactment gives the Bank of Ghana the discretion to establish, operate, promote and supervise payment, funds transfer, clearing and settlement systems operating in Ghana, subject to the rules that it may publish. It should be noted that the Electronic Money Issuers and Agents' Guidelines, 2015 and the Payment Systems Act, 2003 (Act 662) were reviewed and consolidated into a new piece of legislation known as the Payment Systems and Services Act, 2019 (Act 987). This Act repealed and replaced Act 662.<sup>39</sup> Nevertheless, all orders, directives, guidelines and rules made before the coming into force of Act 987 remain effective until they are reviewed or cancelled or terminated.<sup>40</sup> Act 987 gives the Bank of Ghana, among other things, the responsibility to regulate the issuance of electronic money, payment instrument, payment service providers and electronic money business as well as the formulation, monitoring and reviewing of policies on the payment system.<sup>41</sup>

The Bills of Exchange Act, 1961(Act 55) continues to be the principal legislation governing Bills of Exchange, cheques and promissory notes in Ghana. This law, which is based largely on the English Bills of Exchange Act, 1882, has generally proved to be efficient in dealing with matters covered within its scope. However, the law has grappled with issues resulting from technological advancements which were not within the contemplation of the law at the time of its enactment. For example, in *Standard Chartered Bank Ghana Ltd v Victoria Island Properties & Anz Grinlays Bank*,<sup>42</sup> the Supreme Court was called upon to determine whether electronically conveyed messages between bankers (SWIFT) qualified as a Bill of Exchange within the intendment of the Bills of Exchange Act, 1961 (Act 55). In this case, it was the Plaintiff's case that by two telefax instructions dated 2<sup>nd</sup> and 4<sup>th</sup> September respectively addressed to the Co-Plaintiff, the 2<sup>nd</sup> Defendant fraudulently instructed that two sums of US\$12,000.00 and US\$70,000.00 be transferred to a fictitious account and same be duly transferred. The Plaintiff claimed that on or about 24<sup>th</sup> September 1997, the 1<sup>st</sup> Defendant (Stanchart) negligently and without complying with Co-Plaintiff's payment instructions paid the total sum of US\$82,000.00 to the 2<sup>nd</sup> Defendant through its Liberia Road Branch even though the 2<sup>nd</sup> Defendant did not have a foreign currency account with the 1<sup>st</sup> Defendant. The Plaintiff did not become aware of the fraud until sometime in January 1998 when the Plaintiff requested a statement of its account. The Trial Court and the Court of Appeal gave judgment in favour of the Plaintiff, ordering the Standard

<sup>39</sup> Section 103(1), Act 987.

<sup>40</sup> Section 103(2), Act 987.

<sup>41</sup> Section 3, Act 987.

<sup>42</sup> [2007-2008] SCGLR 721; (2007) 13 MLR 88.

Chartered to pay US\$82,000.00. On appeal to the Supreme Court, it was held per Justice Seth Twum that:

Electronically conveyed messages do not fit this definition of a bill of exchange in Section 1 of the BEA, 1961. Such messages are not unconditional orders. They are really banker to banker requests among members of SWIFT and the sums are not payable on demand. Indeed, in *Tenax Steamship Co Ltd v Brimnes (Owners of) Brimnes (1975) 1 QB 929* Lord Justice Edmund Davies and Lord Justice Cairns pointed out that the Bank Giro form was not an 'order'. Their Lordships held further that **a telex transfer order was not a negotiable instrument**. Electronic money transfer orders are not negotiable instruments. Consequently, in my view, the Bills of Exchange Act, 1961, is not applicable to such transfers.

Advancements in technology will continue to pose the greatest challenge to the Bills of Exchange Act, 1962 (Act 55) and it is expected that the judiciary will continue to fill-in the gaps when it is called upon to interpret and/or apply its provisions by drawing on the jurisprudence and experiences of countries which are more technologically advanced in terms of their laws on the subject. Parliament must also keep a proper look out in order to bring our laws on bills of exchange in keeping with technological advancements and new trends. It is hoped that the recently enacted Payment Systems and Services Act, 2019 (Act 987) will go a long way to assist in dealing with some of the technological challenges faced by Act 55.<sup>43</sup>

Closely connected with Bills of Exchange and broadly speaking payment systems is the high incidence of money laundering, which has become an international menace which every country is enjoined to tackle by the passage of anti-laundering laws and actions.

Currently, the laws regulating money laundering in Ghana are the Anti-Money Laundering Act, 2008 (Act 749) and Anti-Money Laundering Regulations, 2011(LI 1987) as well as the Anti-Terrorism Act, 2008(Act 762). Act 749 in essence seeks to prohibit money laundering, which is an offence.<sup>44</sup> More significantly, the Act also establishes the Financial

<sup>43</sup> This Act was assented to by the President on 13 May 2019.

<sup>44</sup> Section 1(1) defines the offence of money laundering as follows 'A person commits an offence of money laundering if the person knows or ought to have known that property is or forms part of the proceeds or unlawful activity and the person

(a) converts, conceals, disguises or transfers the property.

(b) conceals or disguises the unlawful origin of the property.

(c) acquires, uses or takes possession of the property.

Intelligence Centre (FIC). In order to achieve the objectives of the FIC, the centre is mandated to perform the following functions: (a) process, analyse, disseminate and interpret information disclosed to or obtained by the centre in terms of this Act; (b) retain the information in the manner and for the period required under this Act; (c) inform, advise and co-operate with investigating authorities, supervisory bodies, the revenue agencies, the intelligence agencies and foreign counterparts; and (d) monitor and give guidance to accountable institutions, supervisory bodies and other persons on the discharge of their duties and in compliance with this Act.<sup>45</sup>

Section 30 of Act 749 places a legal obligation on a person or institution to report by way of a Suspicious Transaction Report (STR) to the FIC within 24 hours of after acquiring knowledge or entertaining suspicion of the transaction. The person or institution must report if he knows or suspects that (a) a business entity, an accountable institution or a trust has received or is about to receive the proceeds of unlawful activity, or (b) a transaction to which the business entity is a party (i) facilitated or is likely to facilitate the transfer of the proceeds of unlawful activity, (ii) has no apparent business or lawful purpose, (iii) is conducted to avoid or give rise to a reporting duty under this Act, (iv) may be relevant to an investigation into tax evasion or an attempt to evade the payment of tax, duty or a levy imposed by legislation, or (v) has been used or is about to engage in money laundering<sup>46</sup> within twenty four (24) hours after the knowledge or the ground for suspicion of the transaction. Similarly, where a person suspects a transaction to be linked to or used for the financing of a *terrorist act* as defined by law, the person shall make a report to the FIC within twenty-four hours (24) of the suspicion.<sup>47</sup>

This law, together with its Regulations, have not only raised awareness about the high incidence of money laundering, but has also founded the conviction of persons found guilty of money laundering,<sup>48</sup> the deterrent effect of which cannot be underestimated or over emphasised.

*(2) For the purpose of this Act, unlawful activity means conduct which constitutes a serious offence, financing of a terrorist act or contravening of a law which occurs after the commencement of this Act whether the conduct occurs in this country or elsewhere.*

<sup>45</sup> Section 6, Act 749.

<sup>46</sup> Section 30(1), Act 749.

<sup>47</sup> Section 30(2), Act 749.

<sup>48</sup> See for example, *The Republic v Mathias Appiah Bill @ Delali Vettel @ Robert Scott* (High Court Financial and Economic Division Suit No FTRM49/14 ,18 March 2016); *The Republic v Mandy Afari Gyan* (High Court Financial and Economic Division Suit No FTRM 88/14, 21 December 2015).

### International Banking Regulation

This review will not be complete without the mention of the influence at the international level of the Basel Committee on Banking Supervision.<sup>49</sup> This Committee prescribes rules on regulatory capital adequacy and capital management of banks. It is important to mention that the rules prescribed by the Basel Committee are not binding on national authorities.<sup>50</sup> However, they epitomise global best practices on capital adequacy and risk management for purposes of banking supervision and regulation. In nearly forty years, the Basel Committee on Banking Supervision has issued three (3) Accords (Agreements), namely, Basel I, which was issued in 1988; Basel II which was issued in 2004 and Basel III which was issued in 2010.

In a nutshell, Basel I imposes minimal capital requirements and other requirements as a measure of regulating and supervising the banking industry. It assesses a bank's capital in relation to its credit risk.<sup>51</sup> Basel II is aimed at achieving adequate capitalization of banks and best practices relating to risk management to ensure the stability of the banking system. This is done through what is often referred to as 'three pillars': *Risk Asset Ratio, supervisory reviews and market discipline*.<sup>52</sup> Like most developing nations, Ghana is yet to be compliant with the Basel II Accord.<sup>53</sup> Basel III capital rules were developed as a reaction to the 2008 financial crisis. Basel III seeks to achieve greater risk management at the micro and macro levels. It also aims to introduce leverage and liquidity ratios and conservation buffers.<sup>54</sup> Broadly speaking, the Bank of Ghana strives to carry out its regulatory and supervisory functions in accordance with the Basel Core Principles for Effective Banking Supervision.<sup>55</sup>

### Part III - Defining Inventions, Events

Although laws are generally the product of legislative action, the enactment of laws are necessitated or precipitated by certain acts, omissions or developments in general by which future actions become

<sup>49</sup> The Basel Committee has a permanent secretariat at the Bank for International Settlements (BIS) in Basel. The BIS does not participate in the Basel Committee's policy-making. It only provides a venue for the Committee's Secretariat and for membership meetings. S Heffernan, *Modern Banking* (John Wiley & Sons Ltd 2005) 184.

<sup>50</sup> S Heffernan, *Modern Banking* (John Wiley & Sons Ltd 2005) 193.

<sup>51</sup> Bank for International Settlements < <http://www.bis.org> > accessed 30 December 2017.

<sup>52</sup> Heffernan (n 50) 194.

<sup>53</sup> R Atuahene, 'The Soundness and Unsoundness of Bank Recapitalization' *Business & Financial Times* (Accra, 14 September 2017) 16.

<sup>54</sup> Bank for International Settlements < <http://www.bis.org> > accessed 30 December 2017.

<sup>55</sup> Bank of Ghana < <http://www.bog.gov.gh/supervision-a-regulation/regulatory-framework> > accessed 20 July 2019.

defined. The banking space in Ghana has for the period of over six decades experienced redenomination of the currency, the emergence of mobile money, insolvencies, mergers and acquisitions and their attendant radical reforms. The following paragraphs briefly discuss these developments that have shaped the future course of banking in Ghana.

### **Redenomination in July 2007**

On 1<sup>st</sup> July 2007, the Bank of Ghana redenominated the Ghanaian currency, the *cedi*. By this process, the Bank of Ghana set Ten Thousand Cedis (¢10,000) as the equivalent of one new Ghana Cedi, which is equivalent to One Hundred Ghana pesewas.<sup>56</sup> The international standard designated to the redenominated currency is GHS. Arithmetically, the redenominated currency is presented as ¢10,000= GHS1=100 Gp. Some of the justifications given for the redenomination were general inconvenience and the high risk of carrying loads of cash and the strain on payment systems such as the deployment of ATMs.<sup>57</sup>

### **Mobile Money and advances in Cheque Clearing**

Perhaps, the most radical development with payment systems in Ghana in the last 60 years is the advent of mobile money transfers, which are operated by the various telecommunication networks. Mobile money has progressed from a modest means to transfer money from one patron to another to become a fully-fledged digital financial service which permits its patrons to store, send and receive money on a mobile phone.

From 11 September 2016, the Bank of Ghana approved the payment of interest to mobile money customers.<sup>58</sup> The rate of interest which ranges from 1.5% to 7% is paid by partner banks on mobile money floats they hold.<sup>59</sup> Telecommunication service providers are obliged to pay 80% of this interest to their patrons in quarterly instalments. It is estimated that by the close of 2016, mobile telephony network operators paid interest in the region of Twenty – Four Million, Eight Hundred Thousand Ghana Cedis (GHS24.8 Million) to mobile wallet holders.<sup>60</sup> And, at the close of 2017, it is

<sup>56</sup> Bank of Ghana <<http://www.bog.gov.gh/public-notices/1401-redenomination-of-the-cedi-faqs>> accessed 20 July 2019.

<sup>57</sup> *ibid.*

<sup>58</sup> Bank of Ghana E-Money Issuers Guidelines, 2015.

<sup>59</sup> PWC, 'Banking Survey : Risk Based Minimum Capital Regulatory Capital Regime: What it Means for Banks in Ghana' (2017) 29.

<sup>60</sup> BoG, Annual Report (2016) para 4.4.5, 23.

estimated that total volume of mobile money transfers were in the region of Fifty-Six Billion Ghana Cedis (GH¢ 56,000,000,000).<sup>61</sup>

However, the challenge with mobile money transactions is to find enduring ways of curbing mobile money frauds. The statistics on mobile money frauds appear staggering and bewildering. For example, it was recently revealed that MTN which is the biggest mobile money telephony company in Ghana has sanctioned 3,000 mobile money agents allegedly caught in mobile money fraud from about July/August to October 2017.<sup>62</sup> MTN has also revealed that the company receives about 365 complaints from subscribers and blocks 400,000 scam messages daily.<sup>63</sup> This situation clearly leaves much to be desired and calls for urgent attention and action from the central bank and the mobile telephony companies to engender confidence in the money transfer market.

In relation to clearing of cheques, apart from the clearing house operated under the aegis of the Bank of Ghana, there is the recently fashioned Ghana Interbank Payment and Settlement System (GHIPPS). The Ghana Interbank Payment and Settlement Systems Limited (GHIPPS) established by the Bank of Ghana is responsible for implementing and managing the interoperable payment system infrastructure for banks and non-bank financial institutions in Ghana. The move towards a cashless economy took a bold and giant step in 2016, when GHIPPS successfully launched its *Instant Pay* system which effectively reduced the duration of cross bank account transactions from about 72 hours to within a matter of minutes and introduced an *e-zwich* international remittance platform. Consistent with the National Payment Systems Oversight Framework (2013), the Bank of Ghana has established the Payments Systems Council (PSC) to drive developments in the payment systems.<sup>64</sup>

### Mergers and Acquisitions

The banking industry has witnessed several mergers and acquisitions in the last decade. In 2012, Ecobank Ghana Limited merged/acquired the erstwhile The Trust Bank (TTB); Access Bank Ghana Limited also acquired Intercontinental Bank Ghana (IBG) Limited. In 2015, the Republic Bank of Trinidad and Tobago acquired the HFC Bank Limited; the Amalgamated Bank was also acquired by the Bank of Africa (BOA); Fidelity Bank Ghana limited acquired Procredit Savings and Loans Company; UT Bank Ghana

<sup>61</sup> Bank of Ghana <<http://www.bog.gov.gh>> accessed 5 August 2019.

<sup>62</sup> *Daily Graphic*, (Accra, 27 October 2017) 3.

<sup>63</sup> *ibid.*

<sup>64</sup> See PWC, 'Banking Survey : Risk Based Minimum Capital Regulatory Capital Regime: What it Means for Banks in Ghana' (2017) 29.

Ltd also acquired the Metropolitan and Allied Bank; the SG-SSB Bank also acquired the erstwhile Social Security Bank; Bayport Financial Services and CFC Savings and Loans Company also merged.

As at December 2017, there were Thirty-Two banks in the country with 17 foreign controlled and 15 Ghanaian controlled banks.<sup>65</sup> As at December 2016, there were 64 Non-Bank Financial Institutions (NBFIs), 141 Rural and Community Banks (RCBs), 564 Microfinance Institutions (MFIs), 420 forex bureaux, and 3 credit reference bureaux operating in Ghana.<sup>66</sup>

### Insolvencies

Insolvencies arise where the liabilities of a bank/financial institution exceed the value of its assets or the entity is unable to satisfy its obligations as they fall due.<sup>67</sup> The banking sector has over the period of 60 years and a little more experienced some insolvent situations. The notable insolvencies were experienced in the early 2000s and between 2017 to 2019. For example, in January 2000, the Bank for Housing and Construction (BHC) and the Co-operative Bank became insolvent as a result of their involvement in the infamous A-Life Supermarket scandal. Government approved a scheme under which the Registrar-General was appointed as Receiver, with *PricewaterHouseCoopers* appointed as consultant.

On 14 August 2017, as a result of insolvencies, the Bank of Ghana revoked banking licenses of UT Bank Limited and Capital Bank Limited and approved a Purchase and Assumption transaction between these two banks and the GCB Bank Limited. Under this transaction, all deposits and selected assets were transferred to GCB Bank Ltd and *PricewaterHouseCoopers* was appointed receiver of these two banks.

On 20 March 2018, the Bank of Ghana, acting under powers conferred upon it by Sections 107 and 108 of Act 930, placed Unibank Ghana Limited under administration and appointed KPMG as Official Administrator for Unibank.<sup>68</sup> The placing of Unibank Ghana Limited under administration was necessitated by a number of infractions of the Act 930, including its persistent failure to maintain Capital Adequacy Ratio of 10%, breach of cash reserve requirements, and poor credit administration, which had the

<sup>65</sup> UT Bank Limited and Capital Bank Limited, two banks which collapsed in 2017 have not been included in this count.

<sup>66</sup> Bank of Ghana Report 2016, para 4.2, 20.

<sup>67</sup> See for example s 123(4) of the Banks and Specialised Deposit-Taking Institutions Act, 2016(Act 930).

<sup>68</sup> Bank of Ghana, Notice to the General Public, Notice No. BG/GOV/SEC/2018/07-Bank of Ghana Appoints Official Administrator for Unibank Gh Ltd See *Daily Graphic* (Accra, 21 March 2018) 23.

tendency to jeopardise the interest of depositors and the financial sector as a whole.<sup>69</sup>

In August 2018, as a result of liquidity challenges and regulatory breaches, the Bank of Ghana revoked the banking licenses of five banks and established the Consolidated Bank Ghana (CBG) Limited to take over their operations. The five banks are Unibank Ghana Limited,<sup>70</sup> Beige Bank Limited,<sup>71</sup> Royal Bank Limited, Construction Bank Limited<sup>72</sup> and Sovereign Bank Limited.<sup>73</sup> The Government provided Four Hundred and Fifty Million Ghana Cedis (GH¢450,000,000) as starting capital for CBG Limited and raised a bond of Five Million, Seven Hundred and Twenty thousand Ghana Cedis (GH¢ 5.72 M). Pursuant to Section 123 of Act 930, the Bank of Ghana also revoked the banking licences of Premium Bank Limited<sup>74</sup> and Heritage Bank Limited<sup>75</sup> in December 2018. The Bank of Ghana appointed Vish Ashiagbor of *PriceWaterHouseCoopers* as the Receiver of the two banks. The Bank of Ghana also approved a Purchase and Assumption Agreement between the Receiver and CBG Limited. Under this arrangement, the Receiver transferred some assets of the two banks to CBG Limited. The Government also issued a bond with the face value of One Billion, Four hundred and Three Thousand Ghana Cedis (GH¢1.403 Billion) to CBG to cover the gap between the value of the good assets and liabilities of the two banks transferred to Consolidated Bank.<sup>76</sup>

Apart from these banks, several financial institutions, particularly the microfinance institutions, have also become insolvent, impairing depositors' funds. Some of these are the result of Ponzi schemes operated by some of these financial service providers including the infamous *Pyram*

<sup>69</sup> *ibid.*

<sup>70</sup> As at 31 May 2018, uniBank was reported to be insolvent, with a capital deficit of GH¢7.4 billion and a capital adequacy ratio (CAR) of negative 74.65% (compared to the regulatory minimum of 10%).

<sup>71</sup> Beige Bank is reported to have acquired its banking licence using fictitious and non-existent capital.

<sup>72</sup> Construction Bank is also reported to have acquired its banking licence using fictitious and non-existent capital.

<sup>73</sup> Sovereign Bank's licence was revoked because it obtained its licence under false pretences and had become insolvent.

<sup>74</sup> The Bank of Ghana reported that Premium Bank was found to be insolvent as at 30 November 2018 with a capital adequacy ratio of negative 125.26%; See Bank of Ghana, Update on Banking Sector Reforms, Press Release 4 January 2019.

<sup>75</sup> The Bank of Ghana alleged that the Heritage Bank obtained its banking licence on the basis of 'questionable sources' and its failure to meet the new capital requirement of GHS 400 Million as at 31st December 2018; See Bank of Ghana, Update on Banking Sector Reforms, Press Release 4 January 2019,

<sup>76</sup> Bank of Ghana, Update on Banking Sector Reforms, Press Release 4 January 2019,

and R5. Indeed, on 23 March 2018, the Bank of Ghana gave a grim report of the financial sector when it observed that 272 financial institutions were in distress and about 705,396 depositors of these microfinance and Rural and Community banks are at risk of losing a total sum of GHS740.5 Million.<sup>77</sup>

### 2017-2018 Radical Reforms

As a result of these insolvencies and various regulatory breaches, from 2017, the Bank of Ghana started the implementation of some very radical steps, directives and decisions aimed at ensuring a holistic and robust financial sector. These measures have left the banking sector and the economy with far-reaching consequences which will reverberate for many years to come. A recount of the events and measures employed by the regulator is in place.

On 11 September 2017, the Bank of Ghana issued the Minimum Capital Directive<sup>78</sup> under which all the universal banks were required to enhance their minimum paid-up capital to Four Hundred Million Ghana Cedis (GHS400,000,000.00) by 31 December 2018. The universal banks were required to satisfy this minimum requirement through fresh capital injection, capitalization of income surplus or a combination of fresh capital injection and capitalization of income surplus.<sup>79</sup> Upon recapitalization, the number of universal banks operating at the end of deadline reduced from 34 to 23. The requirement of capitalization also compelled some banks to merge. First Atlantic Merchant Bank Limited and Energy Commercial Bank merged, Omni Bank Limited and Bank Sahel Sahara also merged. Finally, First National Bank and GHL Bank Limited also merged.<sup>80</sup> Some private pension funds operating in Ghana also found the need for capitalization as a unique opportunity to own equity/ acquire stake in some struggling / capital-deficient banks. This was done through a special purpose holding company known as the Ghana Amalgamated Trust (GAT) Limited. Two state banks and three private banks benefited from this scheme. The banks that benefitted from GAT are Agricultural Development Bank, National Investment Bank Limited, the merged Omni/Bank Sahel Sahara, Universal Merchant Bank and Prudential Bank.<sup>81</sup>

In July 2018, the Bank of Ghana has also issued the Fit and Proper Directive, and recently in July 2019, issued the Fit and Proper Persons' Directive - 2019. The objects of the Directive are to ensure that persons

<sup>77</sup> See *Daily Graphic* (Accra, 23 March 2018) 3.

<sup>78</sup> Minimum Capital Directive (BG/GOV/SEC/2017/19).

<sup>79</sup> *ibid.*

<sup>80</sup> Bank of Ghana, Update on Banking Sector Reforms, Press Release 4 January 2019.

<sup>81</sup> *ibid.*

who acquire significant equity in interests in banks and other financial institutions, directors or key management personnel of such institutions are fit and proper to the extent that they do not pose risks to depositors and creditors of their institutions. It also seeks prohibit persons who are not 'fit and proper' from engaging in activities sanction by Act 930. In December 2018, the Bank of Ghana with the aim of improving corporate governance in the banking industry also issued the Corporate Governance Directive.

These radical steps taken by the Bank of Ghana have had very significant consequences for the banks, depositors, staff, directors and the nation as a whole. The capitalised banks have become financially stronger and capable of undertaking major transactions and boosted the confidence of their customers. The capitalization should ordinarily boost and rekindle economic activities because all the capitalised banks should have enough funds to lend to deserving businesses and individuals.

However, the fact that the banks whose licences were revoked were all Ghanaian banks has adversely affected the confidence of the banking public in dealing with such banks.<sup>82</sup> Most customers whether Ghanaian or not would now prefer to place their investments and deposits with foreign-owned banks than locally owned ones. This lack of confidence in Ghanaian banks is really disturbing and the regulator and the Ghanaian banks must find ways of engendering confidence in dealing with these banks.

Also, the lack of confidence in Ghanaian banks has had an unintended effect on Savings and Loans Companies, Finance Houses and Microfinance companies. This is because of the belief by the banking public that if local universal banks are failing what confidence or assurance can they repose in low tiered financial institutions. This has led to significant withdrawal runs by customers on these financial institutions, which has in some cases led to the demise of many other financial institutions.<sup>83</sup>

Furthermore, many customers of these banks whose licences have been revoked, particularly other financial institutions which placed investments with these banks have had a torrid time retrieving their investments from the Consolidated Bank. The failure of these financial institutions to recover their investments from CBG has been passed on to these financial institutions who are also unable to repay investments placed with them by their individual and corporate customers. This contagion is real and appears to have caused a general hardship to individuals and enterprises alike.

<sup>82</sup> See for example, 'Depositors running away from local banks' *Business & Financial Times* (Accra, 17 July 2018) 1,3.

<sup>83</sup> See *Daily Graphic* (Accra, 23 March 2018) 3.

Finally, so many employees of these banks whose licences have been revoked and other financial institutions which have ceased operations as a result of funding difficulties have become unemployed and now find it very difficult to secure new jobs particularly in the financial sector partly because of the stigma of being former employees of the collapsed banks and financial institutions and partly as a result of vacancies in the banking space.

In the end, it is hoped that the Bank of Ghana has learnt valuable lessons in the process and would in the future consider other alternatives to revoking the licenses banks and other financial institutions and to graduate its regulatory sanctions.

### Developments in Banker and Customer Relationship

In terms of the banker and customer relationship,<sup>84</sup> the rules governing this relationship have remained largely the common law principles of contract as supplemented by statute. The basic character of the banker and customer relationship has remained contractual.<sup>85</sup>

The common law sets out the various rights and obligations of the customer and those of the banker. The duties of the banker and customer recognised at common law are set out in the celebrated case of *Joachimson v Swiss Bank Corporation*.<sup>86</sup> The duties imposed on the customer include the duty to abide by the customer's mandate;<sup>87</sup> pay cheques when they are properly drawn; furnish the customer with accurate and regular bank statements; keep the customer's transactions and information confidential;<sup>88</sup> collect cheques on behalf of the customer and exercise due care and skill in dealing with the customer; and to give notice to the customer before closing the customer's account.<sup>89</sup>

Unlike the bank, the duties imposed on the customer are severely limited in scope. The two recognised duties are the duty to inform the bank of forgeries, or fraud relating to his or her account, of which he or she

<sup>84</sup> Traditionally, a customer is said to be a person who has opened an account with a bank (*Ladbroke & Co v Todd* (1914) 30 TLR 433) or one to whom the bank provides any service. See also *Great Western Railway Co v London & County Bank* [1901] AC 414.

<sup>85</sup> *Foley v Hill* (1848) 2 HL Cas 28, 36; *GNAT v Standard Chartered Bank Ghana Limited* (2008-18) 1 CLRG 82.

<sup>86</sup> [1921] 3 KB 110.

<sup>87</sup> *Ligget (Liverpool) Ltd v Barclays Bank* [1928] 1 KB 48; See also *Sampson X Tommey v Standard Chartered Bank Ltd* (2008-18) 1 CLRG 68.

<sup>88</sup> *Tournier v Provincial and Union Bank of England* [1924] 1 KB 46.

<sup>89</sup> *Prosperity Ltd v Lloyds Bank* (1923) 39 TLR 372.

becomes aware<sup>90</sup> and to take care when drawing cheques so that they are not easily altered.<sup>91</sup> Several attempts to increase or expand the scope of the customer's duty of care have proved futile.<sup>92</sup>

Perhaps, the most radical intervention in the banker and customer relationship in Ghana has been recorded in the area of the bank's duty of confidentiality.

### Duty of Confidentiality

At common law, subject to specific exceptions, a banker owes its customers a duty of secrecy, to keep confidential all matters affecting the customer's transactions with the bank. The leading case on this duty in the Commonwealth is the celebrated decision in *Tournier v Provincial and Union Bank of England*.<sup>93</sup> In this case, *Tournier*, a customer of the Defendant bank, overdrawn his account. When the customer defaulted in repaying his debts, the bank Manager telephoned his place of employment to ascertain the Plaintiff's private address, and there followed conversation between him and two of the company's directors. The Plaintiff said in this conversation the Manager had disclosed the facts of the overdraft and his failure to repay as well as disclosing that the Plaintiff was betting heavily, the bank having traced a payment or payments to a bookmaker. Consequently, the Plaintiff's employers refused to renew his employment when his quarterly employment expired. The Plaintiff sued the Defendant, among others, for breach of an implied contract that the bank would not disclose to third parties the state of his account or any transactions relating to it. On appeal the Court of Appeal held in the Plaintiff's favour. The Court further went on to set out some exceptions to the general. Bankes LJ in this case stated:

At the present day I think it may be asserted with confidence that the duty [of non-disclosure] is a legal one arising out of contract, and that the duty is not absolute, but qualified. It is not possible to frame any exhaustive definition of the duty. ...On principle, I think that the qualifications can be classified under four heads; a. where disclosure is under compulsion by law; b. where there is a duty to the public to disclose; c. where the interests of the bank require disclosure; and d. where disclosure is made by the express or implied consent of the customer.<sup>94</sup>

<sup>90</sup> *Greenwood v Martin's Bank Ltd* [1933] AC 51.

<sup>91</sup> *London Joint Stock Bank Ltd v Macmillan & Arthur* [1918] AC 777.

<sup>92</sup> *Tai Hing Cotton Mill Ltd v Liu Chong Hing Bank Ltd* [1986] AC 80; *GNAT v Standard Chartered Bank Ghana Limited* (2008-18) 1 CLRG 82.

<sup>93</sup> [1924] 1 KB 461.

<sup>94</sup> *ibid* 471-473.

The common law obligation of confidentiality has been codified in a number of enactments in Ghana.<sup>95</sup> The current law which codifies this obligation is the Banks and Special Deposit-Taking Institutions Act, 2016 (Act 930).<sup>96</sup> The point of interest with the law is the tall list of exceptions created by Act 930. The law has created 'institutional exceptions', where certain institutions created by law are entitled to be furnished with information. These institutions include: the Ghana Revenue, the Financial Intelligence Centre created under the Anti-Money Laundering Regime, the Collateral Registry created under the Borrowers and Lenders Act, the Ghana Deposit Protection scheme, Credit Bureau established in accordance with the Credit Reporting Act, 2007(Act 726) and the Securities and Exchange Commission.<sup>97</sup>

Additionally, in a bid to strike a healthy balance between protecting the secrecy of customers and meeting the demands, complexities and challenges of modern banking, the law has created further exceptions to the bankers' duty of confidentiality. These exceptions include where (a) a customer who had been issued a credit card or charge card by a bank, has had the card suspended or cancelled by the bank by reason of default in payment, and the bank discloses information related to the customer's name and identity, the amount of indebtedness and the date of suspension or cancellation of the credit card or charge card to other banks issuing credit cards or charge cards in Ghana; (b) the customer is declared bankrupt in Ghana or, in the case of a company, is being wound up; (c) the customer has passed away, testate or intestate, and the information is required by the appointed personal representative of the deceased or the testamentary executor solely in connection with the succession estate; (d) civil proceedings arise involving the bank and the customer or the account of the customer; (e) the information is required by a colleague in the employment of the same bank in Ghana or an auditor or legal representative of the bank who requires and is entitled to know the information in the course of professional duties; (f) the information is required by another bank for the purpose of assessing the credit-worthiness of a customer, if the information is being sought for commercial reasons and is of a general nature; (g) the bank has been served with a garnishee order attaching moneys in the account of the customer; (h) any person summoned to appear before a court or a Judge in Ghana

<sup>95</sup> Section 84 of the Banking Act, 2004 (as subsequently amended by Banking (Amendment) Act, 2007(Act 738); Section 1 of Borrowers and Lenders Act 2008 ; Section 41 of Non-Bank Financial Institutions Act, 2008(Act 774) ; Sections 8, 27, 34 and 36 Credit Reporting Act, 2007(Act 726); Section 146 of Banks and Special Deposit-Taking Institutions Act, 2016(Act 930).

<sup>96</sup> Sections 145 - 147.

<sup>97</sup> Section 146(3), Act 930.

and the court or the Judge orders the disclosure of the information; (i) the bank is required to make a report or provides additional information on a suspicious transaction to the Financial Intelligence Centre set up under the Anti -Money Laundering law in force.

### **Human Capital Requirement Qualities-Fidelity, Integrity and Competence**

It is a truism that no industry can survive nor thrive without quality human capital. The practice of banking requires a sound mind, a high level of integrity, good judgment, great business acumen and a good dose of confidentiality. Therefore, persons who are employed at the various levels in a bank (such as directors, senior management and all employees of all grades) must possess these qualities. In *Boohene Foods Ltd v National Savings and Credit Bank and Another*,<sup>98</sup> the Court held that:

The business of banking was organised and thrived on trust and confidence. The...bank was therefore under a duty to ensure that not merely competent, but also honest and trustworthy personnel were employed to conduct its operations. Accordingly, since the bank erred in the evaluation of the integrity of its accountant, it was the bank and not the customer who should accept liability for that misplaced trust or selection.

Therefore, successive laws regulating the banking and financial sector have invariably made prescriptions about the quality of human beings required to run this sector.<sup>99</sup> Currently, under Section 59 of the Bank and Special Deposit-Taking Institutions Act, 2016, a person shall not be appointed or elected, or accept appointment or election, as a director or key management personnel if that person:

(a) has been adjudged to be of unsound mind' or is detained as a criminal lunatic under any law in force in Ghana; (b) has been declared insolvent, has entered into terms with any person for payment of that person's debt or has suspended payment of the person's debt; (c) is convicted of an offence involving fraud, dishonesty or moral turpitude; (d) has been a director or manager or associated with the management of an institution which is being or has been wound up by a court of competent jurisdiction due to offences committed under a law or a bankruptcy; (e) is a director,

<sup>98</sup> [1992] 1 GLR 175-188.

<sup>99</sup> Section 20, Act 738.

chief executive or employee of another bank;<sup>100</sup> (f) is under the age of eighteen years; does not have the prior approval of the bank of Ghana; or has defaulted in the repayment of the financial exposure of that person; or (g) is not, in the opinion of the Bank of Ghana, a fit and proper person to be a director.

In our 60-year history, the banking and financial sector has been riddled with several incidents of fraud perpetrated by bank-staff on customers and on the various banks they work for and on the industry as a whole. In *SAX Tsegah v Standard Chartered Bank*, the Court accepted the Plaintiff-customer's testimony that the ATM system is not foolproof. The Court accepted the testimony of instances where other customers' accounts were fraudulently manipulated and monies withdrawn without their permission. The Court also accepted the Plaintiff's testimony that some employees of the Defendant bank working at the Computer Department could obtain internal records to produce additional ATM cards. With the use of fake but functional cards they could fraudulently withdraw money from ATM machines. Standard Chartered Bank also admitted that it was well-aware of ATM and credit card fraud, but admitted that the bank did not have, at the time, equipment to detect such activities. The bank admitted in its defence that it provided waste paper bins at all the locations of their ATM machines into which customers dropped their receipts if they did not want to keep them. The receipts bore the name of the customer, his or her account number and the branch number. These receipts, the bank further admitted, could be used by fraudsters to defraud the bank. In *Barclays Bank v Dabo*,<sup>101</sup> evidence was led to show that a clerk in the bank had fraudulently entered one customer's deposits in a rogue's ledger account and was successfully prosecuted. In *Boohene Foods Ltd v National Savings and Credit Bank & Anor*, supra, an accountant fraudulently committed its employer, a bank, to pay a guarantee in the sum of €5 million. In *Republic v Samuel Otumfuo*, a former Head of Operations at Access Bank, who had worked in the banking sector for about 28 years, was found guilty of stealing in excess of GHS800,000.00 from a customer's account using the customer's duplicate cheques.<sup>102</sup> He was sentenced to a year's term of imprisonment by the Circuit Court in 2015.<sup>103</sup> In October 2017, the Wa Circuit Court sentenced an employee of the

<sup>100</sup> However, this section does not apply where (a) a person appointed as a director for the ARB Apex Bank Limited is a representative of a bank that is an affiliate of the ARB Apex Bank Limited; or (b) in the opinion of the Bank of Ghana, special circumstances require that the person be appointed as director of another bank.

<sup>101</sup> [1964] GLR 637-643.

<sup>102</sup> < <http://citifmonline.com/2015/07/former-access-bank-head-of-operations-jailed/> > accessed 18 August 2018; See also <<https://www.newsghana.com>> accessed 18 August 2018.

<sup>103</sup> *ibid.*

Stanbic Bank Ghana Limited to a 10-year term of imprisonment with hard labour for stealing an amount of GHS287,000.00 belonging to the Bank.<sup>104</sup> His *modus operandus* was to divert the bank's electronic cash belonging to his employers.<sup>105</sup>

Where the fraud has been perpetrated on customers of the banks, the banks have been vicariously held liable, with the bank granted the liberty to recover any such amount from the employee.

### Technological Advancements

The recent technological advancements have resulted in technological innovations in banking including the deployment of Automated Teller Machines (ATMs) and the introduction of electronic banking, telephone banking and short message service (SMS) banking. These technological deployments have sought to make banking more convenient and deepened financial inclusion.

### Law and Technology

In resolving conflicts arising from the use of technological banking devices, the courts have preferred to rely on the evidence provided by the customer over electronically generated evidence. The Courts have not shied away from emphasising that the employment of technology must be accompanied by the appropriate security features. The classic case which demonstrates these principles is *SAX Tsegah v Standard Chartered Bank*. In this case, the Court was confronted with accepting the testimony of a prominent lawyer customer of Standard Chartered Bank and the computer printout which showed that the customer had made several withdrawals at different ATMs although there was credible evidence to the effect that the customer was indisposed at the material time. Furthermore, there was credible evidence that he had not compromised his ATM card and PIN. The Court per Dordzi J (as she then was) held that:

ATM machines, it is not in dispute, are computers and they are not foolproof, they can break down and they can make mistakes. In the course of taking evidence in this case, the United States of America held its Presidential elections and it became a common fact worldwide that computers that counted the votes in the State of Florida made mistakes and votes in some counties in Florida had to be recounted by hand. This is an example of how common the

<sup>104</sup> <<http://www.myjoyonline.com/news/2017/October17th/stanbic-bank-teller-jailed-10-years-for-stealing-287000.php>> accessed 18 July 2018.

<sup>105</sup> *ibid.*

news of computer malfunctioning has become even with computers that one would have thought would be very reliable because of the very sensitive and vital information they access. In any case, the defence admits that their ATM machines are not foolproof. Human beings feed information into their machines and therefore there is possibility of the machines making mistakes. The defence also admits they are aware of ATM and credit card frauds and they do not have the equipment to detect that kind of fraud. One other significant admission the defence made is that they have provided waste paper bins at all the locations of their ATM machines and their customers drop their receipts in these bins if they do not want to keep them. The receipts bear the name of the customer, his account number and the branch number. These receipts the defence further admitted can be used by fraudster to defraud the bank.

We have here a situation where the defendant bank has no doubt about a long time reputable customer and shareholder's integrity. It means when he reported that the series of withdrawals debited to his account between January 1999 and April 1999 were not made by him and that his ATM card did not fall into any wrong hands or any hand at all and therefore he suspected fraud has been committed, the bank had no reason to doubt him. Evidence had established it that before the plaintiff made his complaint the bank was very aware of frauds perpetrated on ATM customers and they have made refunds to customers in some cases. Mr. William Boafo PW1 was one of the victims that received a refund.

On the issue as to whether the plaintiff's card was used or not making the withdrawals, it is the word of the plaintiff against a computer printout. The plaintiff has established that he did not use the card and did not make the withdrawals in question. On some of the days the withdrawals were made he was on admission in hospital and was incapacitated. No other person too had access to his card.

The defence the defendant is putting up is that though they do not doubt what the plaintiff is saying their computer printout shows that the plaintiff's card was used to withdraw the ₵13.1 million the plaintiff is claiming, so someone might have access to his card. The defence has admitted that computers do make mistakes and their ATM machines are no foolproof. It follows then that computer printouts are not foolproof and can make mistakes. To rely on the computer printout to say someone else might have accessed

to plaintiff's card is a mere speculation. What I can say is that the defendant bank is not ready to face the fact that there was a fraud hence their refusal to allow a police investigation. Calling on me to prefer the contents of a computer printout which they themselves admit is not foolproof to the evidence of a witness whose integrity they themselves have no doubt about I find absurd. Electronic banking is a relatively new scheme in this country. There are no local judicial precedents on cases involving electronic banking.

The only way to deter this type of fraud is to provide cameras, an ATM interface and VCR on the ATM.

### Corporate Governance

Section 56 of Act 930 empowers the Bank of Ghana to prescribe rules regarding matters of corporate governance of a Bank, Specialised Deposit-Taking Institutions or Financial holding company. The Bank of Ghana has discretion to consider necessary or appropriate measures to ensure prudent operations including: (i) the scope and nature of the duties of directors of the financial institutions; (ii) requirements for audit and other specific committees of the board; (iii) responsibilities for key management personnel; (iv) risk management; (iv) internal audit; (v) internal control and compliance.<sup>106</sup>

The recent collapse of Capital Bank and UT Bank has been attributed partly to the absence of or weak governance structures. According to the Governor of the Bank of Ghana, Dr Ernest Addison:

In our history, Ghana's banking sector has also witnessed its fair share of corporate scandals and restructurings, including the collapse of Co-Operative Bank and Bank for Housing and Construction. More recently, the revocation of the licences of UT Bank and Capital Bank due to significant capital deficiencies and also partly reflected poor corporate governance practices within these institutions.<sup>107</sup>

The lack of board independence, competent members and objectivity has been identified as the bane of financial institutions. These challenges have been attributed to several factors including the fact that most board

<sup>106</sup> Section 56, Act 930.

<sup>107</sup> Speech by Governor of the Bank of Ghana at a Breakfast Meeting at the National Banking College in Accra on the theme 'The Role of capacity building in Transforming the practice of Corporate Governance in the Financial Sector', *Business and Financial Times* (Accra, 15 September 2017) 1.

members have political affiliations, family connections or close associations with either the CEOs or board chairpersons.<sup>108</sup>

In order to strengthen the governance structures of financial institutions, particularly the banks, the Bank of Ghana has instituted guidelines aimed at improving governance in the banking sector. These guidelines include the adoption of the Risk-Based Supervision framework.<sup>109</sup> This framework employs both off-site and on-site surveillance systems to provide early warning signals of developing risks at either the individual bank level or on an industry-wide basis.<sup>110</sup> Furthermore, the framework provides the regulator with a clearer picture of the risk profile of each bank and the required level of capital required to support its operations within the industry.<sup>111</sup>

Finally, the Bank of Ghana has just released a comprehensive set of corporate governance regulations for the banking industry in the form of the Banking Business-Corporate Governance Directive, 2018, which outlines among many other issues, matters concerning the tenure of the CEO and non-executive Directors of banks; the size of bank boards; the retiring age for directors; and disclosure of attendance at Board meetings by directors in annual accounts.<sup>112</sup>

#### **Part IV- Recommendations and Concluding Remarks**

The foregoing analysis clearly shows that the health of the economy is directly linked with the stability and proper regulation of the banking and financial sectors. The primary responsibility of the Bank of Ghana to regulate and ensure the stability of the banking industry cannot be overemphasised. The Bank of Ghana must have its surveillance on high alert to be able to pick up the early warning signals of any failings in the industry at large or in relation to a particular institution. The regulator should not be sympathetic or intimidated by the size, reputation and personages behind financial institutions in enforcing the laws, regulations and directives. The law must continually respond to social, economic and technological changes. Due to the fact that the next frontier of banking is going to be technology-driven it is incumbent on the regulator to ensure that our laws are in tune with, and if possible, ahead of the developments in

<sup>108</sup> *ibid.*

<sup>109</sup> *ibid.*

<sup>110</sup> *ibid.*

<sup>111</sup> *ibid.*

<sup>112</sup> The Banking Business-Corporate Governance Directive (2018) for banks and specialised Deposit-Taking Institutions Regulated under the Banks and Specialised Deposit-Taking Institutions Act, 2016(Act 930); See <<http://www.bog.gh>> accessed 18 August 2019.

banking/financial technology. This will give the regulator the opportunity to adequately deal with banking fraud, which is on the rise, money-laundering and terrorist financing.

By reason of the commanding presence of foreign banks in Ghana, the regulator must be wary of cross-border contagion, a situation where the collapse or impairment of a parent bank outside the jurisdiction of Ghana may result in impairment in the financial fortunes of its subsidiaries in Ghana. The Bank of Ghana must constantly be in touch with the regulatory authorities of parent banks outside the jurisdiction as a way of picking up early warning signs of any impairments likely to affect the subsidiaries in Ghana and to put in place mitigating measures to deal with the high risk of contagion.

Furthermore, the regulator must also enhance its supervisory capacity by increasing its staff strength and heavily investing in the capacity of its staff in relevant areas such as ICT, accounting, law, corporate governance, cyber fraud and investigations to be able to critically monitor and analyse the activities of banks, particularly their credit portfolios and credit management practices to deal with the ever increasing rate of non-performing loans.

Although it is not in doubt that the Bank of Ghana as regulator of the industry has primary responsibility for ensuring the stability of the banking sector, there are other key players who must also play critical roles to ensure stability and proper regulation of the sector. The Banks and Special Deposit-Taking Institutions would have to be more rigorous and critical with their credit appraisal and administration system, to ensure that only those who demonstrate a capacity to repay are granted credit facilities. The taking of security for credit as a fall-back position is very much recommended. The financial players must make sure they strictly adhere to the laws regulating their activities particularly making sure that they are in good standing with their minimum capital requirements and keeping to the statutory capital adequacy ratios. These steps will not only engender confidence in the banking sector, but will also enable the banks to undertake major financial transactions.

The analysis also shows that the banking industry is not fraud foolproof. The evidence clearly shows that the enemy within, the rogue banker, must be watched. The Internal Audit and Inspection Units in the banks and other financial institutions must be up and doing in preventing the incidence of fraud, while picking up early warning signs in the various institutions. The role of the Human Resource Departments in this enterprise cannot be over emphasised. They must be thorough and detailed in their employment processes, particularly in terms of character traits and competence. They

must request and receive appropriate recommendations and references before the employment processes are completed.

Directors of banks have a special role to play in ensuring the good health of the various banks they direct. It is hoped that banks and the regulator will adhere to key components of the 'fit and proper test' of integrity and competence as well as faithfully complying with the Banking Business-Corporate Governance Directives.

The judiciary has played and must continue to play a critical role in filling-in the gaps in the law, particularly in grey areas of the banking law by interpreting, declaring and faithfully applying the law to hold the scales of justice balanced among its patrons, namely, the banking industry, the regulator, the financial institutions and customers. It is hoped that our Judges will be more in tune with developments in the banking industry and equipped to deal with the changing character of banking business and financial laws. The declared law must not be divorced from the practice of banking. The two must work in tandem. The Ghana Association of Bankers and the Chartered Institute of Bankers also have roles to play. They must continue to educate their members and the general public on banking procedures, new banking laws and emerging global trends. Where they feel so strong about the position of the industry, they must be prepared to engage lawyers to file *amicus briefs* in on-going suits that have the potential of affecting the whole industry.

Finally, the role of academia is critical. Legal scholars must keenly follow developments in the banking and financial sector, to constantly analyse, synthesise and provide constructive feedback and illumination to the nation in the years ahead on matters affecting the economy, of which the banking and financial sector is a key part.

### Conclusion

The foregoing analysis clearly shows that the trajectory of banking laws in Ghana has been evolutionary and reactive at the same time in responding to both local and foreign demands - socially, economically and technologically. It has shown that banking regulation in Ghana has been relatively stable over the period, and where there have been challenges, the Bank of Ghana as regulator has risen to the occasion to find suitable solutions, although crucial lessons remain to be learnt. It is hoped that the Bank of Ghana and other regulators in the financial space have learnt from our history and that of other jurisdictions to act decisively and to be more proactive than being reactive in the future.

It is submitted that banking regulation must engender confidence in the banking sector. Banking regulation must be both preventive and

resolutive of intermediary breaches and crisis. Banks (and other financial institutions) and their counterparties must be confident in dealing with one another knowing very well that each of the parties involved in the web is playing by the law and keeping high standards, and the risk of contagion is eradicated or reduced to minimal. Regulation must also inspire confidence in the deposit and investment public and to assure them that their deposits and investments are safe, particularly with indigenous banks.

In addition to bolstering public confidence in banks and other financial institutions, it is important for key actors in the financial space to collaborate to ensure financial stability and strict enforcement of laws regulating the sector. It should be obvious to anyone that laws in general and even good laws by themselves are not good enough to ensure the stability and resilience of the financial sector. The laws must be strictly implemented and enforced fairly, without fear or favour, and non-capriciously. The flagrant disobedience of our banking laws must be a thing of the past. The regulator must be able pick-up early warning signs and implement measures to decisively deal with them. As the evidence suggests, the risk of contagion is real and every effort must be made to isolate and address this risk.

The law must continually respond to social, economic and technological changes. Again, it should be obvious by now that the next frontier of banking is going to be technology-driven, and every effort must be made to ensure that the technological space within which this occurs is well regulated and secured. At the end of the day, we must allow the history of banking in this country to always serve as a useful guide and illumination for the future.