

PD-ABM-932
90606

FINAL EVALUATION OF THE GHANA VENTURE CAPITAL FUND

Final Report

U.S. Agency for International Development

Prepared for: USAID/Ghana

**Prepared by: Laurence C. Morse, Ph.D, Consultant to Coopers & Lybrand
Eric L. Chatman, Consultant to Coopers & Lybrand
Markai Plange, Consultant to Coopers & Lybrand**

**Sponsored by: Private Enterprise Development
Support Project III
Contract No. PCE-0026-Q-00-3031-00
Delivery Order No. 16
Prime Contractor: Coopers & Lybrand, LLP**

June 1996

GHANA VENTURE CAPITAL FUND FINAL EVALUATION

TABLE OF CONTENTS

Executive Summary	1
I. The Ghana Venture Capital Fund (GVCF)	4
A. Background	
B. Final Evaluation Report	
II. The Legal and Policy Environment	6
A. Overview of the Financial Sector	
B. Sources of Equity Financing: Donor Institutions	
C. Regulation of Venture Capital and Fund Management Companies	
III. The Operations of the Venture Fund Management Company (VFMC), 1992-1995	15
A. Introduction	
B. Staffing	
C. Training	
D. Operating Procedures	
E. Deal Flow Generation	
IV. GVCF Portfolio Review and Evaluation	23
A. Introduction	
B. Evaluation Methodology	
C. Portfolio Company Evaluations	
D. GVCF Portfolio: General Observations and Assessment	
E. Projected GVCF Portfolio at March 31, 1997	
V. The Impact of the GVCF on Private Sector Development	55
A. Assessment of GVCF Impact to Date	
B. Possible Future Impact of the GVCF	

ATTACHMENTS

- A** **Statement of Work**
- B** **Team Capabilities**
- C** **Financial Institutions (Non-Banking) Law**
- D** **Securities Industry Law**
- E** **Draft Operating Guidelines for Venture Capital Funding Companies**
- F** **Enterprise Fund Management Agreement**
- G** **VFMC Investment Staff Resumes**
- H** **VFMC Administration Notes (Operations Manual)**
- I** **CDC Internal Audit, Back To Office Report, October, 1995**
- J** **GVCF Deal Log, November 1992 - December 1995**
- K** **List of Interviewees**
- L** **GVCF Brochure; article from the Daily Graphic re: Venture Capital, February 16, 1996**
- M** **GVCF Shareholders**

THE GHANA VENTURE CAPITAL FUND FINAL EVALUATION

EXECUTIVE SUMMARY

In late 1991, in recognition and support of financial sector reform efforts undertaken by the Government of Ghana, and to demonstrate the need for financial products and services designed to meet the long-term financing requirements of growing businesses, USAID/W and USAID/Ghana (hereinafter referred to jointly as USAID) sponsored the formation of a venture capital fund in Ghana. USAID was joined in this effort by the Commonwealth Development Corporation (CDC) of the European Union (EU).

From the outset, the agreed upon legal structure was to establish two companies, a non-bank finance company to hold the funds, Ghana Venture Capital Fund (GVCF or "the Fund"), and a management company, Venture Fund Management Company (VFMC), to make investment decisions. It was further agreed that USAID, through a grant, would underwrite the operational expenditures of VFMC, and that CDC would be the anchor investor in GVCF and lead the effort to attract additional investors.

The two companies were incorporated in Ghana and began commercial operations in November 1992. The total USAID grant amounted to \$1,094,000, expended, in support of VFMC operations, over a three year period ending in November 1994. CDC committed \$2.0 million to GVCF and assisted the Fund in raising an additional \$3.8 million in investment capital from a number of development finance and local institutions, bringing total fund investment capital to \$5.8 million.

Final Evaluation Report

Under the terms of the USAID grant, the progress of GVCF and VFMC was to be monitored and evaluated on at least an annual basis, and a final or end of activity evaluation was to be conducted after the expiration of USAID's financial support. The present document reports the findings of this end of activity evaluation.

A team of three consultants, a venture capital expert (Laurence C. Morse, PhD) and two finance experts with extensive experience in Ghana (Eric L. Chatman and Markai Plange), undertook the final evaluation. The team was charged with evaluating the Fund's contribution to achieving the goal of promoting Ghana's private business sector with a focus on its: (i) political and regulatory environment impact, e.g., on Government of Ghana programs and policies; (ii) direct economic impact, e.g. job creation, expanded private sector activity; and (iii) business impact, e.g. heightened understanding of the venture capital mechanism, access to investors and attractive investees.

The evaluation team conducted most of its field work in Ghana during the two week period February 12-23, 1996. Over the course of its field work, team members: (i) visited all GVCF portfolio companies; (ii) conducted scores of interviews with VFMC management, GVCF board members (all of whom either are or represent GVCF investors), the managing directors and

finance officers of all GVCF portfolio companies, Government officials, prominent Ghanaian business owners, and representatives of other institutions which play significant roles in Ghana's private sector; and (iii) collected portfolio company and VFMC/GVCF management reports, financial statements and other data considered appropriate and necessary to complete its assigned task.

Observations and findings based on the team's evaluation effort are presented in four sections under the following headings:

- The Legal and Policy Environment
- The Operations of the Venture Fund Management Company, 1992-1995
- GVCF Portfolio Review and Evaluation
- The Impact of the GVCF on Private Sector Development

Summary of Findings

1. GVCF's most obvious and significant impact with respect to the basic factors operative in the private enterprise development process has been on Government policies and regulations. The promulgation of the Financial Institutions (Non-Banking) Law of 1993, and the subsequent publishing of "Draft Operating Guidelines for Venture Capital Funding Companies" by the Bank of Ghana in 1995, with input by VFMC management, constitute a clear signal from the Government of its intent to create a regulatory environment conducive to the growth and development of institutional venture capital finance in Ghana.
2. From the commencement of commercial activity, GVCF has undertaken a continual marketing effort to better acquaint the general business community with its presence and the nature of its particular product. These efforts are seen as having been generally successful. There was broad consensus among a cross section of private sector participants that GVCF's presence in the financial sector has resulted in much greater understanding in the larger business community of the specific utility of venture capital as an appropriate financing mechanism for certain types of businesses.
3. The third area in which GVCF has had an impact on private sector development falls into the category of behavioral or attitudinal change. Several respondents, who had either referred investment opportunities to GVCF, or were particularly knowledgeable about its present portfolio and deal pipeline, commented on what they characterized as a greater degree of management discipline, focus and professionalism exhibited by some of the entrepreneurs who had to meet the Fund's demanding pre-investment criteria and on-going reporting standards. It was suggested that should companies led by such entrepreneurs become significant wealth creation vehicles for their owners and GVCF investors, the impact on other business owners and other potential entrepreneurs would be quite significant.

4. The evaluation team did not find there to have been a discernible direct economic impact from GVCF's investment activity to date, with respect to areas such as job creation, increased tax revenues and enhanced infrastructure development. However, given that the Fund had invested a total of \$1.6 million in six companies, over less than a two year period at the time of this evaluation, a significant impact in these areas would not be expected. Based on the Fund's present deal pipeline, the number of projects now approved for investment that should come into the Fund's portfolio over the next twelve months, and the fact that approximately 50% of the projected dollars to be invested would go into start-up companies, appreciable direct economic impact should be discernible over the next five years.

5. Lastly, while prevailing macroeconomic conditions and the relative youth of the existing GVCF portfolio make it difficult to draw conclusions about the likelihood of GVCF's ultimate success, the team found the current portfolio, albeit small, in fairly good shape. Grouping GVCF's current investments into three broad performance categories -- satisfactory, watch and problem -- precise definitions for which are made explicit in the report, the team concluded that of \$1,625,000 invested as of February 23, 1996, \$707,000, or 44% of capital invested, has been invested in companies performing satisfactorily and demonstrating high financial return prospects; \$528,000, or 32% of capital invested, has been invested in companies experiencing difficulty due primarily to external conditions and for which return of capital is highly probable and attractive returns possible, though less likely; and the balance of \$390,000, or 24% of invested capital, has been invested in a company experiencing significant problems due as much to internal as external problems and for which, barring significant changes, return of capital is doubtful.

I. THE GHANA VENTURE CAPITAL FUND (GVCF)

A. Background

In 1984, under its Economic Recovery Program (ERP), the Government of Ghana embarked on a formal process of economic reform which graduated into a Structural Adjustment Program in 1987. Under this program, a series of initiatives were launched to redress major economic imbalances and to foster growth through liberalization. One such initiative was the Financial Sector Adjustment Program (FINSAP). At the time, the financial sector was dominated by formal banking institutions, most of which were undercapitalized and possessed portfolios characterized by a large number of non-performing loans. Under the FINSAP, the Government sought significant deregulation of the financial sector, undertook recapitalization of the banks and encouraged the development of new forms of financial intermediation in the economy.

USAID/W and USAID/Ghana (henceforth together referred to jointly as USAID) recognized the impact and the limits of these reform efforts and, to demonstrate the need for financial services and products designed to meet the long-term financing requirements of growing businesses, sponsored the formation of a venture capital fund in Ghana. USAID was joined in this effort by the Commonwealth Development Cooperation (CDC) of the European Union (EU), which had launched venture capital funds in other countries, had been actively involved in Ghana for some 40 years, and had also expressed an interest in supporting the establishment of a venture capital fund in Ghana.

From the outset, the agreed upon legal structure was to establish two companies, a non-bank finance company to hold the funds, Ghana Venture Capital Fund (GVCF or the "Fund"), and a management company, Venture Fund Management Company (VFMC), to undertake investment decisions. It was further agreed that USAID, through a grant, would underwrite the operational expenditures of VFMC, and that CDC would be the initial investor in GVCF and lead the effort to attract additional fund investment capital.

The two companies were formally incorporated in Ghana and commercial operations began in 1992. The total USAID grant amounted to \$1,094,000 expended in support of VFMC operations over a three year period ending in November 1994. CDC committed \$2.0 million to GVCF and assisted the Fund in raising an additional \$3.8 million in investment capital, bringing total fund investment capital to \$5.8 million.

B. Final Evaluation Report

Under the terms of the USAID grant, which was administered through its Africa Venture Capital Project (AVCP), the progress of GVCF and VFMC was to be monitored and evaluated on at least an annual basis, with a final or end of activity evaluation being conducted after the expiration of USAID's financial support. The present document reports the findings of this end of activity evaluation. (See Attachment A: Statement of Work).

A team of three consultants, a venture capital expert and two finance specialists with extensive experience in Ghana, undertook the final evaluation. (See Attachment B: Team Capabilities). The team was charged with evaluating the Fund's contribution to achieving the goal of promoting Ghana's private business sector with a focus on its: (i) political and regulatory environment impact, e.g., on Government of Ghana programs and policies; (ii) direct economic impact, e.g. job creation, expanded private sector activity; and (iii) business impact, e.g. heightened understanding of the venture capital mechanism, access to investors and attractive investees. Suggested specific tasks included evaluating:

- the legal and policy environment in which the Fund operated;
- the operations of VFMC during the period 1992-1995;
- the operations of companies in the Fund's portfolio, examining the success (or lack thereof) of these companies;
- the impact of the Fund on the financial sector in Ghana; and
- the future role of the Fund in Ghana's private sector development effort.

The evaluation team conducted most of its field work in Ghana during the two week period February 12-23, 1996. Though not required, a brief exit meeting was held at USAID/Ghana on February 23, 1996, during which two evaluation team members -- the venture capital expert and one of the finance specialists -- discussed some of the team's observations and preliminary findings. More detailed observations and findings are discussed in the following four sections of this report.

II. THE LEGAL AND POLICY ENVIRONMENT

The legal and policy environment as it pertains to venture capital and fund management companies has developed, in part, due to the establishment of the Ghana Venture Capital Fund (GVCF) and Venture Fund Management Company (VFMC). GVCF is formally regulated under the Financial Institutions (Non-Banking) Law. (See Attachment C for a copy of the Financial Institutions (Non-Banking) Law). However, provisions in the law are geared towards the regulation of depository or lending institutions. As a consequence, GVCF management is working with the Bank of Ghana to address provisions in the law that are unsuitable for venture capital companies. VFMC is formally regulated under the Securities Industry Law. (See Attachment D for a copy of the Securities Industry Law).

To date, the regulatory and policy environment has been supportive in the establishment and operations of GVCF. The broad policy objective of the Government of Ghana appears to be designed to encourage the development of venture capital funds through the drafting of appropriate laws and regulations. This section provides an overview of the financial sector and discusses the particular laws and regulations which affect venture capital companies.

A. Overview of the Financial Sector

1. Introduction

The financial sector in Ghana has undergone significant changes in the past few years. With the assistance of the World Bank and other donor agencies the following have been achieved:

- the foreign exchange market has been liberalized;
- commercial banks have been restructured and recapitalized; and
- the Bank of Ghana has ceased direct credit ceilings and other credit rationing mechanisms and replaced them with new financial policy instruments, namely open market operations and risk-adjusted capital requirements.

In addition, new financial institutions have been established and are introducing new products and services. This has placed significant pressure on the regulatory establishment to revise laws and policies to encourage prudent financial practices and aid in financial sector development. For example, the establishment of Ghana Venture Capital Fund and other non-bank financial institutions has led to efforts to revise the Financial Institutions (Non-Banking) Law of 1993, since some of the provisions are not suitable to non-depository institutions. These trends are expected to continue as the financial and capital markets continue to develop and all market participants gain more experience.

2. Financial Sector Adjustment Program

In 1987, the Government instituted the Financial Sector Adjustment Program (FINSAP I) which was targeted at overhauling the financial sector in all areas including regulation, supervision, monetary and credit policy, and capital market development. A major aspect of the program was the recapitalization of commercial banks and the establishment of the Non-Performing Assets Recovery Trust (NPART), an organization similar to the Resolution Trust Corporation (RTC) of the United States. Many of the non-performing assets of the commercial banks were transferred to NPART in exchange for FINSAP bonds to clean up the banks' balance sheets.

In 1991, FINSAP II was initiated. FINSAP II was designed to fine-tune the earlier efforts to improve the functioning of banks through the training of commercial bank personnel, while proceeding with the government's privatization program and efforts to strengthen the capabilities of the Bank of Ghana. Overall, the program has been successful, leading to significant improvements in the performance of banks and other financial institutions.

In 1995, the privatization program moved to its implementation stage. Mandates were awarded to three financial advisory teams to execute the privatizations of Social Security Bank (SSB), Ghana Commercial Bank, and National Investment Bank. Although all three banks were scheduled to be privatized in 1995, only Social Security Bank succeeded in its privatization, while the privatizations of National Investment Bank and Ghana Commercial Bank were postponed until 1996. SSB was privatized without a strategic investor, which the program requires. As a result, the search for a strategic investor continues. The offering for Ghana Commercial Bank began in late February 1996.

3. Market Participants

The financial sector can be broadly segregated into banking and non-banking institutions. Major banking institutions include commercial, development, merchant and rural banks. Non-bank institutions include discount houses, the Stock Exchange, an export finance company, Ghana Venture Capital Fund, leasing companies, a mortgage finance company, brokerages, and other financial services companies such as Databank Financial Services Limited. Within the past few years, a number of bank and non-bank financial institutions have entered the financial sector.

3.1 Banking Institutions

Commercial Banks

Commercial banks in Ghana include Ghana Commercial Bank (GCB), Standard Chartered Bank Limited (SCB), Barclays Bank of Ghana Limited (BB) and Social Security Bank Limited (SSB). SSB, once a state-owned enterprise, was privatized in 1995 and GCB is scheduled to be privatized in early 1996. Standard Chartered Bank Limited (SCB) and Barclays Bank of Ghana Limited (BB) are subsidiaries of multinational banks with substantial Government of Ghana holdings (27.5% and 40%, respectively). These banks collectively have over 250 branches nationwide and a network of foreign alliances.

Commercial banks offer a full range of banking services. These include taking retail deposits, making loans (mostly short-term), providing project financing, import-export financing, money market instruments, and loan syndications.

Development Banks

Development banks in Ghana include National Investment Bank (NIB), Agricultural Development Bank (ADB) and Bank of Housing and Construction (BHC). These are all government-owned. They were formed by statute to channel financial resources to specific sectors of the economy. ADB and BHC were established to focus on the agriculture, construction and housing sectors, while NIB was established for large scale industrial projects. Over time, however, these institutions have broadened their activities and now operate principally as commercial banks. NIB is also presently undergoing its privatization exercise.

Merchant Banks

Merchant Banks include Merchant Bank Ghana Limited, Ecobank Ghana Limited, CAL Merchant Bank Limited, Trust Bank, and the recently formed First Atlantic Merchant Bank and Metropolitan Allied Bank. These are privately-owned institutions which function as wholesale commercial and investment banks. As commercial banks, they extend banking services and credit facilities to business institutions and corporations. As investment banks, they underwrite commercial paper and corporate debt, arrange private placements, and finance mergers and acquisitions.

Merchant Bank Ghana Limited, CAL Merchant Bank Limited, Ecobank Ghana Limited and First Atlantic Bank also operate brokerage subsidiaries and participate actively in the stock market as Licensed Dealing Members of the Ghana Stock Exchange.

Other Banking Institutions

In addition to the institutions outlined above, there are approximately 120 rural banks which serve rural communities and the Ghana Co-operative Bank, which was established to mobilize private savings to meet the credit requirements of co-operative societies. In aggregate, these institutions account for less than 5% of total assets in the banking system. In addition, Equator Bank Ltd, a member of the HSBC Group, has established a small office in Ghana and is managing the Africa Growth Fund, a foreign originated venture fund invested in Ghana.

3.2 Non-Bank Financial Institutions

Non-bank financial institutions include the discount houses, the Ghana Stock Exchange (GSE), an export finance company, two leasing companies, a venture capital company, a reinsurance company, insurance companies, a pension fund, credit unions, and two building societies. Most of these institutions are regulated to some degree by the Bank of Ghana under the Financial Institutions (Non-Banking) Law.

Discount Houses

Two discount houses operate in Ghana, Consolidated Discount House Limited (CDH) and Securities Discount Company Limited (SDC). These institutions function as brokers in the inter-bank money market, where banks buy and sell short-term securities to meet their reserve requirements, invest excess funds, or borrow needed funds for short periods.

They make markets and have authority to deal in Bank of Ghana bills and notes, government securities, bankers' acceptances, negotiable certificates of deposits, commercial paper, and cocoa bills. They also participate in the Bank of Ghana weekly auctions. Both discount houses have established brokerages and are licensed dealing members of the GSE. In addition, CDH operates an investment management subsidiary.

The Stock Exchange

The Ghana Stock Exchange (GSE) has been operating since November 1990. At present, ten (10) licensed brokers have been trading on the floor of the GSE. Nineteen (19) companies with a market capitalization of about c2.9 trillion trade on the GSE as at February 23, 1996.

Other Non-Bank Financial Institutions

The Export Finance Company Limited (EFC) began business in July 1990 and is owned by seven insurance companies and Ghana Export Promotion Council. EFC's purpose is to serve the export sector with pre-export finance, rediscounting bank loans, export guarantees, and loans. It was designed to provide financing alternatives to exporters who historically have had difficulty financing their exports through the banking sector. However, due to high interest rates and short-term repayment terms, the majority of EFC products are not adequate financing alternatives for exporters.

Ghana Leasing Company Limited began operations in April 1992. It is owned by a consortium made up of the International Finance Corporation, the Commonwealth Development Corporation and some local financial institutions. Another leasing company, *Leasafic Ghana Limited*, is owned by a few individuals and institutions. Ghana Venture Capital Fund is an investor in *Leasafic*, which began operations in 1994.

The Africa Growth Fund, managed by Equator Bank, has invested in a merchant bank, an automobile importing company, a soft drink bottling company and an agri-business.

Insurance companies, with their stable flows of premium income and large investment portfolios, could play a larger role in the financial sector. Currently, there are some twenty (20) registered insurance companies and two (2) re-insurance companies in Ghana. They provide life, fire, motor, marine, general accident and workmen's compensation insurance. Apart from State Insurance Corporation (SIC) and Ghana Reinsurance Organization (GRO), which are government corporations, all insurance companies are privately-owned.

The Home Finance Company and *First Ghana Building Society* provide home mortgage financing in Ghana. At present, the housing finance market is dominated by HFC. However, other companies (e.g. Union Mortgage Bank) are entering the market. HFC also operates a unit trust scheme, one of the first mutual funds in the country.

The *Social Security and National Insurance Trust* (SSNIT) is the only pension fund in Ghana. SSNIT receives more than c2 billion in premium income each month from employees and their employers. SSNIT's total investment portfolio is in excess of c50 billion (US\$ 40 million) which is invested in treasury bills, government stocks and bonds, loans, equities, real estate, and bank fixed deposits.

One company, *Eximguaranty Company* (GH) Ltd, has been established to offer free financial advice to banks and to give guarantees to banks for the loans they provide to exporters.

There are over four hundred (400) credit unions in the country with close to 100,000 members. Savings mobilized in the informal sector are usually on-lent to contributors on flexible terms. Individual credit unions show deposits ranging from c3 million to c7 million. The Credit Union Association of Ghana is the promotional body which helps establish and support credit unions in the country.

B. Sources of Equity Financing: Donor Institutions

One of the clear weaknesses in the Ghanaian financial system is the limited medium and long-term financing available in the market place. While commercial banks are the major source of loanable funds in the market historically, they focus on providing only short-term financing for their clients. As a consequence, many companies inappropriately use short-term funds to finance long-term projects.

A number of donor institutions provide medium and long-term financing to Ghanaian companies. These include the Commonwealth Development Corporation (CDC), the International Finance Corporation (IFC), Danida, and other institutions. In addition, selected donor agencies provide funds to the Bank of Ghana and commercial banks to be on-lent to entrepreneurs. These include the Private Enterprise Export Development Program (PEED) and other programs.

1. Commonwealth Development Corporation (CDC)

The Commonwealth Development Corporation (CDC) is a development financial institution which offers long-term loans and risk capital to new and existing private enterprises. CDC usually prefers equity investments to be less than 20% of total financing and invests up to £3 million in a business. Normally, it will not finance greater than 35% of total project costs.

Grace and repayment terms are determined according to the cash flow of each business. In most cases, however, the given period is two (2) years and the loan maturity is five (5) years or more. CDC's current portfolio stands at seventeen (17) projects with a total of £48 million committed to Ghana.

2. Danida

Danida is giving support to the private sector in Ghana by establishing long-term cooperation between Ghanaian and Danish companies. Danida provides grants in the areas of technical assistance, training, education, and assistance for the improvement of occupational health and of the external environment. Loans which Danida provides are for the importation of capital goods, raw materials, components and for the payment of license fees, royalties and the like. The loans provided are denominated in cedis over a ten (10) year period, with up to three (3) years grace period.

Danida also provides buyer credit for financing development projects and supports priority projects by the Government of Ghana to the tune of approximately US\$2.8 million or 18.5 million DKK. Danida provides long-term grants for private sector programs, and supports approximately four (4) programs a year with a maximum grant of between US\$30 - 40 million.

3. International Development Association/World Bank Funds for Small and Medium Enterprise Development (FUSMED)

The International Development Association, through a facility administered by the Government of Ghana, provides loan facilities to private enterprises engaged in productive sectors and services other than primary agriculture, trading and real estate. The maximum loan size is \$750,000 and applicants are required to contribute at least 25% of the cost of their project. The Bank of Ghana administers the IDA loan facility (FUSMED).

The loans may be used for the purchase of plant machinery and equipment or as working capital. Loans for the purchase of equipment are payable over a maximum period of ten (10) years, including three (3) years moratorium. Credit for working capital is payable over a maximum of three (3) years, including a one (1) year moratorium. FUSMED has US\$28 million committed to it and has provided funding for one hundred nineteen (119) beneficiaries.

4. International Finance Corporation/Africa Project Development Facility/Africa Enterprise Fund (IFC/APDF/AEF)

IFC, through APDF, provides debt/equity financing facilities for small and medium-sized enterprises for the purpose of conceptual design, market research, management assistance, technology selection, financial restructuring and raising financing. Project financings normally cost between US\$250,000 and US\$10 million and are repayable over three (3) to seven (7) years.

IFC, in conjunction with APDF, provides financing to small business enterprises which have at least 50% Ghanaian ownership. Long-term loans or equity are raised in the interest of the project. To date, APDF has approved twenty (20) projects for which thirteen (13) loans have been disbursed.

At present, Ghana has attracted US\$11 million from the AEF's total allocation made to Africa.

5. Private Enterprise Export Development Program (PEED)

PEED is a US\$34 million World Bank line of credit to the Government of Ghana to help support the export of non-traditional products. It is a short-term loan facility given to Ghanaian exporters. The Bank of Ghana disburses this facility through commercial banks. At present, twenty-three (23) exporters have benefitted from this facility. PEED has disbursed US\$4 million out of the US\$34 million facility.

6. Japan

The Japanese Non-Project grant is a short-term credit facility which must be used within a year and repaid within two (2) years. This facility is meant for the importation of such goods and services as may be needed by the beneficiary. At present, seventy (70) applicants have benefitted from this facility. Approval must be obtained from the Ministry of Finance.

Over the last two (2) years, US\$21 million was committed to Ghana out of which 75% has been disbursed. The remainder has been committed to prospective beneficiaries but not disbursed. This year, 1996, the Japanese government has signed for a new grant allocation of US\$11.6 million to the Government of Ghana, in support of two projects.

7. Business Assistance Fund (BAF)

The BAF is a revolving fund of c10 billion instituted by the Government of Ghana to assist distressed, but potentially viable enterprises, and to permit enterprises seeking bank loans to gain access to funds at a much more competitive rate of interest. The BAF typically provides medium-term loan facilities of up to five (5) years.

C. Regulation of Venture Capital and Fund Management Companies

The regulation of Ghana Venture Capital Fund and Venture Fund Management Company, like that for most non-bank financial institutions, is evolving. At present, the Fund is regulated under the Financial Institutions (Non-Banking) Law and the Securities Industry Law. Draft guidelines governing the operations of venture capital funding Companies were issued by the Bank of Ghana in February 1996. These guidelines are designed to rationalize the regulation of venture capital companies.

1. Financial Institutions (Non-Banking) Law

Passed in 1993, the Financial Institutions (Non-Banking) Law is designed to regulate the activities of non-bank financial institutions. While the law is written to guide the activities of all non-banking institutions, its rules are geared towards the regulation of deposit-taking and lending institutions.

The law contains many of the basic provisions which are common in developed country banking laws, including licensing procedures/restrictions, powers of the central bank (Bank of Ghana), deposit taking restrictions, limitations on dividend payments and loans to Directors, etc. Major aspects of the law include:

- Capital Requirements: c100 million
- Capital Adequacy: 10% of Risk Assets
- Liquidity Requirements: As Prescribed by BOG
- Exposure Restrictions: Limitation of 15% of net worth to a single institution, and

Limitation of 10% of net worth to a single institution if unsecured

The law was initially designed to apply to a wide range of non-bank institutions, including discount houses, lease finance companies, mortgage finance institutions, building societies, credit unions, savings and loans, acceptance houses, finance houses, as well as venture capital companies.

While attempting to cover all of these institutions, it is clear that many of the provisions in the non-bank law are not appropriate for selected non-bank institutions, including venture capital companies. Specifically, the exposure limitations and minimum capital requirements are not appropriate for venture capital companies.

Exposure limitations can be easily dealt with by the Fund's investment guidelines. Any potential investor whose risk profile does not fit a particular fund's investment guidelines may choose not to invest. In addition, investors in venture funds are likely to be sophisticated investors who do not need the type of protection provided for individuals with exposure to depository institutions.

The minimum capital requirements (c100 million) are unnecessary for venture capital companies. Typically, these requirements are designed to provide a cushion against losses or provide a minimum for operations. However, there is no reason why a venture fund focusing on small and medium-sized enterprises cannot be established with a smaller amount of capital.

2. Securities Industry Law

The Securities Industry Law, 1993 (PNDCL 333) is designed to regulate the activities of institutions and individuals in the securities business. In its current form, it requires the registration and licensing of investment management companies (including venture capital management companies) and investment professionals. There are no references in the law to regulate the activities of venture capital funds. The law, however, does prescribe the activities of licensed advisors and other requirements. Venture Fund Management Company and all of its investment professionals have obtained all necessary licenses.

3. Draft Guidelines on Venture Capital Companies

Draft guidelines governing the activities of venture capital companies were issued by the Bank of Ghana in February 1996. These guidelines were intended to rationalize the operations of venture capital funds and regulate them in a more effective manner. (See Attachment E for a copy of the "Draft Guidelines"). The guidelines cover the following activities:

- Investment Operations
- Risk Management Norms - Transactions
- Portfolio Classifications
- Capital Funds
- Deposits
- Interest and Dividends
- Other Matters

The guidelines outline policies on the type of investments a fund is allowed to make, the necessary qualifications of the Fund Manager, exposure limitations, minimum capital requirements, and other issues. The guidelines are helpful in that they are written with more understanding of the activities of a venture fund than the more general Financial Institutions (Non-Banking) Law. However, the guidelines for exposure and minimum capital provisions may not be appropriate for venture capital activities. These guidelines are similar to those contained in the Financial Institutions (Non-Banking) Law outlined above. As previously mentioned, exposure limitations can be addressed through a fund's investment policies, while the minimum capital provisions are inappropriate for venture funds. GVCF's management is working with the Bank of Ghana to rationalize these aspects of the guidelines and, in a meeting with evaluation team members, Bank of Ghana officials indicated that subsequent changes in these areas, more appropriate for venture funds, were likely to be forthcoming.

III. THE OPERATIONS OF THE VENTURE FUND MANAGEMENT COMPANY (VFMC), 1992-1995

A. Introduction

CDC received approval, in principle, to set up the Fund (GVCF) and establish the management company (VFMC), in a letter from the Ministry of Finance and Economic Planning dated May 7, 1992. Mr. Giles Middleton, a CDC investment professional was seconded to Ghana to undertake the start-up effort, which proceeded along two tracks. On the one hand, the successful launching of the Fund required identifying and convincing a group of local and foreign currency investors to commit significant funds to a long term investment effort without the certainty of eventually achieving a positive return on investment. On the other hand, before beginning an active investment program, qualified staff had to be identified, hired and trained; a pipeline of appropriate investment opportunities generated; and an appropriate evaluation process established -- all of which are associated with the management company.

In this section, we cover the operations of the management company, VFMC, focusing on staffing, training, operating procedures and deal flow generation from start-up to year-end 1995, reserving our review and evaluation of the Fund until Section IV of the report.

B. Staffing

Following the official opening of the VFMC in November 1992, Giles Middleton hired an Investment Manager (Pandit Adu, retained January 4, 1993), a Financial Manager/Controller (Eugene Quayson, retained March 1, 1993), an administrative assistant, receptionist and a driver. After a period of four months, Mr. Adu opted to change his role from full-time investment manager to a part-time advisory role, and Middleton began actively seeking a replacement. The ideal candidate was to be someone qualified to succeed Middleton as general manager after a training and orientation period.

On March 1, 1994, John Mawuli Ababio joined VFMC as the new Investment Manager, succeeding Giles Middleton as General Manager on November 1 of the same year. He remained in that position at the time of submission of this report.

VFMC has a total staff of seven. At February 23, 1996, the investment staff consisted of:

- John Mawuli Ababio (36), Investment Manager. Former Investment Officer (North, East, Southern Africa and Indian Ocean), SIFIDA Investment Company, Geneva, Switzerland; Former Principal Investment Officer (Central, East Africa and Indian Ocean), African Development Bank, Abidjan, Cote D'Ivoire; B.A. with honors, Politics, Philosophy and Economics, University of Keele, U.K.; M.A. in International Business and Economic Development, University of Reading, U.K.

- Eugene Quayson (31), Financial Manager. Former Deputy Manager, KPMG Peat Marwick Okoh & Co.; Member of the Institute of Chartered Accountants.
- Jacob Kholi (29), Investment Analyst. Former Management Accountant, Shell (Ghana); Member of the Institute of Chartered Accountants; B.Sc Accounting, School of Administration, University of Ghana, Legon. Joined VFMC April 1, 1995.
- Neustadt Amarteifio (37), Investment Manager/Enterprise Fund.¹ Joined VFMC on September 1, 1995. Previous five years at EMPRECTEC responsible for its business advisory, extension and consultancy services to small and medium-sized companies; B.Sc. Development Planning, University of Science and Technology, Kumasi.

Complete resumes of all members of the investment staff are provided in Attachment G.

In our assessment, the investment staff is highly skilled, thoroughly competent, professional in its comportment and business conduct and exhibits a very high degree of dedication to this endeavor. Mr. Ababio, in particular, as team leader, brings to his task an extraordinary amount of energy, enthusiasm and general business savvy. He is clearly respected by members of his team and in turn demonstrates respect for their individual competencies, while appreciating the dimensions along which further growth and development may be required. Externally, the team receives generally high marks from entrepreneurs, members of the VFMC Board of Directors, and in the case of Mr. Ababio, the broader private sector community.

Administrative support functions are well managed by Ms. Anastasia Gbogonah, Administrative Secretary, who joined VFMC shortly after its inception. Additional support is provided by a receptionist and driver.

C. Training

From inception, the primary sponsors of this venture capital initiative -- USAID and CDC -- placed a very high priority on staff training. This emphasis was embraced by VFMC's first Manager, Giles Middleton, and has continued under his successor, John Mawuli Ababio.

¹ Note: In the first quarter of 1993, VFMC was approached by agents acting on behalf of the European Union (EU) about the possibility of VFMC managing a fund to be established by the Government of Ghana, with the support of the EU, to provide commercial long-term finance to growth oriented small and medium enterprises (SMEs) in Ghana. Subsequent negotiations led to the establishment of the Enterprise Fund (EF), a \$4.0 million fund, one-half of which VFMC is to invest directly in SMEs, and one-half of which VFMC will place with participating financial institutions to be on-lent to SMEs. VFMC entered into a management agreement with the EF on June 27, 1995, a copy of which is included herewith as Attachment F. The EF commenced commercial operations on September 1, 1995.

As part of his eight month "apprenticeship" to the former Manager, prior to assuming the helm, Mr. Ababio spent six weeks with a venture capital firm in Washington, D.C., during which time he was exposed to the American approach to venture capital and the challenges involved in successfully managing a small investment management firm.

During the second quarter of 1994, after one year with VFMC, Mr. Eugene Quayson, the Financial Manager, spent one month with a venture capital firm in Dallas, Texas, learning about their approach to venture capital investment management.

In September of 1995, both Mr. Ababio and Mr. Quayson attended the National Association of Small Business Investment Companies' (NASBIC) 1995 Venture Capital Institute in the United States. The Institute, which is an annual event, brings together venture capitalists from the United States and Europe for a week-long session of seminars, tutorials and working sessions on various topics and case studies such as developing deal flow, deal structuring, pricing and negotiation, effective monitoring and exit strategies. Mr. Ababio has recommended to the VFMC board that Mr. Jacob Kholi, VFMC's Investment Analyst, attend the 1996 Venture Capital Institute.

Lastly, in November of 1995, Mr. Ababio attended a venture capital seminar in South Africa organized by CDC's Financial Markets Department. The forum was attended by all CDC fund managers as well as country representatives from the various countries. Among issues covered were staff training, portfolio valuation, fundraising and reporting.

D. Operating Procedures

The standard operating procedures of VFMC are codified in an operations manual which serves as a reference tool for management and which is updated periodically as merited. The most recent version, as of the date of submission of this report, was published in August 1995, a copy of which is included in Attachment H. The manual covers: (i) the legal framework for VFMC, GVCF and the Enterprise Fund; (ii) accounting, reporting and control procedures; and (iii) GVCF investment procedures, including the decision-making process, Investment Committee guidelines, due diligence procedures, investment disbursement and monitoring.

VFMC's accounting, reporting and control procedures were the subject of a recent audit by CDC. As part of its standard monitoring, CDC sent in an internal auditor to review the operations of both GVCF and VFMC. The audit report made a number of recommendations, most notably with respect to the preparation of accounts, bank signatories, password controls and fire proof storage of investment files -- all of which were subsequently implemented. A copy of the CDC internal auditor's "Back to Office" Report is included as Attachment I.

In our opinion, the investment procedures adopted by VFMC mirror, in all critical aspects, the procedures followed by most well-managed U.S. venture capital funds, and, to date, appear to be closely adhered to.

E. Deal Flow Generation

It is not an overstatement to say that the lifeblood of any venture capital firm is the quality of its deal flow. Absent sufficient inflow of high quality investment opportunities, a firm is unlikely to be able to build a portfolio capable of generating the level of returns expected by its investors. In Tables 1, 2 and 3, we examine VFMC's deal flow generation capabilities as evidenced by the level of deal flow activity from start-up to end of year 1995, the percentage of enquiries reaching the active due diligence phase of VFMC's evaluation process and the percentage of projects ultimately approved for investment. In Table 4, we examine the composition of this deal flow by type of financing: start-up, expansion, privatization, restructuring, acquisitions/buyouts, rehabilitations and special situations.

From the commencement of commercial activity through year-end 1995, VFMC processed a total of 276 enquiries (see Table 1), of which 24, or roughly 9% , were the subject of active due diligence and 10, approximately 4%, were ultimately approved for investment. Of these 10 projects 6, or roughly 2%, had become portfolio companies by the end of the period under observation. The average small venture fund in the United States processes approximately 100 deals per year, with 3% - 5% ultimately becoming portfolio companies. Had VFMC's approved investments all become portfolio companies, within the time frame under observation, its deal flow conversion experience would be very much in line with U.S. industry norms. However, as we shall see in Section IV, when we focus on the GVCF portfolio, there are macroeconomic factors operative in Ghana which add a complicating dimension to the deal conversion process, and which serve to prolong and sometimes frustrate the process of reaching mutually agreeable investment terms and conditions.

Of considerable interest to us was the extent to which VFMC's deal flow and "success rate," i.e., the percentage of projects reaching the active due diligence and investment approval stages, changed over time. In Table 2, we present aggregate data on an annual basis, focusing only on number of enquiries received, approved for due diligence and approved for investment. It appears, not surprisingly, that as the marketplace became more knowledgeable about the particulars of venture capital as a financing tool, both the quantity and composition of deal flow changed, with the quantity of enquiries falling off and the percentage of enquiries reaching active due diligence and investment approval increasing.

Although the choice of periods over which to aggregate and compare data involves a significant degree of subjectivity, we found it insightful to consider the entire period from November 1992 through year-end 1994 as the "start-up" phase of VFMC's activity. Not only does this period roughly approximate the tenure of the first manager, but is a phase over which VFMC could be reasonably considered not to have reached steady state performance. When we compare activity during and post start-up, which we do in Table 3, VFMC's ability to attract a more appropriate stream of investment opportunities appears to be evidenced by the increasing percentage of enquiries reaching active due diligence and investment approval.

Lastly, in Table 4, we present VFMC's quarterly deal flow from commencement of activity through year-end 1995 by financing type. Start-ups and expansion financings together accounted for roughly 84% of VFMC's deal flow over this period, with potential start-ups alone accounting for 54%. The remaining 16% was distributed, in diminishing order of importance, among privatizations, restructuring, acquisitions/buyouts, rehabilitations and special situations. Deals converted into portfolio companies during this period (6) included one start-up, three expansion financings, one privatization and one special situation, all of which are discussed more fully in the following section. (See Attachment J for a list of all VFMC enquiries from November 1992 - December 1995).

TABLE 1

**GHANA VENTURE CAPITAL FUND
DEAL FLOW ACTIVITY**

(November, 1992 to December, 1995)

Quarter Ending

	12/92	3/93	6/93	9/93	12/93	3/94	6/94	9/94	12/94	3/95	6/95	9/95	12/95	Total	Percent
Enquiries Under Initial Review															
At Beginning of Period	0	5	10	17	13	11	8	4	4	5	17	13	16		
Number of Enquiries Received	19	47	35	26	18	24	24	13	7	18	19	14	12	276	100%
Total Projects In House	19	52	45	43	31	35	32	17	11	23	36	27	28		
Decined/Withdrawn	-14	-41	-26	-27	-21	-22	-27	-13	-6	-6	-20	-13	-12		
Reinstated	0	0	0	0	3	0	1	0	1	1	2	2	0		
Requiring Further Attention	5	11	19	16	13	13	6	4	6	18	18	16	16	161	58.33%
Due Diligence in Progress															
At Beginning of Period	0	0	1	2	4	2	3	1	1	0	1	4	3		
Approved for Due Diligence During This period	0	1	2	3	2	5	2	1	1	1	5	0	1	24	8.70%
Declined/Withdrawn During Due Diligence	0	0	1	2	3	2	1	0	1	0	1	0	1		
Due Diligence In Progress at End of Period	0	1	2	3	2	3	1	2	0	1	4	3	2		
Approved For Investment	0	0	0	0	1	2	3	0	1	0	1	1	1	10	3.62%

25

TABLE 2

**GHANA VENTURE CAPITAL FUND
DEAL FLOW ACTIVITY**

(November, 1992 to December, 1995)

Period

		11-12/92	FY 1993	FY 1994	FY 1995	Total
Number of Enquiries Received		19	126	68	63	276
Percent		100.00%	100.00%	100.00%	100.00%	100.00%
Approved for Due Diligence During This period		0	8	9	7	24
Percent		0.00%	6.35%	13.24%	11.11%	8.70%
Approved For Investment		0	1	6	3	10
Percent		0	0.79%	8.82%	4.76%	3.62%

TABLE 3

**GHANA VENTURE CAPITAL FUND
DEAL FLOW ACTIVITY**

(November, 1992 to December, 1995)

Start-Up

		11/92-12/94	FY 1995	Total
Number of Enquiries Received		213	63	276
Percent		100.00%	100.00%	100.00%
Approved for Due Diligence During This period		17	7	24
Percent		7.98%	11.11%	8.70%
Approved For Investment		7	3	10
Percent		3.29%	4.76%	3.62%

TABLE 4

**GHANA VENTURE CAPITAL FUND
DEAL FLOW ACTIVITY
BY FINANCING TYPE**

(November, 1992 to December, 1995)
Quarter Ending

Financing Type	12/92	3/93	6/93	9/93	12/93	3/94	6/94	9/94	12/94	3/95	6/95	9/95	12/95	Total	Percent	
Start - Up	11	20	12	18	9	17	15	5	5	14	13	5	4	148	53.62%	
Expansion	7	25	16	6	2	3	5	3	1	1	1	6	6	82	29.71%	
Privitization	1	0	4	2	4	2	1	0	0	0	1	0	0	15	5.43%	
Restructuring	0	2	3	0	3	2	1	1	0	0	1	0	0	13	4.71%	
Acquisition/Buyout	0	0	0	0	0	0	2	1	0	1	3	1	1	9	3.26%	
Rehabilitation	0	0	0	0	0	0	0	3	1	1	0	2	0	7	2.54%	
Special Situation	0	0	0	0	0	0	0	0	0	1	0	0	1	2	0.72%	
														Total =	276	100.00%

23

IV. GVCF PORTFOLIO REVIEW AND EVALUATION

A. Introduction

It would be exceedingly difficult, if not impossible, to accurately assess the performance of GVCF's portfolio without some understanding of the importance of macroeconomic conditions as a significant factor in the general investment environment facing the Fund, and the degree to which prevailing macroeconomic conditions in Ghana constrain the portfolio's development. Over the period of GVCF's investment activity, macroeconomic instability in Ghana has been manifested in several ways, the most obvious of which are high inflation, high interest rates and considerable exchange rate volatility.

At the beginning of January 1995, the rate of inflation stood at 26%, but averaged 59.5% over the course of the year. In its efforts to rein in inflation, the Bank of Ghana increased its lending rates from 33% to 39% in January of 1995, and followed this with another increase in September 1995 to 45%. Lastly, the exchange rate to the US dollar, which stood at c1,050:\$1 at the beginning of the year, ended the year at c1,446:\$1, representing a 37.7% depreciation during the year.

As we shall see presently, some portfolio companies are much better positioned than others, given their relative market strengths and degree of dependence (or lack thereof) on imported production inputs, to adapt to and succeed in the face of such unfavorable conditions. The potential for such conditions to impact GVCF's ability to generate 20% per annum real returns over the life of its investments is obvious. The consequences to date are discussed in the portfolio company reviews which follow. The final impact on GVCF investment returns will be known only after its fully invested portfolio is liquidated.

GVCF began its investment cycle in March 1994 and over the fourteen month period through May 1995, invested a total of approximately US \$1.625 million in six (6) companies. Brief profiles of each company appear in Table 5. More detailed summaries of GVCF's investments follow a brief summary of our evaluation methodology.

B. Evaluation Methodology

In order to assess the performance of GVCF over the period 1992-1995, the evaluation team reviewed all:

- GVCF Investment Files, including:
 - Company Investment Memoranda
 - Historical and Current Company Financial Statements (when available)
 - Portfolio Company Management Reports;
- VFMC Quarterly Reports covering the period December 1992 to December 1995;
- GVCF Quarterly Reports covering the period December 1992 to December 1995; and
- VFMC and GVCF audited financial statements for the years 1992 to 1994. (Audited fiscal year 1995 Financial Statements were not yet available).

In addition, evaluation team members visited each portfolio company, interviewed each company's managing director, and when possible its chief financial officer or chief accountant as well, and toured each company's plant or facilities. These interviews were followed by a series of interviews with VFMC senior management regarding its assessment of portfolio companies' performance and problems to date, as well as its views of each portfolio company's future prospects.

TABLE 5

**GHANA VENTURE CAPITAL FUND
PORTFOLIO**

(as of February 23, 1996)

Portfolio Company	Industry	Product/Service	Date of Investment	Stage	GVCF \$'s Invested	% Fund Ownership	Current Status
1. Sydals Limited	Food and Beverage Products/Services	Specializes in egg production	Mar-94	Expansion	\$168,000	10%	Watch
2. South Akim Manufacturing Limited	Commercial/Industrial Products	Produces crown caps for beer and soft drinks; plastic bottles and caps for pharmaceutical industry	Jun-94	Expansion	\$212,000	20%	Satisfactory
3. Leasafric Ghana Limited	Financial Services	Medium term lease finance for business equipment, industrial and agricultural machinery for private and public sector	Jun-94	Start - Up	\$150,000	25%	Satisfactory
4. Paper Conversion Company Limited	Commercial/Industrial and Consumer Products	Produces cardboard cartons and toilet paper from imported paper	Dec-94	Privitization	\$370,000	35%	Watch
5. ABC Brewery Limited	Food and Beverage Products/Services	Producer of beer, lager and stout products; soft drinks to be added	Mar-95	Expansion	\$390,000	5%	Problem
6. Ghana Pioneer Aluminum Factory	Consumer Related	Manufactures aluminum household cooking products for domestic and export markets	May-95	Special Situation	\$345,000	35%	Satisfactory
Total GVCF \$'s Invested =					\$1,625,000		

C. Portfolio Company Evaluations

1. SYDALS Limited (Sydals)

a. Company Description

Sydals is a family-owned company, incorporated in 1972, specializing in egg production. The company developed gradually over the years and by the end of 1987 had a 15,000 layer (i.e., producing hen) capacity, expanding to 55,000 layers in 1992. In 1993, a further expansion was undertaken, increasing the capacity to 85,000 layers.

The main inputs to the company's production cycle are day-old chicks and feed. All day-old chicks are imported directly by Sydals due to the unreliability of obtaining a guaranteed supply of disease-free chicks from the local market. The company formulates its own feed based on a mix of imported and local raw materials, as there is as yet no commercial feed supplier in Ghana able to offer reliable feed quality.

The company was founded by Dr. S.B.K. Quartey, who remains its largest shareholder and chairman, although he is no longer active in the day to day management of the company. Dr. Quartey is a qualified veterinarian and has wide experience in this role in West Africa. He established Sydals as a sideline business and did not expand it significantly until his son Kenneth Quartey joined him in 1984. Kenneth Quartey, a university-trained animal scientist, serves as Managing Director of the company and has been the driving force behind the development and expansion of the business.

b. GVCF Investment

On February 18, 1994, VFMC sought the approval of its board to invest c150 million (approximately US \$158,000 at the then prevailing exchange rate) in Sydals in the form of equity and a participating loan (c80 million in equity for 10% of the company's shares and c70 million in a participating loan repayable in 1999).

c. Expected Use of Proceeds

Sydals took on additional term borrowing as well as a number of short-term loans in order to finance its 1993 expansion. It was envisaged that the GVCF investment would be used to settle a number of creditors, reduce bank borrowings and purchase a generator.

d. VFMC Pre-Investment Key Risks Analysis

At the time that VFMC sought board approval for this investment, the following were presented as the results of its key risks analysis:

- unavailability of imported feed ingredients;
- continued pressure on margins;
- major disease outbreak; and
- departure of Kenneth Quartey for any reason.

e. Company Performance Post-GVCF Investment

GVCF closed on its investment in Sydals on March 21, 1994 which, given its tight cash position, used c60 million of GVCF's money to buy foreign exchange which it used in the following quarter to purchase imported day-old chicks and new equipment. The balance of c90 million was used to reduce the interest bill on borrowings as envisaged on approval of the investment. The company was not able, as had been planned, to either settle with a number of its creditors or reduce principal on its bank borrowings.

Although the company met or came close to meeting its production and sales targets for fiscal years 1994 and 1995, it generated year-end losses against budgeted profits in both years due to a fairly continuous cycle of rising import prices and downward pressure on egg prices. While this led to both reduced profit margins and strained cash flow, thus far, the company has remained current on its obligations to GVCF. The company's current ratio at December 31, 1995 stood at 1:1 and its debt to assets ratio was 78%.

Summary financial performance data for the years 1994 and 1995 are presented below:

Sydals, Fiscal Performance Data, 1994 and 1995

	1994		1995	
	Actual	Budget	Actual	Budget
Eggs(millions)	11.2	12.1	14.9	14.7
Avg. egg price (cedi)	69	62	88	100
Sales (c'm)	774	751	1,300	1,400
Gross Margin(%)	35	52	29	31
Profit(Loss) Before Tax (c'm)	(15)	87	(62)	110

f. Evaluation Team Observations and Assessment

Sydals is a well-run company. However, its present difficulties stem from certain structural elements of its production function which do not permit, as it were, an easy fix. In brief, the company utilizes two main inputs (day-old chicks and feed) to produce its primary product -- eggs. Day-old chicks are sourced solely on an imported basis and the proportion of imported to local ingredients in a typical feed formula is 39% to 61% in volume terms. The price of imported chicks varies from day to day with currency fluctuations and the percentage cost of imported ingredients in the typical feed formula is rising constantly as the cedi depreciates against the U.S. dollar. Short of the availability of a cheaper local feed supply of acceptable quality and a reliable local supply of properly vaccinated chicks, the company is perpetually vulnerable to a degree of input cost escalation that it cannot control.

In and of itself, this may not place a company in financial distress, if it is in a position to increase prices sufficiently to maintain profit margins. Unfortunately for Sydals, the demand for eggs in Ghana, while growing, is not strongly price inelastic, and also evidences a significant degree of seasonality (with demand generally being strongest and least price sensitive during the final quarter of the year due to the sequence of major holidays therein).

The company's financial difficulties are further exacerbated by its present debt ratio, making it extraordinarily vulnerable to rising interest rates, which also have been a persistent feature in the Ghanaian economy over the last two years.

It was fairly evident to the evaluation team that, but for its exceptionally capable management team, this company would be in even worse financial condition. As it stands, it appears to be a likely candidate for financial restructuring if it is to eventually clear all bank debt and prosper.

Of the risk which VFMC thought material prior to its investment, the company has confronted two -- continued pressure on margins and an outbreak of disease -- and thus far survived. It is for this reason that we do not discount the probability of GVCF eventually recovering its investment, although we believe the likelihood of its realizing a positive return on this investment to be minimal.

While GVCF may well subsequently find it prudent to write down this investment, it may in the near term find it necessary to consider converting part or all of its debt to equity as part of a restructuring effort. Should this occur, GVCF might attempt to acquire "put" rights for its equity as one consideration for any accommodation.

2. South Akim Manufacturing Ltd. (SAML)

a. Company Description

SAML makes crown caps (bottle tops) used by brewers and soft-drink bottlers from imported tinsplate and plastic granules using an automated process. Sheets of tinsplate are stacked next to the machine, which lifts them, cuts out the discs for caps, and discharges the waste. The discs are then crimped, and lined with plastic in a heat-bonding process. The caps are then automatically counted into cartons of 10,000 units. Less than 1% of production is lost through quality problems or other wastage.

The production equipment was bought from the manufacturer, SACMI of Italy, in 1990 at a total cost of \$800,000. The machinery was chosen from amongst three suppliers of similar equipment. The company runs the only fully automated plant installed in West Africa, with competitors in Cote d'Ivoire and Nigeria using separate units for cutting, crimping, lining and packaging caps. The company has experienced no major breakdowns of its machinery since purchase. Replacement parts are bought from SACMI as needed, supplemented by occasional technical advice.

SAML was founded in 1969 by Mr. E.J. Prah, an engineer by profession who, after serving 20 years with the State Transport Corporation (lastly as its chief executive), retired to establish the company. In 1981, Mr. E.J. Prah turned over active management of the company to his son, Mr. George Prah, a graduate of the City University, London (degree in International Finance, 1978, post-graduate training in accounting), who currently serves as the company's managing director.

b. GVCF Investment

On May 18, 1994, VFMC sought board approval for a GVCF investment of c200 million (approximately US \$213,000 at the then prevailing exchange rate) to acquire a 20% interest in the ordinary shares of SAML.

c. Expected Use of Proceeds

In the short term, proceeds from GVCF's investment would be used to reduce the company's bank overdraft and debts, and to increase stocks of imported raw materials -- primarily tinsplate and plastic granules. This would enable SAML to reduce interest costs and foreign exchange losses, and to meet expected growth in demand. In the medium term, the company's expectation was that this financing would enable the company to free up additional resources for diversification.

d. VFMC Pre-Investment Key Risks Analysis

At the time that VFMC sought board approval for this investment, the following were presented as the results of its key risk analysis:

- **Further decline in margins:** it would appear that SAML is a relatively low cost producer, but as the market grows, it is likely to attract more attention from overseas firms, leading to further pressure from imports. It is also possible that a lower cost producer could set up in Ghana, although this seems less likely given the substantial investment required for low-cost production.
- **Over-ambitious diversification plans:** SAML management knows its job, but could come unstuck in new areas. It will be important for VFMC to get involved in diversification plans to ensure they are prudently conceived and well executed.
- **Further conflict between Chairman and MD:** the risk of this should be minimized by appointing at least one other experienced non-executive director to the board, and by making the accountant a co-signatory on cheques, which will reduce Chairman's involvement in day-to-day matters.

e. Company Performance Post-GVCF Investment

GVCF's investment closed in June 1994 and the company ended the year with turnover of c1.6 billion (an increase of 69% over 1993 turnover, reflecting improvement in cost recovery through appropriate pricing), net operating profits of c118.8 million (an increase of 391% over 1993 net operating profits) and profits after tax of c113 million (versus c11 million in 1993).

From year-end 1994 to 1995, turnover increased by 56% from c1.6 billion to c2.5 billion. Of this increase, 12% was due to the increase in volume and the remainder was due to price increases during the year. (The average selling price per carton was raised twice during the year, from c70,000 per carton to c80,000 in March 1995 and to c100,000 in October 1995.) The company achieved net operating profit of c215 million -- an 82% increase over the previous year. Export activity generated an additional US \$42,097 in 1995.

Selling, general and administrative expenses also increased from 1994 to 1995, by 47%. This increase was due primarily to: (i) a 10% salary increase negotiated by collective bargaining with the local union; (ii) costs related to the appointment of a marketing manager and two senior production personnel -- (Quality Control Officer and Electrical Technician) -- and additional security personnel; and (iii) increased consumption and price of fuel, telephone, electricity and water during the year.

During 1995, the company was able to finance more working capital from internal resources, achieving a current ratio of 1.46:1, indicating an ability to meet its current liabilities comfortably.

Earnings per share grew from c4.55 in 1994 to c6.4 in 1995, while net assets grew from c1.1 billion to c1.3 billion. Shareholders' interests grew by 10% to c1.4 billion in 1995.

Finally, during the second half of 1995, the company began production of bottles and caps for the pharmaceutical industry in its plastics division, carrying out its diversification plans.

The company's profit and loss statements for the period 1992-1995 are summarized below:

SAML, Summary Profit and Loss, 1992-1995

	1992	1993	1994	1995
	c'm	c'm	c'm	c'm
Turnover	795	949	1,608	2,510
Direct Costs	498	700	1,256	1,963
Gross Profit	267	249	352	547
Gross Profit %	35%	26%	22%	22%
Indirect Cost	131	107	126	218
Depreciation	42	42	42	42
PBIT	94	100	184	(287)
Interest	(47)	(76)	66	71
PBT	47	24	118	215
Tax	(18)	(13)	5	65
PAT	29	11	113	150

f. Evaluation Team Observations and Assessment

SAML is a well-run company. The team was particularly impressed by the managerial and financial acumen of the Managing Director and the Management Accountant. While facing a structural constraint similar to that of Sydals Ltd., in that its primary inputs are all imported, SAML's ability to manage the difficulties imposed thereby is dramatically different. As the sole manufacturer of crown caps in Ghana, the company's ability to pass on raw materials price increases to its customers, while not unlimited, is considerably greater than that of Sydals. Unconstrained by supply agreements limiting its ability to acquire raw materials from or through a single source, SAML can change suppliers based on quality and price, and has done so (although not precipitously) as either or both factor dictated.

The company's long-term prospects appear reasonably bright. The privatization of both the Coke and Pepsi bottling franchises in Ghana is expected to trigger substantial growth in the market for the company's primary product line. (The Coke privatization has been completed and a new facility is on line; the Pepsi privatization is expected to close in 1996, with GVCF involved.) Regionally, Togo, Benin and the Sahel countries are all importers of crown caps, and

34

after not exporting for several years; SAML recently re-entered the export market. In addition, the company intends to actively pursue its plastics activity going forward and expects to make additional investments in plastics machinery to expand its product offerings.

Prospects appear to be good for the company to list on the Ghana Stock Exchange in 1996 and to be presented as a packaging company, leading in the manufacture of crown corks, closures and containers. Should the company continue to perform on or near plan, GVCF may well realize its projected return on this investment.

3. Leasafric Ghana Ltd. (Leasafric)

a. Company Description

Leasafric was incorporated in March 1992 in order to provide medium term lease finance for business equipment, industrial and agricultural machinery for Ghanaian companies and public sector organizations. In August 1994, the company was granted a license to operate as a leasing company by the Bank of Ghana, in accordance with the Financial (Non-Banking) Institutions Law and the Finance Lease Law.

The promoters of Leasafric are Mr. Seth Dei and his business partner, Mr. Ebow Essandoh. Mr. Dei, the lead promoter, serves as Managing Director of Leasafric. Mr. Essandoh is not directly involved in the management of the company.

Mr. Dei was educated in the United States, earning a Bachelors Degree in Agricultural Economics from Cornell University, followed by a Masters Degree in Finance and Communications from the Graduate School of Business at Columbia University. Mr. Dei began his career in lease finance in 1973 at Taw International Leasing Company, a U.S.-based company with ten African subsidiaries. He became vice president responsible for Africa in 1975. Based in Abidjan in 1977, he pioneered the indigenization and restructuring of the Taw subsidiaries in Africa. In 1984, with Mr. Essandoh, he co-founded GECAD, Inc., a sales and marketing company that handles electric power generation and transmission equipment for General Electric in West Africa. Mr. Essandoh continues to serve as President/General Manager of GECAD, and until Leasafric began operations, Mr. Dei served as GECAD's Finance Director.

Nature of Finance Leasing: A finance lease is a contract whereby the lessor (in this case, Leasafric), supplies to the lessee (user), an item of equipment (the leased asset) selected by the lessee, for a specified period, usually between 2 and 5 years, in return for a series of rental payments by the lessee. Title to the equipment remains vested in the lessor, which will recover the full cost of the asset plus its costs and a profit during the period of the lease.

Finance leasing is similar to term lending, although tending to differ in the following respects:

- payments are spread evenly over the term of the transaction;
- finance cannot be used for purposes other than the acquisition of assets applied for;
- reduced/no requirement for collateral (because legal ownership of the asset remains with the lessor); and
- reduced/no restriction on the company's other borrowings.

b. GVCF Investment

On January 14, 1994, VFMC sought board approval to invest c180 million (approximately US \$200,000 at the then prevailing exchange rate) as part of a total financing of c765 million (approximately US \$850,000), to acquire a 23.5% interest in the ordinary shares of Leasafic Ghana Ltd.

c. Expected Use of Proceeds

Proceeds of the June 1994 financing were to be used to fund the start-up of the company's operations, i.e., to set up offices, retain key personnel and to fund leases until more substantial credit lines could be arranged with local banks.

d. VFMC Pre-Investment Key Risks Analysis

At the time that VFMC sought board approval for this investment, the following were presented as the results of its key risks analysis:

- inability to access sufficient competitively-priced loan funds would prevent growth;
- poor selection of lessees leading to defaults;
- price competition with Ghana Leasing Company (GLC);
- mismatching lease receivables (currency, interest rate, maturity) with borrowing;
- market may not be adequate;
- lessee selection process could become unduly influenced by Ecobank, (an investor);
- poor control over administration costs.

e. Company Performance Post-GVCF Investment

The company got off to a fairly slow start during the remaining six months of 1994, post financing, due in large measure to the time it took for the company to arrange suitable bank lease credit facilities. The result is that, while the company wrote three leases during the period, only one of which closed by year-end 1994, performance for the year was under budget.

For the partial year 1994, the company generated net lease income of c5.08 million and an operating loss of c65.9 million versus a budgeted profit of c5.9 million.

With credit facilities in place at the beginning of 1995, the total investment in leases amounted to the equivalent of \$1.4 million as against budget of \$2.5 million. Total deals approved during the period, however, amounted to \$2.35 million. Turnover for the year was c334 million and, after provisions and exchange gains, the company broke even with a nominal profit of c3.9 million, versus a budgeted loss of c54 million.

f. Evaluation Team Observations and Assessment

Leasafric is a well-run company facing a significant market opportunity. It has savvy, well-trained senior management which has developed a thorough, tight credit screening process and which follows an operating strategy that effectively insulates the company from one of the major problems which plague many Ghanaian companies: foreign exchange risks.

Management has segmented its market such that it emphasizes US dollar-denominated deals, targeting companies which generate US dollars from their operations (e.g. the mining sector): the loans are written in dollars, Leasafric funds in dollars and the lessees pay back in dollars. For those credit-worthy lessees which generate cedis from their operations, Leasafric uses its cedi-denominated credit facilities, funds in cedis, is paid back in cedis. By attempting to have approximately 85% of its portfolio value in dollar-denominated leases, the company incurs no foreign exchange risks and minimal exposure to cedi depreciation. During fiscal year 1996, for example, the company projects investing a total of \$6.0 million in US dollar-denominated leases and c1.5 billion (approximately US \$1.0 million at March 1996) in cedi-denominated leases. Indeed, within the first six weeks of 1996, the company's Investment Committee had approved deals with a total value of \$2.2 million.

Which brings us to what may be the primary potential obstacle facing the company. Of the key risks identified by VFMC prior to its investment in Leasafric, only one appears to have had any appreciable impact on the company's performance to date, and to remain a source of concern going forward: the company's inability to access sufficient (competitively priced) loan funds to enable it to support its projected level of lease investment activity.

The funding constraint presented the company's management with its greatest challenge during the 1995 fiscal year. Management responded by adopting a strategy to build a high quality portfolio with zero incidence of default, based on its belief that the banking community's perceptions of the company's credit worthiness would be a function of the quality of its portfolio. This approach appears to have met with some success. During the last quarter of 1995, the European Investment Bank (EIB) approved a one million ECU credit line for the company, which the company hoped other sources in the financial community would emulate. At the time the evaluation team left the field, Caisse Francaise Centrale was processing the company's application for a \$2 million credit line and two of the company's existing lenders were considering increasing their lines to the company. In addition, VFMC is considering extending a line to the company under the Enterprise Fund facility.

In sum, we believe Leasafric's prospects are bright. Should the company maintain its credit disciplines as it grows, thereby continuing to generate a quality book of investments, it ought to be a very attractive candidate for listing on the Ghana Stock Exchange within the next two years. Should the company continue to grow profitably but be unable or unwilling to enter the public market, VFMC's put rights should enable it to exit this deal with an attractive return.

4. Paper Conversion Company Ltd, (PCC)

a. Company Description

PCC was established in 1961 as a tissue converter producing toilet paper and other tissue products from imported jumbo rolls. In 1964, a corrugated cardboard carton line was added. For much of its existence the company enjoyed a monopoly position in the Ghana market. However, in recent years, the advent of competition, as well as both working capital and equipment constraints, contributed to an erosion of the company's market position such that by year-end 1993, the company had approximately 40% of the corrugated carton market and 5% of the tissue market.

Imported paper represents approximately 80% of the direct cost of producing cartons, and approximately 90% of toilet rolls. Other imports include starch, inks and gummed tape, together amounting to roughly 5% of the cost of cartons.

b. GVCF Investment

On November 11, 1993, VFMC sought board approval for a GVCF investment of the cedi equivalent of 3.0 million Swedish Kroner (approximately US \$370,000 at the then prevailing exchange rate) as part of a total financing of c1.12 billion (approximately US \$1.54 million) to acquire a 24% (subsequently adjusted to 31.65%) interest in the ordinary shares of a new company being formed to take over and rehabilitate the assets and operation of GIHOC Paper Conversion Company Ltd. (GPCC). GPCC was owned by the Government and was to be privatized by the Divestiture Implementation Committee (DIC). The new company would be named Paper Conversion Company Ltd (PCC).

The main promoter of the project was Gothia Pulp & Paper AB (Gothia), a Swedish company which sells paper and paper conversion equipment. Prior to this project, Gothia had no other investments in converting companies and was assumed by VFMC to be motivated primarily to increase sales of its paper. Indeed Gothia paid for its shares of PCC by delivery of paper. In addition to paper sales, Gothia entered into a technical assistance contract to supply some equipment as well as an engineer and other staff as required to assist in the rehabilitation of PCC after divestiture. The cost of Gothia's technical assistance program was to be borne by a grant from SwedFund International AB (SwedFund) which, in addition to its grant, was also expected to invest equity capital into the new company. As a condition of its grant investment, SwedFund required that a majority of the equity in the new company (inclusive of GVCF's investment) be held by local (i.e. Ghanaian) shareholders.

In sum, the new company was to enter into the following agreements:

- (i) Agreement with Government of Ghana to purchase the assets of GPCC;
- (ii) Lease covering the factory site and other land;
- (iii) Supply Agreement with Gothia for supply of raw materials; and
- (iv) Technical Assistance and Training Agreement with Gothia.

c. Expected Use of Proceeds

The main constraint identified by company management prior to divestiture was the shortage of working capital finance. As a result, production had been uneven and unavailable, which encouraged customers to buy elsewhere. The age and condition of PCC's equipment did not appear to represent a major constraint at the Company's existing levels of production (2,000 and 120 tons of cartons and tissue products, respectively, for fiscal year 1993), although increasing production to the level of 2,500 tons per annum (cartons) would be difficult without rehabilitation.

Investment proceeds were expected to be used primarily to meet PCC's working capital needs, and secondarily to finance the rehabilitation program. The rehabilitation program was expected to be implemented over a period of four years, corresponding with the company's market and product development.

d. VFMC Pre-Investment Key Risks Analysis

At the time that VFMC sought board approval for this investment, the following were presented as the results of its key risks analysis:

- delay by DIC in finding additional investors will lead to further erosion of GPCC's market share;
- problems during handover could lead to unforeseen costs and downtime;
- failure by DIC to settle outstanding liabilities to staff and others could interrupt operations;
- devaluation of the Swedish Kroner could lead to insufficient finance being available;
- price-cutting by competitors;
- management changes may not yield the desired improvements in performance;
- rehabilitation could cost more than expected;
- rehabilitation may not yield increased production and improved efficiency;
- sudden sharp rise in paper prices could make working capital requirements prohibitive.

e. **Company Performance Post-GVCF Investment**

Negotiation with the DIC to acquire the assets of GPCC consumed a full year after VFMC received board approval for this investment, resulting in the new company (PCC) taking control of GPCC's assets in late November of 1994.

The present ownership structure is as follows:

PCC, Present Ownership Structure

Investor	% Ownership
Gothia Pulp and Paper	31.65
Swedfund International AB	31.65
GVCF	31.65
Other (Ghanaian)	<u>5.05</u>
	100.00

During its first full year of operations as a private enterprise (1995), the company experienced raw materials supply problems due to worldwide shortages of paper and increased prices on world markets for available supplies, further complicated by depreciation in the purchasing power of the cedi. (While the company generates revenues in cedis, all of its raw materials are purchased with foreign exchange.) In addition, the company experienced margins that were lower than expected as customers resisted its efforts to pass along increased costs through price increases. PCC was therefore unable to satisfy its working capital requirements for the year, resulting in a slow down in its rehabilitation program (which was to be partly funded through internal cash) and the company being unable to make the full remaining payment due to the DIC for purchase of the company's assets.

By December 31, 1995, the company's raw material situation appeared to be under control as a combination of declining paper prices on world markets and increased local banking facilities arranged by the company (with VFMC's active assistance) positioned it, going forward, to support its import requirements. In addition, two of the company's shareholders (Gothia and SwedFund) had each paid-in an additional US \$75,000 into the company (GVCF expected to follow suit in the first quarter of 1996) enabling it to procure equipment required to put its rehabilitation program back on course.

The results to year-end 1995 are summarized below:

PCC, Financial Results, Year-End 1995

	Actual Budget Variance				Actual Budget Variance		
Production (tons)	2,254	3,058	(804)	Production (tons)	2,254	3	(804)
Sales(cedimillion)	3,745	5,266	(1,521)	Sales(\$ in 000's)	2,497	4	(1,014)
Gross Margin (%)	24	27	(3)	Gross Margin (%)	24	27	(3)
PAT(cedimillion)	(241)	358	(599)	PAT(\$ in 000's)	(161)	239	(400)

f. Evaluation Team Observations and Assessment

PCC faces a problem common to Ghanaian companies for which a significant percentage of production inputs are imported, but for which revenues are generated in cedis: raw materials costs which escalate due to both exogenous factors as well as the depreciation of the cedi. If the demand elasticity for the company's product is not such that the company is able to maintain gross margins by passing on costs increases through prices, the company faces continuous working capital pressures. More specifically, PCC imports over 90% of its raw materials, primarily paper, the prices for which are determined on world markets. When paper prices increase significantly, the company has little latitude beyond its ability to astutely manage its cashflow cycle: tighten credit policies, aggressively collect on receivables outstanding, stretch payables, increase stock when raw materials prices are depressed and if possible, attempt to increase prices for its products when raw materials prices escalate.

The company is further constrained, however, by its supply agreement with Gothia Paper which, while envisaged as an agreement that would give Gothia the first opportunity to supply at *competitive* prices, has in fact meant that most paper is bought either from or through Gothia. Moreover, Gothia charges PCC a 3% - 6% "service" charge depending upon whether raw materials are sourced through Gothia or another supplier. In practice, this has meant that over and above shortages due to price increases, the company has at times had difficulty sourcing raw materials at all. This agreement is due to expire in 1997, but is expected by management to be renewed. If so, it would appear at the very least to be in VFMC's and the company's interest if the terms of the agreement could be altered to give the company greater latitude in sourcing raw materials when Gothia is either simply unable to supply, or unable to supply at competitive prices.

While PCC management expects the company to generate a profit in 1996 based on recent paper price reductions, and increased production of higher margin tissue products (tissue production began in February 1996), the evaluation team would place PCC in the "watch" category. Short of identifying a cheaper, less volatile source of raw materials, the company's fortunes are extraordinarily dependent upon forces beyond its control. Astute working capital management is a necessary, though not sufficient, condition for survival, and far from a guarantor of success.

- 41.

Although at present PCC appears to be in no danger of going under, and given a long enough run of stable, relatively low raw materials prices, GVCF might well recover its capital, exiting with venture returns appears unlikely for this investment.

5. ABC Brewery Ltd. (ABC)

a. Company Description

ABC is a limited liability company incorporated on April 30, 1992 to purchase the assets of Achimota Brewery Company Ltd. from the Government of Ghana, under its privatization program. The company, formerly incorporated and operating under the name Tata Brewery, was confiscated from private owners by the Government in 1979. The new company, the shareholders of which were Ghana Reinsurance Organization (GRO), Social Security and National Insurance Trust (SSNIT) and the National Investment Bank (NIB), with each holding equal shares, took control of the assets and commenced operations in May 1992.

The company produces three beer products -- Golden Lager Beer, Bubra (draught) Beer and Supermalt -- and planned to enter the soft drink beverage market through the introduction of a line of carbonated fruit-based beverages in March 1996.

The brewery is situated at Achimota on a 30-acre plot that it has leased from the Government for a term of 50 years.

b. GVCF Investment

In October 1994, VFMC sought board approval for a GVCF investment of US \$390,000 to acquire 5% of the equity of ABC Brewery Ltd. (ABC), as part of a total capitalization of US \$7.8 million which had been delayed considerably since the "new" company started operations in 1992.

In April 1992, SSNIT made the first down payment of cedis 3 billion (out of a total agreed purchase price of c6.25 billion) to Government. The balance due to the Divestiture Implementation Committee (DIC) was paid prior to year-end 1992. These payments made by SSNIT were initially regarded as loans rather than equity contributions, pending completion of the financing package. Subsequent delays in structuring and agreeing on shareholders' commitments resulted in the company having to operate on further loans and advances from shareholders. (The company's equity capital remained nominal.) The delays also resulted in the withdrawal of three of the expected participants in the transaction: The International Finance Corporation (IFC), Deutsche Investitions - und Entwicklungsgesellschaft (DEG) and Holsten Brauerei AG (Holsten), the German brewing concern which, through a joint venture with AMS (to be named HoAmGA) -- a brewing and beverage engineering specialist -- was to provide ABC with brewing expertise and license ABC to use its brand names.

c. Expected Use of Proceeds

The shareholders eventually agreed that ABC should be capitalized at the equivalent of US \$7.8 million, to be subscribed primarily through the conversion of existing debts to equity, with additional cash contributions from some of the shareholders, effectively restructuring the company's balance sheet and recapitalizing the company in the manner intended at purchase in 1992.

Some of the cash was expected to be used to enable the company to complete a major equipment rehabilitation and expansion program begun in 1992. This was expected to position the company to increase its market share by introducing mini-beers and soft drinks and by expanding the production and sales of its draught beer (Bubra).

The financing structure of the company before and after the capitalization is shown below.

ABC, Financing Structure Before and After Capitalization

Shareholders	Before		After			Cash Flow
	Loans at 1/6/94 C000's	Equity subscribed US\$'000's	% Holding	Equity equivalent in C'm	Loans contracted C'm	Cash pmt/(refund) C'M
SSNIT	(9,219)	5,577	72	5,577	4,870	1,228
HOAMGA	(1,082)	780	10	780		(302)
GRO	(124)	390	5	390		266
NIB	(1,172)	390	5	390	422	(360)
ABC-STAFF		273	4	273		273
GVCF		390	5	390		390
	(11,597)	7,800	100	7,800	5,292	1,495

d. VFMC Pre-Investment Key Risks Analysis

At the time that VFMC sought board approval for this investment, the following were presented as the results of its key risks analysis:

- depreciation of the cedi against foreign currencies will affect the repayment of forex borrowings, and
- projected sales volumes may not be achieved.

e. Company Performance Post-GVCF Investment

GVCF made its investment in ABC in March 1995, and for the balance of the year the company failed to meet either its production or sales targets. The primary difficulty facing ABC during this period appears to have been delays in completion of the rehabilitation program. Continued production losses due to the inefficient performance of the existing plant had a negative impact on sales volumes as well. While year-end financial statements had not been provided to VFMC and were not made available to the evaluation team during its site visit, recorded sales for the nine month period through September 1995 were c4.1 billion, accompanied by a pretax loss of c2.2 billion.

Summary comparative financial performance data for the period 1993 - 1995 (nine months) are presented below:

ABC, Summary Comparative Financial Data, 1993 - 1995 (9 months)

	1993	1994	1995(9mos.)
	c'm	c'm	c'm
Sales	3,609	4,048	4,100
Cost of Sales	(2,514)	(3,788)	
Gross Profit	1,095	260	
Gen., Admin. & Selling Expenses	(1,681)	(3,633)	
Operating Loss	(586)	(3,373)	
Other Income	10	220	
Loss Before Exceptional Item	(576)	(3,153)	
Exceptional Item	(1,578)	---	
Loss Before Taxes	(2,154)	(3,153)	(2,200)

44

f. Evaluation Team Observations and Assessment

It is obvious from the very short list of perceived risks, enumerated by VFMC management prior to GVCF's investment, that VFMC believed this investment to be a fairly safe bet, and for understandable reasons. There are four breweries in the Ghana market including ABC, and the other three are all listed on the GSE. During the year preceding VFMC's investment recommendation, the market shares of ABC's Golden Lager and Bubra (draught) beers increased from 6.5% and 36.6% to 18.2% and 78.2%, respectively. It seemed obvious that should the company successfully complete its rehabilitation program, it would be poised to regain significant market share lost to competitors in the late 1980s and early 1990s. In addition, SSNIT was at the table as a deep-pocket financial partner should additional resources be required, and AMS, with its presumed technical expertise, was there to balance or compensate for the lack of brewing expertise of the other shareholders. To be sure, with all of its raw materials being imported, the company faced foreign exchange risks similar to other Ghanaian companies dependent upon foreign inputs, but since ABC management saw no reason why prices should not continue to move in line with costs, short of sales volumes not keeping pace with production, what could go wrong? This would surely be an easy story to sell in the public market should the company's performance match or come close to projections.

Again, this was an understandable, even reasonable bet. However, in retrospect, there were at least two check points during the process of this deal coming together at which VFMC might have, with good reason, chosen to opt out. First, the withdrawal of Holsten, the successful German brewer that was to provide brewing and brewing management expertise ought to have been a red flag. AMS's experience as brewing and beverage "engineering specialist" was simply not equivalent to that of a successful brewing concern. Second, VFMC sought GVCF Board approval to make an exception to the Fund's Investment Policies to enable GVCF to invest in a company in which it would own less than 10% of the equity. By ultimately owning such a small percentage of the company's equity (5%), GVCF placed itself in a position where it would have little ability to influence the company's direction should performance vary significantly from plan.

There is a saying in the venture capital business that has become something of an axiom: a venture capitalist has a much greater probability of making money on an investment in a company with superior management and an average product, than vice versa -- average management and a superior product. To its credit, VFMC management has clearly recognized the need to identify a new management partner (preferably another brewer) to invest in and run this company. (Unfortunately, it has little leverage with which to bring such change about.) Given the popularity of the company's products, should the investor group succeed in bringing (1) the appropriate management talent and (2) the additional resources that will be required to both finish the rehabilitation program and fund the marketing effort that will be required to regain lost ground, this may yet turn out to be a successful investment for GVCF.

6. Ghana Pioneer Aluminum Factory (GPAF)

a. Company Description

GPAF manufactures and markets a wide range of aluminum household cooking products for the domestic and export markets, including pots, wash basins, frying pans, casseroles and other household utensils. Its products are well known locally and enjoy significant product loyalty, as its "Red Torch" label brand is considered to be one of the best product lines on the market.

The company's primary raw materials are aluminum circles of various dimensions, which are supplied by Aluworks Limited, a rolling mill located -- as is the company -- in Tema. The company's proximity to its main supplier provides it with a cost advantage over other producers in Ghana since transport and other costs are minimal. This also allows GPAF to limit working capital needs since there is no need to hold large stocks of raw materials.

The company holds approximately 25% of the market for aluminum household cooking products in Ghana and has been consistently the number one or two volume producer. GPAF sells its products to over 100 customer/distributors, including market women, who in turn distribute the company's products via the local markets and commercial houses. There is also modest export to the sub-region (Togo, Benin, Gambia) on an ad hoc basis.

GPAF was incorporated by Swiss Nationals in 1959 as a private company. During the 1970s, the Government of Ghana became a significant shareholder of the company. Following a difficult period in the mid to late 1980s, the company retained a new managing director, Mr. K. Kwateng, in 1991, who has engineered a very successful turnaround. Prior to assuming the leadership of GPAF, Mr. Kwateng was a management consultant specializing in accounting systems. He was previously employed by Union Carbide and Eveready in Nigeria, the United States and Ghana. Mr. Kwateng holds a BS degree in Administration from the University of Ghana (Legon) and an MBA from New York University. He is also a Certified Public Accountant.

b. GVCF Investment

In current financial services investment parlance, GVCF's investment in GPAF would be referred to as a "special situation." On April 25, 1995, VFMC sought approval from its board to invest US \$345,000 to acquire a 20% stake in GPAF from the widow of the company's founder, a Mrs. Schwegler.

The company's ownership structure at the time of GVCF's proposed investment was as follows:

GPAF, Ownership Structure at Time of GVCF Proposed Investment

Shareholders	Pct. Ownership
Mrs. Heidi Schwegler	45
Government of Ghana	40
Devaq Limited	10
Current and Former GPAF Employees	<u>5</u>
	100%

Mrs. Schwegler had offered to sell her shares (36,000) in the company via a private placement to be managed by Databank Brokerage², which offered 20,000 of these shares (a 25% shareholding) to GVCF for US\$345,000. Databank had also been given a mandate to privatize the Government's shareholding through a public flotation. Application had already been made to the Ghana Stock Exchange (GSE) for all ordinary shares of GPAF, issued and to be issued, to be listed on the GSE.

c. Expected Use of Proceeds

GVCF's investment was used to acquire a 20% interest in the shares of a solidly performing company, poised for significant expansion and growth, whose shareholder base was being restructured by the divestiture of both government and foreign shareholders' interests.

d. VFMC Pre-Investment Key Risks Analysis

At the time that VFMC sought board approval for this investment, the following were presented as the results of its key risks analysis:

- sales may not grow as quickly as anticipated;
- depreciation of the cedi may continue and the costs of inputs and spares may increase faster than anticipated; this might occur in tandem with persistent increases in the world price of aluminum;
- competition from cheap imported substitutes.

² Note: Two of the authors of this report -- Eric Chatman and Markai Plange -- are Vice Presidents of Databank Financial Services, of which Databank Brokerage is a wholly-owned subsidiary. Databank Financial Services performed Corporate Advisory and preparatory work for the flotation of GPAF's shares. Databank Brokerage sponsored the listing of GPAF shares to the Ghana Stock Exchange.

e. **Company Performance Post-GVCF Investment**

GVCF made its investment in April 1995 and GPAF was listed on the GSE in August of the same year. For fiscal year 1995, the company turned in another in a steady sequence of years of improved performance. Total annual sales of 726 metric tons, valued at c4.097 billion were 94.2% and 95.4% of budget, respectively, and represent an increase over 1994 annual sales of 678 metric tons, valued at c2.685 billion. The company earned an overall profit before tax of c650 million, which represents a 15% increase over budgeted profit before tax of c565 million, and a 95% increase over 1994 profit before tax of c332 million (a significant increase even after taking into account depreciation in the value of the cedi of approximately 37.7% during 1995).

While profits have improved consistently over the last five years, GPAF's gross margins had remained relatively flat due to raw materials price increases, until 1995. For the year 1995, the company generated a gross profit margin of 32%, a significant improvement over its 1994 gross profit margin of 22.6%, and five percentage points higher than a previous high of 27% in 1992. (See Financial Performance Summary below). The company ended the year in a solid financial position, with net current assets of c372 million. The company's financial performance and financial position over the period 1991-1995 also are summarized in the two boxes below.

GPAF Financial Performance 1991-1995					
	1991	1992	1993	1994	1995
	c'm	c'm	c'm	c'm	c'm
Net Sales	1,101	1,212	1,696	2,685	4,097
Cost of Sales	(826)	(884)	(1,269)	(2,078)	(2,783)
Gross Profit	275	328	427	607	1,314
(Gross Profit Margin)	0	0	0	0	0
Selling, Gen. & Admin.	(286)	(209)	(190)	(226)	(606)
Depreciation	(6)	(5)	(21)	(55)	(79)
Other Income	3	10	6	65	21
Net Profit(Loss) Bef. Tax	(14)	124	222	332	650
Tax	0	(26)	(89)	(128)	(252)
Profit (Loss) After Tax	(14)	98	133	204	298

GPAF Financial Position 1991-1995					
	1991	1992	1993	1994	1995
Fixed Assets	673	618	586	581	789
Investments	12	12	12	12	108
Current Assets	229	262	296	619	1,013
Stocks	79	41	73	91	109
Debtors	4	4	14	19	21
Bank & Cash	312	307	383	729	1,143
Current Liabilities					
Bank Overdrafts	123	74	44	109	125
Creditors	134	199	228	356	646
	257	273	272	465	771
Net Current Assets(Liabilities)	55	34	111	264	372
Long Term Liabilities	(81)	(57)	(9)	0	897
Net Assets/Liabilities	509	607	700	844	1,269
Shareholders' Funds					
Stated Capital	0	600	600	600	627
Capital Surplus	623	22	22	23	22
Income Surplus	(114)	(15)	78	221	620
	509	607	700	844	1,269

f. Evaluation Team Observations and Assessment

Of the key risks which VFMC thought GVCF was exposed to through its investment in GPAF, to date, none have materialized to a degree sufficient to derail the company's growth trajectory: sales are reasonably close to budget, competition has not reduced the company's market share or profits, and cedi depreciation and rising input costs thus far have not threatened the company's financial position. That said, the company is not invulnerable; substitution products, such as plastics and imports, do limit the ability of aluminum hollowware producers to increase their prices in response to raw materials price increases.

GPAF's theoretical production capacity is 700 metric tons per annum, making it the second largest plant in the country. (The largest plant in Ghana has a capacity of 720 metric tons per annum). At 717 metric tons produced in 1995, GPAF is thus straining capacity. (Note: The 9 metric tons difference between 717 and 726, the number of metric tons sold in 1995, represents 1994 production sold in 1995.) As a result, the company has undertaken an expansion project designed to increase production capacity to over 1,000 metric tons per annum. At the same time, the expansion project (which was underway during the period the evaluation

team was in the field) is expected to augment the company's ability to improve quality and introduce new product lines. Specifically, non-stick and exterior coating technologies will be introduced into the expanded plant to compliment existing product lines and enhance market penetration. The expansion and introduction of these additional technologies will increase GPAF's ability to meet demand for its products, increase its flexibility to shift production to items with higher demand, and solidify its leadership position in Ghana's aluminum hollowware market.

GPAF is an extraordinarily well-managed company with a very efficient production culture. Management continually seeks ways to improve product quality as well as the efficiency of the company's production process. The results of these efforts are demonstrated in the company's steadily increasing performance numbers.

To the company's and GVCF's benefit, the investing public appears willing to recognize and reward GPAF's performance. The company's shares listed on the GSE in August 1995 at c115 per share. Six months later, during the period of the evaluation team's field work, the company's shares traded at an average price of c155 per share. Should the company's performance trend continue, this investment is likely to be a significant winner for GVCF.

D. GVCF Portfolio : General Observations and Assessment

It is difficult to draw conclusions about the probability of success of GVCF that are likely to stand the test of time, given the relative youth of the current portfolio. At the time the evaluation team was in the field, the oldest investment in the GVCF portfolio was less than two (2) years of age. Given that most venture investments are expected to come to maturity, and some form of exit, within a four to seven year time frame, much is likely to occur before GVCF exits its current investments. In particular, the entire portfolio is likely to exhibit different degrees and elements of focus, balance and diversity as GVCF's investment cycle comes to an end.

However, it *is* possible to make some general observations about the current status of the GVCF portfolio and to give our own subjective view of the portfolio's relative health. In Table 6 below, based on the materials reviewed, as well as site visits and interviews conducted with respect to each of GVCF's current portfolio companies, we have grouped GVCF's investments into three broad performance categories -- satisfactory, watch and problem -- by which we mean to convey the following:

Satisfactory: The company is performing at or near plan. There are no readily apparent management performance concerns or issues. The probability of GVCF accomplishing a successful exit (i.e., achieving venture returns on its investment) appears to be quite high.

Watch: Company is performing below plan, but not due to any apparent management or product/service deficiencies or quality concerns. Sub-plan performance appears to be due largely to exogenous factors (in particular current macroeconomic conditions in Ghana) or company production functions dependent upon a very high percentage of imported production inputs, and the company's inability, given its competitive market position, to enforce price increases in line with cost escalation. Profitable GVCF exit remains possible, though it would appear at this juncture not highly probable. Prospects for return of capital appear moderate to good.

Problem: Company performing considerably below plan. Current management appears inadequate to get the company on track. Significant change required to position company for successful turnaround. Should present performance level continue, return of capital unlikely.

Current Status	Company Name(s)	GVCF \$'s Invested	Percentage \$'s in Category
Satisfactory	South Akim, Leaseafric, Pioneer Aluminum	\$707,000	44%
Watch	Sydals, Paper Conversion	\$528,000	32%
Problem	ABC Brewery	\$390,000	24%
	Total=	\$1,625,000	100%

As of February 23, 1996, 44% of GVCF's dollars invested were invested in companies performing satisfactorily; 32% of GVCF's dollars invested were invested in companies which were experiencing some difficulties, but from which return of capital or modest gains remain probable; and 24% of GVCF's dollars invested were invested in a company experiencing significant difficulty, from which -- at this juncture -- return of capital appears unlikely.

Overall, this is a portfolio that is in fair shape, given its stage of development and the current macroeconomic environment in Ghana. Beyond this, it is our view that any attempt, at this juncture, to predict the likely success or failure of GVCF's portfolio five to seven years hence, would be premature.

E. Projected GVCF Portfolio at March 31, 1997

In this section, we attempt to project a snapshot of the GVCF portfolio at March 31, 1997, one year hence, and based on this projection to draw some speculative conclusions about the contours of the fund after its investment cycle is completed, abstracting from follow-on investments in existing portfolio companies.

In Table 7, we project an overview of the GVCF portfolio one year out, based on the current portfolio and deals currently in the pipeline which have been approved for investment but have not closed. Companies 7 and 8 in the table, Alugan and Ghana Emulsion, were in legal documentation during the period of the evaluation team's field work and were expected to become portfolio companies in the very near term. The remaining six companies were all expected to enter the portfolio by end of the 1996 fiscal year. We have extended the window to the end of first quarter 1997, given the normal amount of slippage in the deal closing process.

GVCF expects to invest an additional \$2.5 million over the next twelve months, reserving the balance of its investment capital (approximately \$1.6 million) for follow-on investments in portfolio companies and other contingencies. This would bring total dollars invested to approximately \$4.1 million at March 31, 1997.

In Exhibits 1 and 2, we focus on the allocation of GVCF investment dollars in the existing portfolio (\$1.625 million as of February 23, 1996) by industry and by financing type. Present fund investments are concentrated in the Commercial/Industrial Products and Food and Beverage industries, with the two industry groups accounting for 70% of GVCF invested capital. The balance falls into the Consumer Related and Financial Services industries. With respect to financing type, fund management adopted a conscious strategy of initially concentrating its efforts at the lower end of the risk spectrum, with expansion financings and privatizations together accounting for 70% of the portfolio investment activity and the least amount of capital being invested in start-up situations.

Turning our attention to Exhibits 3 and 4, we focus on the allocation of GVCF investment dollars by industry and financing type based on its projected investment schedule over the next twelve months. The projected portfolio evidences a greater degree of industry diversity, with Communications entering the industry mix, Financial Services becoming a bit more pronounced and the Food and Beverage Industry becoming a bit less so. When we focus on the allocation of investment dollars by financing type, the most obvious change is the dramatic increase in the percentage of investment activity accounted for by start-ups. Should the company fulfill its projected investment schedule, fully 50% of GVCF's investment capital, before any additional follow-on investments, would be invested in start-up opportunities.

Some of the implications of the dramatic projected increase in start-up investment activity are obvious. To the extent that start-ups generally entail a greater degree of risk than later stage financings (of whatever stripe), GVCF will be taking on much greater risk in its portfolio. Start-ups also generally demand greater attentiveness and active involvement of a venture fund's

management, so we would anticipate much greater demand on the time of VFMC management. On the flip side of the coin, the potential rewards should be commensurate with the risks. To the extent that the pricing of start-up opportunities is generally more favorable, GVCF will have the opportunity to take substantial positions in companies based on relatively modest investments. (Of course, additional rounds of financing are likely to be required.) The potential ancillary economic impact of increased start-up activities in terms of expanded private sector activity and job creation should also be noted, as the very nature of start-up activity is the creation of companies that hitherto did not exist.

Less obvious from the summary data presented in these tables and exhibits are the significant lengths to which VFMC management have gone, in their due diligence process, deal structuring and stipulation of pre-investment conditions, to mitigate the degree of risk inherent in each of the start-up investment opportunities which have been approved. In four of the six projected start-up investments, a corporate strategic partner with substantial industry specific expertise is a significant shareholder and management participant. In the remaining two, the entrepreneurs (promoters) have substantial industry-specific experience and have made significant financial commitments to their projects.

In sum, GVCF management envisions completing its initial investment cycle over the next twelve months, in the process increasing capital invested by greater than 2.5 times, more than doubling the number of companies in its portfolio, and dramatically increasing the ratio of start-up to later stage deals closed in the process.

TABLE 7

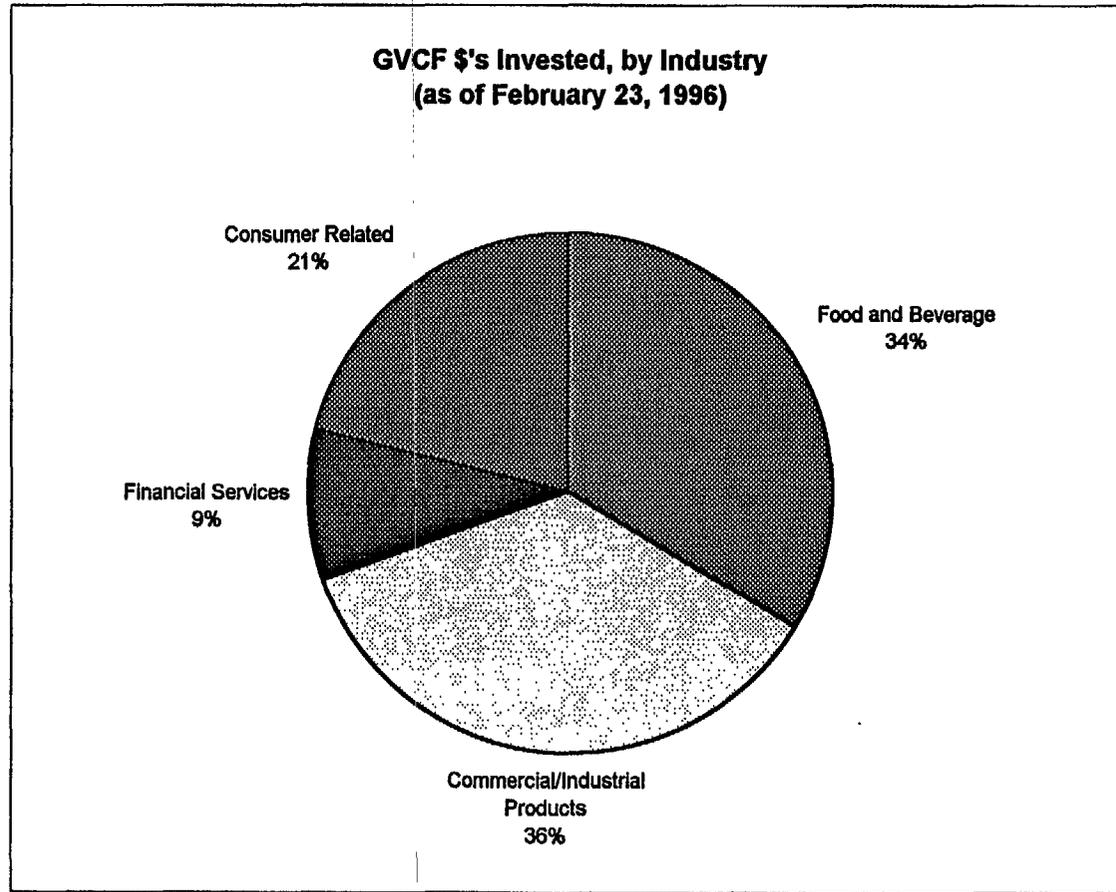
PROJECTED

GHANA VENTURE CAPITAL FUND
PORTFOLIO

(at March 31, 1997)

Portfolio Company	Industry	Product/Service	Date of Investment	Stage	GVCF \$'s Invested	% Fund Ownership	Current Status
1. Sydals Limited	Food and Beverage	Specializes in egg production	Mar-94	Expansion	\$168,000	10%	Watch
2. South Akim Mfrg.	Comm./Indust. Prods.	Produces bottle crown caps	Jun-94	Expansion	\$212,000	20%	Satisfactory
3. Leasafric Ghana	Financial Services	Medium term lease finance	Jun-94	Start - Up	\$150,000	25%	Satisfactory
4. Paper Conversion Co.	Comm. & Cons. Prods.	Cardboard cartons & toilet pap.	Dec-94	Privitization	\$370,000	35%	Watch
5. ABC Brewery	Food and Beverage	Beer and soft drink products	Mar-95	Expansion	\$390,000	5%	Problem
6. Gh. Pioneer Aluminum	Consumer Related	Aluminum cooking products	May-95	Spec. Situa.	\$345,000	35%	Satisfactory
7. Alugan Company	Comm./Indust. Prods.	Aluminum architect. profiles	NA	Expansion	\$200,000	38%	NA
8. Ghana Emulsion	Comm./Indust. Prods.	Cold emulsion bitumen	NA	Start - Up	\$450,000	20%	NA
9. Guarantee Trust Bank	Financial Services	Commercial Banking	NA	Start - Up	\$300,000	30%	NA
10. New World Investments	Financial Services	Brokerage House	NA	Start - Up	\$80,000	20%	NA
11. Metakan Packaging	Comm./Indust. Prods.	Tin cans for food process. ind.	NA	Start - Up	\$90,000	10%	NA
12. Antelope Company	Consumer Related	Mosquito coils	NA	Start - Up	\$500,000	35%	NA
13. SEELnet	Communications	Network based data, voice and video transmission services via VSAT and satellite technol.	NA	Start-Up	\$500,000	39%	NA
14. Ghana Bottling	Food and Beverage	Bottler of Pepsi, Mirinda and 7-Up soft drink products	NA	Privitization	\$400,000	5%	NA
Total GVCF \$'s Invested =					\$4,145,000		

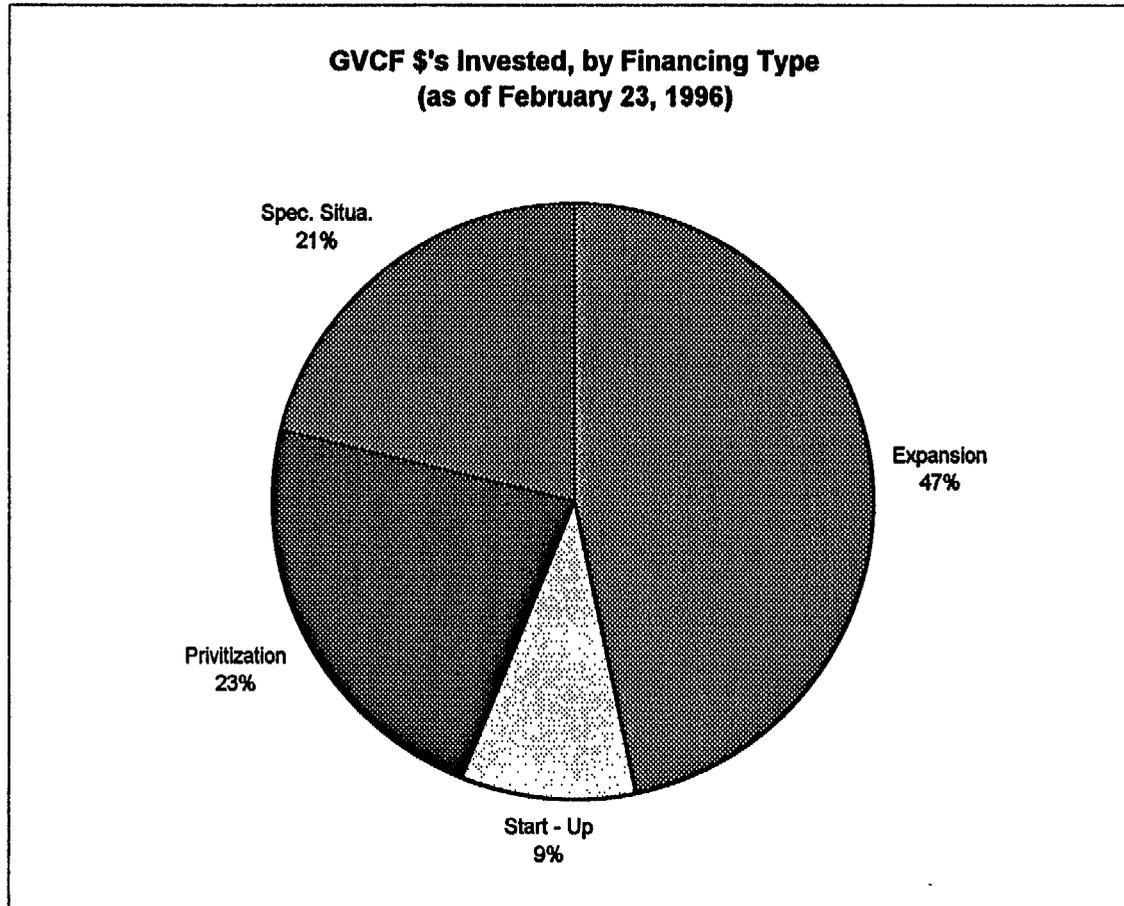
EXHIBIT 1



Total GVCf \$'s Invested = \$1,625,000

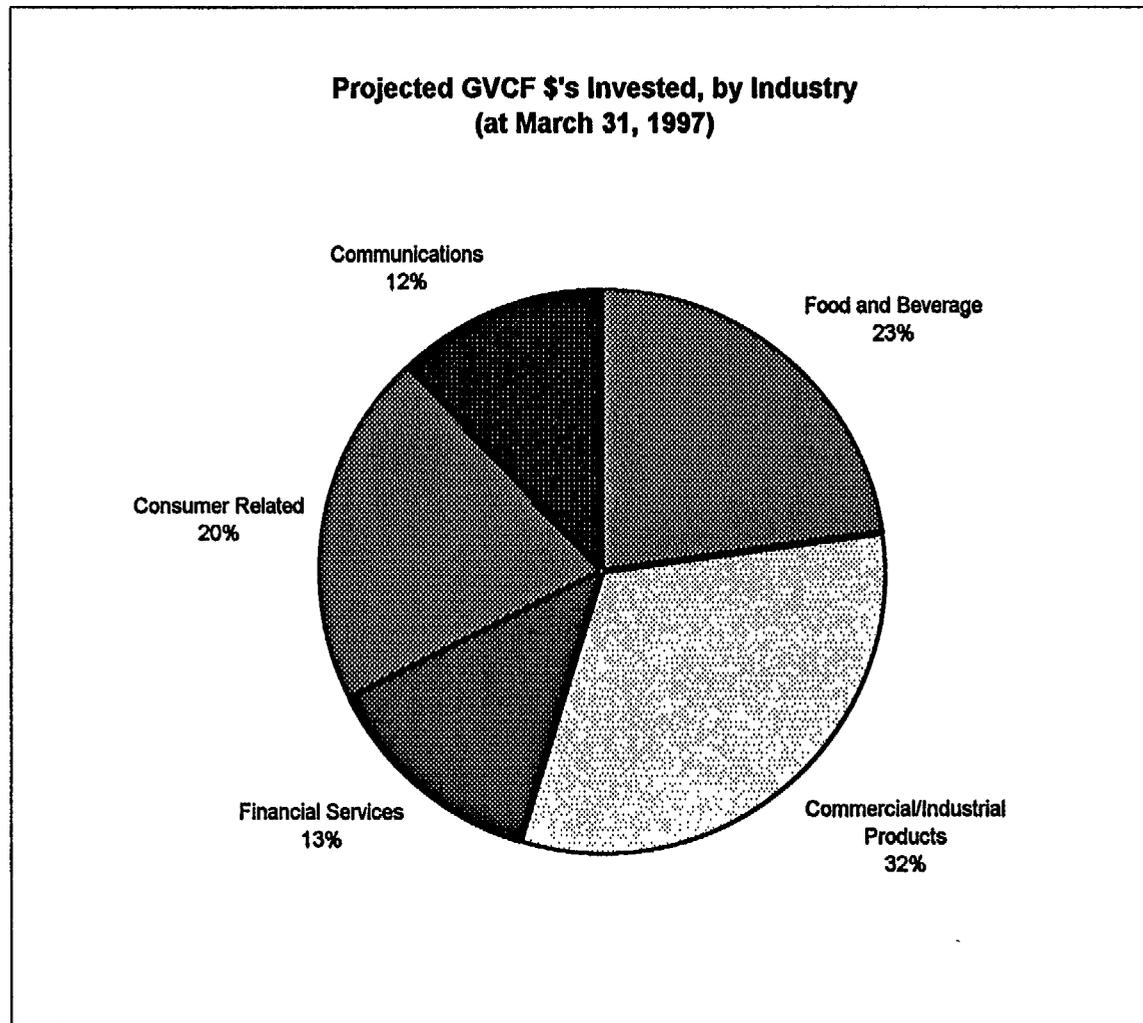
55

EXHIBIT 2



Total GVCF \$'s Invested = \$1,625,000

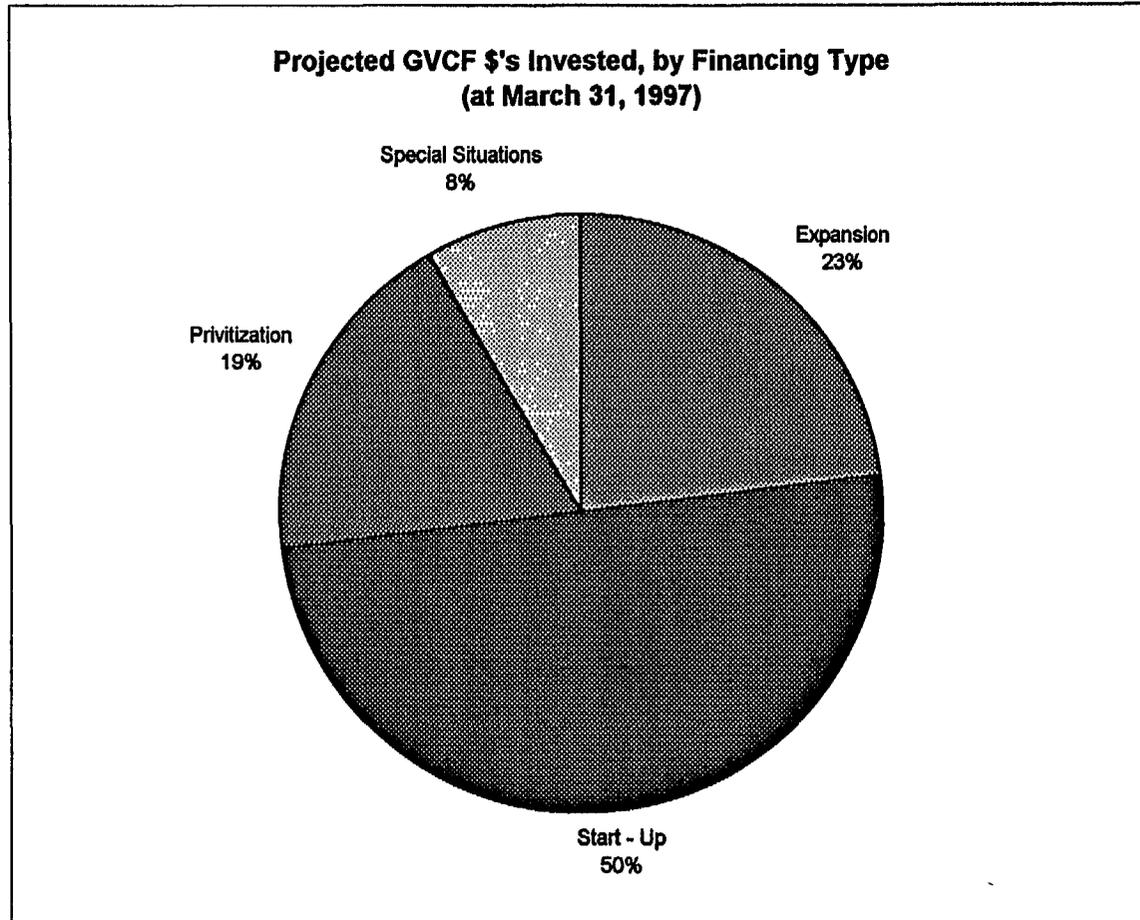
EXHIBIT 3



Projected GVCF \$'s Invested = \$4,145,000

51

EXHIBIT 4



Projected GVCF \$'s Invested = \$4,145,000

50

V. THE IMPACT OF THE GVCF ON PRIVATE SECTOR DEVELOPMENT

A. Assessment of GVCF Impact to Date

In the United States, researchers have found that venture capital-backed companies have made a disproportionately large contribution to local, regional and national economic development not only in terms of new services and technologies, but also in terms of jobs created, tax revenues, employee income and export sales. These findings have contributed to the growing focus on venture capital as a potential tool for achieving development objectives in developing countries, where financial markets and sources of capital to support entrepreneurial efforts are limited.

The basic factors in the private enterprise development process may be organized into two groups: external and internal. Government policies and regulations, societal values and attitudes, education and research institutions, and location/infrastructure are the external factors that determine the environment within which people, capital, market opportunities and support organizations -- the internal factors -- interact to create and develop new ventures and to extend existing lines of business.

Given the relatively brief tenure of the Fund's investment activity (at the time of our field work the oldest investment in the portfolio was less than two years) and small amount of capital invested to date (\$1,625,000), it was obvious that the Fund's direct economic impact with respect to job creation, increased employee income, tax revenues and the like, would be minimal. However, to obtain some sense of the extent or degree to which the introduction of institutional venture capital into the Ghanaian financial sector has had an impact on any of the *basic factors* critical to the private enterprise development process, we conducted interviews with two groups of respondents: (1) members of the GVCF Board of Directors, all of whom either are, or represent, investors in the Fund; and (2) representatives of major stakeholders/participants in Ghana's private sector, e.g., Bank of Ghana, Ghana Stock Exchange, Africa Project Development Facility (APDF), Managing Directors of major companies and the Private Enterprise Foundation. (See Attachment K for a list of members of both groups).

Questions asked of the first group included, but were not necessarily limited to:

- What, if any, are your concerns with respect to GVCF's performance to date?
- What is your sense of the quantity and quality of GVCF's deal flow? . . . of the types, quality and number of deals that have been done?
- What, if anything, ought the Fund/Fund Management be doing differently?
- What, in your view, is the greatest single obstacle to the Fund's likely success?
- On what basis will you consider your involvement (or your institution's involvement) in and support for the launching of institutional venture capital in Ghana to have been a success?

- (The following question asked of CDC only.) How does what you have seen of GVCF's progress to date compare with CDC's experience with risk capital funds it has supported in other parts of the world? . . . in other parts of Africa?

In addition to some of the foregoing, questions asked of the second group included, but were not limited to:

- What, if any, impact would you say GVCF has had on the political and regulatory environment for private enterprise in Ghana?
- Has GVCF had any discernible impact on the larger Ghanaian business community with respect to its increased understanding of venture capital as a financial tool or mechanism?
- Are you of the opinion, or would you care to share your view as to whether or not, the present Government is genuinely supportive of private sector development as a critical part of its overall development plans?

Based on these interviews, as well as our readings of relevant available printed matter (e.g., copies of existing and proposed laws and regulations, articles in business journals and newspapers), we offer the following conclusions:

1. GVCF's most obvious and significant impact with respect to the basic factors in the private enterprise development process has been on Government policies and regulations. The published "Draft Operating Guidelines For Venture Capital Funding Companies" are a clear result of VFMC/GVCF initiatives, and a clear signal from the Government of its desire to create a regulatory environment conducive to the further growth and development of institutional venture capital finance in Ghana. (VFMC's managing director, Mr. Ababio, worked very closely with officials in the Non-Bank Financial Institutions office at The Bank of Ghana (BOG) in their efforts to craft the "Draft Guidelines..." and BOG officials confirmed in a meeting with evaluation team members that additional changes in the "Guidelines," to make them even more compatible with the operations of venture capital funds, were likely to be forthcoming.)
2. There was a fairly broad consensus that the presence of the GVCF in Ghana's financial sector had indeed resulted in much greater understanding in the larger business community of the specific utility of venture capital as a valuable financial tool for certain types of businesses. From the commencement of commercial activity, GVCF has undertaken a continual marketing effort to better acquaint the general business community with its presence and the nature of its particular product. (See Attachment L for copies of GVCF's brochure and an article on venture capital which appeared in the business section of the Daily Graphic on February 16, 1996, during the period of the evaluation team's field work).

3. The third area in which GVCF has had an impact on the business community falls into the more nebulous but very important category of changes in "attitudes/mindsets." Numerous respondents commented that business in Ghana, (as in much of the rest of the world), has been synonymous historically with "family" business, as opposed to "corporate" business; that Ghanaian businessmen and women are reluctant to take on outside equity partners; that what is required for the notion of the private sector as the engine of wealth creation for the larger society to really take hold will be a change in the business culture away from the view -- said to be held by the majority of business owners -- of their businesses as extensions of themselves. Several respondents, who had either referred deals to GVCF, or were particularly knowledgeable about companies in the present portfolio, commented on what they characterized as a greater degree of management discipline, focus and professionalism exhibited by some entrepreneurs who had to meet the Fund's demanding financing criteria and on-going reporting standards. It was further suggested that should those companies turn out to be significant wealth creation vehicles for their owners and GVCF, the impact on other business owners and other potential entrepreneurs would be quite significant.

B. Possible Future Impact of the GVCF

GVCF today perhaps can be best characterized as a work in progress. To expect it to have had an extraordinary impact in so short a period would be unreasonable. And although the most important final measures of the success or failure of GVCF will be arguably how well its portfolio companies performed, the level of returns received by its investors, and whether or not, if successful by these measures, it spawns imitators, we believe that the significant potential secondary and tertiary benefits of some of its present and projected investments should not be ignored.

In particular, it is our view that GVCF's ultimate impact on the financial services sector will not be limited to its own direct provision of long-term risk capital to a number of companies, but that its investments in start-up companies in this sector, in particular Leasafric, New World Investments and Guarantee Trust Bank, have the potential to appreciably impact the provision of long-term capital for growth-oriented small and medium-sized businesses in Ghana.

ATTACHMENT A

Statement of Work

Ghana Venture Capital Fund Final Evaluation

1. Background

In 1984, Ghana embarked on a process of economic reform to redress economic imbalances and foster growth through liberalization. In the early 1990s, considerable macroeconomic reform was undertaken, including major reform of the financial sector which was dominated mainly by formal banking financial institutions. These formal banking institutions were undercapitalized and possessed portfolios characterized by a large number of non-performing loans. Banking sector reform was assisted by the World Bank and the International Monetary Fund.

USAID/W and USAID/Ghana recognized the impact of these reform efforts and, to demonstrate the need for other forms of financial intermediation in the economy, sponsored the formation of a venture fund in Ghana. The Commonwealth Development Cooperation (CDC) of the European Union (EU) also expressed interest in capitalizing a venture capital fund. The CDC had been investing in Ghana for some time and was very supportive of the formation of the Fund.

USAID/W and USAID/Ghana, through a buy-in, funded Harvey and Co., Inc. to undertake a study of the Fund in November 1990. Together with a British firm, Rural Investment Overseas (RIO), two consultants undertook the assignment. The Ghana Venture Capital Fund Company (GVCF), a non-bank finance company to hold the funds, and the Venture Fund Management Company (VFMC), a management company to undertake investment decisions, were incorporated in the country and commercial operations started in 1992.

The fund has invested in six firms to date. USAID/W and USAID/Ghana were jointly responsible for underwriting the operational expenditure of VFMC, through the African Venture Capital Project (AVCP). The period of USAID funding officially ended in November 1994. Under the terms of the AVCP grant, Harvey & Co. was required to monitor and evaluate the progress of the GVCF and VFMC on at least an annual basis.

2. Objective

The services of two consultants, a venture capital expert and a finance specialist with extensive experience in Ghana, are required to undertake the end of activity evaluation. The team will evaluate the Fund's contribution to achieving the goal of promoting Ghana's private business sector with a focus on: (i) political and regulatory environment impact, e.g., government of Ghana programs and policies; (ii) direct economic impact, e.g. job creation, expanded private sector activity; (iii) business impact, e.g., heightened understanding of the venture capital mechanism, access to investors and attractive investees.

3. Specific Tasks

To achieve the objective of this statement of work, the consultants' specific tasks may include:

- a. evaluate the legal and policy environment in which the fund operated;
- b. evaluate the operations of the company during the period 1992-1994;
- c. evaluate the impact of the company on the financial sector in Ghana;
- d. evaluate the operations of firms which the Fund has financed and examine the success (or otherwise) of these firms; and,
- e. evaluate the future role of the Fund.

4. Level of Effort

The two team members will provide a maximum of three person weeks each.

5. Deliverables

The consultants will provide a draft report, and after receiving comments from USAID, a final report that addresses the issues outlined in section 2 and 3 of this statement of work.

ATTACHMENT B

Laurence C. Morse, Ph.D.

Dr. Morse is co-managing partner of Fairview Capital Partners, Inc. and a General Partner of Fairview Capital Limited Partnership, which he joined in 1994. Fairview Capital Partners, Inc., based in Farmington, Connecticut, was established to provide investment management and advisory services to qualified institutional investors and serves as investment manager of the Fairview Capital Limited Partnership, a "fund-of-funds" which invests in venture capital and other private equity limited partnerships that provide capital primarily to companies controlled by minority entrepreneurs.

Prior to joining Fairview, Dr. Morse was a co-founder and partner of TSG Ventures in Stamford, Connecticut, where he initiated and directed equity investments in a variety of companies. He began his career in venture capital with UNC Ventures in Boston, Massachusetts in 1983, leaving in 1988 as an investment officer.

Over the last two decades, Dr. Morse has been a consultant to a number of private and public institutions, having most recently served as Senior Venture Capital Advisor to the project team retained by the United States Agency for International Development to recommend an appropriate structure for the \$100 million Southern Africa Enterprise Development Fund.

Dr. Morse graduated from Howard University with a B.A. in Economics, summa cum laude. He earned M.A. and Ph.D. degrees in Economics at Princeton University and has been a post-doctoral fellow at Harvard University.

ATTACHMENT C

FINANCIAL INSTITUTIONS (NON-BANKING) LAW, 1993

In pursuance of the Provisional National Defence Council (Establishment) Proclamation, 1981 this Law is hereby made:

1. (1) No person shall carry on any of the activities of the non-bank financial institutions set out in the Schedule to this Law unless it is incorporated in Ghana. Financial institutions to be incorporated in Ghana.
(2) The Secretary may, on the recommendation of the Bank of Ghana by legislative instrument amend the Schedule to this Law.
2. (1) Subject to the provisions of this Law no non-bank financial institution shall carry on any of the businesses set out in the Schedule unless it is licensed under this Law. Financial institutions to obtain licences.
(2) An application for a licence shall be made in the prescribed form to the Bank of Ghana and shall be accompanied by such particulars or information as may be required by the Bank of Ghana.
(3) There shall be paid in respect of every licence granted under this Law such fee as may be determined by the Bank of Ghana.
3. No non-bank financial institution shall be licensed unless it maintains a minimum paid-up capital of one hundred million cedis or such amount as the Bank of Ghana may, after consultation with the Secretary, by executive instrument prescribe. Minimum capital.
4. (1) The Bank of Ghana may issue a licence to any non-bank financial institution which complies with the provisions of this Law relating to application and eligibility for a licence. Bank of Ghana to issue licence.
(2) A licence under this Law shall be issued upon such terms and conditions as the Bank of Ghana may determine.
5. (1) The Bank of Ghana may suspend or revoke the licence of any non-bank financial institution if it is satisfied that it— Suspension or revocation of licence.
 - (a) obtained the licence by fraud or mistake;
 - (b) has contravened any provision of this Law or any terms or conditions upon which the licence is granted;
 - (c) has engaged in undesirable methods of conducting the business in respect of which the licence is issued; or
 - (d) has failed to maintain the minimum paid-up capital.
(2) The Bank of Ghana shall, before suspending or revoking the licence of any non-bank financial institution notify the institution in writing of its intention.
(3) A non-bank financial institution notified under subsection (2) may within the period of one month from receiving the notice, petition the Secretary in writing against the suspension or revocation.

FINANCIAL INSTITUTIONS (NON-BANKING) LAW, 1993

SCHEDULE

1. Discount Companies
2. Finance Houses
3. Acceptance Houses
4. Building Societies
5. Leasing and Hire-Purchase Companies
6. Venture Capital Funding Companies
7. Mortgage Financing Companies
8. Savings and Loans Companies
9. Credit Unions.

Made this 5th day of January, 1993.

FLT.-LT. JERRY JOHN RAWLINGS
Chairman of the Provisional National Defence Council

Date of Gazette notification: 21st May, 1993.

SECURITIES INDUSTRY LAW, 1993

ARRANGEMENT OF SECTIONS

Section

PART I - SECURITIES REGULATORY COMMISSION

1. Establishment of the Commission.
2. Composition of the Commission.
3. Terms of membership.
4. Meetings of the Commission
5. Chief Executive and other staff of Commission.
6. Funds of Commission.
7. Accounts and Audit.
8. Allowances for members of Commission.

PART II - FUNCTIONS OF THE COMMISSION

9. General functions of the Commission.
10. Power of Commission to require production of books by a stock exchange and certain persons.
11. Action on production of the books or when books are not produced.
12. Order by magistrate to search premises.
13. Incriminating statement.
14. Penalties.
15. Copies or extracts of books to be admitted in evidence.
16. Savings for lawyers.
17. Secrecy of information from books.
18. Disclosure to the Commission.
19. Where Commission suspects breach of specified provisions.
20. Investigation of certain matters.
21. Inspection by Commission.
22. Power of court to make certain orders.
23. Statements of principle.

PART III - STOCK EXCHANGES

24. Establishment etc. of stock markets.
25. Power of Commission to approve a stock exchange.
26. Commission to approve amendments to rules.
27. Stock exchange to provide assistance to the Commission.
28. Disciplinary power of the Commission.
29. Power of court to order observance or enforcement of rules of a stock exchange.
30. Power to issue directions to a stock exchange.

SECURITIES INDUSTRY LAW, 1993

31. Power of Commission to prohibit trading in particular securities.

PART IV - UNIT TRUSTS AND MUTUAL FUNDS

32. Unit trust schemes.
33. Application and approval of unit trust schemes.
34. Dealings in units.
35. Preparation of scheme particulars.
36. Pricing of units.
37. Commission to keep register of unit trust schemes.
38. Revocation of authorisation of scheme.
39. Redemption of units.
40. Prospectus requirements.
41. Prohibition of certain transactions by manager.
42. Exemption of authorised unit trust scheme from income and other taxes.
43. Exemption of unit holder and contributing institution.
44. Audit of accounts of scheme.
45. Commission to regulate mutual funds.
46. Commission to keep register of mutual funds.
47. Cancellation of registration

PART V - LICENCES

48. Dealer's licence.
49. Dealer's representative's licence.
50. Investment adviser's licence.
51. Investment representative's licence.
52. Applications for licence or renewal.
53. Grant of dealer's licence or investment adviser's licence.
54. Grant of representative's licence.
55. False statements.
56. Power of the Commission to enquire into securities transactions in relation to the holding of a licence.
57. Power of Commission to impose conditions or restrictions.
58. Deposit to be lodged in respect of dealer's licence.
59. Period of licence.
60. Notification of change of particulars.
61. Register of licence holder.
62. Revocation or suspension of licences.
63. Operation pending renewal etc. of licence.
64. Appeals.
65. Exempt dealers.

SECURITIES INDUSTRY LAW, 1993

PART VI - REGISTERS OF INTERESTS IN SECURITIES

66. Application of this Part.
67. Register of securities.
68. Notice of particulars to Commission.
69. Defence to prosecution.
70. Production of register.
71. Particulars of financial journalists.
72. Extract of register.

PART VII - CONDUCT OF SECURITIES BUSINESS

73. Certain representations prohibited.
74. Issue of contract notes.
75. Certain persons to disclose certain interests in securities.
76. Recommendations by adviser.
77. Dealings as principal.
78. Dealings by employees of holders of licences.
79. Dealer to give priority to client's order.
80. Use by dealer of client's money.
81. Right to vest securities through sale.

PART VIII--ACCOUNTS AND AUDIT

82. Application of this Part.
83. Accounts to be kept by dealers.
84. Security documents in custody of dealers.
85. Dealer's trust account.
86. Purposes for which money may be withdrawn from a trust account.
87. Appointment and qualification of auditor.
88. Removal and registration of auditors.
89. Fees and expenses of auditors.
90. Dealer's account.
91. Auditor to report to Commission in certain cases, etc.
92. Certain matters to be reported to Commission.
93. Defamation.
94. Right of stock exchange to impose obligations, etc. on members not affected by this Part.
95. Power of court to restrain dealings with dealer's bank.
96. Duty of banker to make full disclosure.
97. Power of court to make further orders and give directions.
98. Power of court to make order relating to payment of money.

SECURITIES INDUSTRY LAW, 1993

PART IX - FIDELITY FUNDS

99. Establishment of fidelity funds.
100. Moneys constituting fidelity funds.
101. Funds to be kept in separate bank accounts.
102. Payments out of fidelity fund.
103. Accounts of fund.
104. Management committee.
105. Fidelity fund to consist of an amount of ₦5 million.
106. Provisions if fund is reduced below ₦5 million.
107. Levy of liabilities.
108. Power of stock exchange to make advances to fund.
109. Investment of fund.
110. Application of fund.
111. Claims against fund.
112. Notice calling for claims against fund.
113. Power of council to settle claims.
114. Orders of court on establishment of claim.
115. Power of council to require production of securities, etc.
116. Entitlement of stock exchange to rights, etc. of claimant upon payment from fund.
117. Payment of claims only from fund.
118. Provision where fund insufficient to meet claims or where claims exceed total amount payable.
119. Power of council to enter into contracts of insurance.
120. Application of insurance moneys.
121. Interpretation of this Part.

PART X - TRADING IN SECURITIES

122. False trading and market rigging transactions.
123. Stock market manipulation.
124. False or misleading statements, etc.
125. Fraudulently inducing persons to deal in securities.
126. Dissemination of information about illegal transactions.
127. Employment of manipulative and deceptive devices.
128. Prohibition of dealings in securities by insiders.
129. Penalties.
130. Convicted persons liable to pay compensations.

SECURITIES INDUSTRY LAW, 1993

PART XI - MISCELLANEOUS PROVISIONS

131. Restriction on use of title "stock broker" or "stock exchange".
132. Offences by directors or managers, etc.
133. Falsification of records by directors, employees and agents.
134. False reports to Commission or stock exchange.
135. Immunity of Commission and its employees, etc.
136. Offences by body corporate.
137. Power of court to prohibit payment or transfer of moneys, securities or other property.
138. General penalty.
139. Proceedings, by whom to be taken and power to compound offences.
140. Power of Secretary to give directions to Commission.
141. Regulations.
142. Interpretation.
143. Associated person.
144. Interest in securities
145. Consequential amendment to Companies Code.
146. Repeals.
147. Savings.
148. Interim powers of the Governor of the Bank of Ghana.

SECURITIES INDUSTRY LAW, 1993

SECURITIES INDUSTRY LAW, 1993

IN pursuance of the Provisional National Defence Council (Establishment) Proclamation 1981, this Law is hereby made:

PART I - SECURITIES REGULATORY COMMISSION

Establishment
of the Com-
mission.

1. (1) There is hereby established a Commission to be known as the Securities Regulatory Commission (hereafter referred to as "the Commission").

(2) The Commission shall be a body corporate with perpetual succession and a common seal, and may sue and be sued in its corporate name.

(3) The Commission may for the discharge of its functions under this Law acquire, hold and dispose of movable and immovable property and may enter into any contract or other transaction.

Composition
of the Com-
mission.

2. (1) The Commission shall consist of—

(a) a Chairman;

(b) the Executive Director;

(c) the two Deputies of the Executive Director;

(d) one High Court Judge;

(e) a representative of Bank of Ghana;

(f) a representative of Ministry of Finance and Economic Planning;

(g) the Registrar-General or his representative;

(h) four other persons including a lawyer qualified to be appointed a High Court Judge being persons who by reason of their ability, experience or specialised knowledge of securities and investment matters or of business or professional attainments would in the opinion of the P.N.D.C. be capable of making useful contributions to the work of the Commission.

(2) All members of the Commission, including the Chairman, shall be appointed by the P.N.D.C.

Terms of
membership.

3. (1) The Chairman and the other members of Commission shall hold office for three years but shall be eligible for re-appointment.

(2) A member of the Commission may resign his membership by notice in writing addressed to the P.N.D.C.

SECURITIES INDUSTRY LAW, 1993

(3) A member may be removed from membership of the Commission where he—

- (a) becomes a person of unsound mind;
- (b) is absent from three consecutive meetings of the Commission without permission or reasonable cause;
- (c) is proved guilty of grave misconduct in relation to his duties as a member of the Commission;
- (d) is sentenced to death or to imprisonment for a term exceeding 12 months without the option of a fine or is convicted of an offence involving dishonesty;
- (e) is declared bankrupt under any law in force in Ghana or in any other country; or
- (f) in the case of a person possessed of professional qualifications, he is disqualified or suspended, otherwise than at his own request, from practicing his profession in Ghana or in any other country by an order of any competent authority made in respect of him personally.

4. (1) The Commission shall ordinarily meet for despatch of business at such times and places as the Chairman may decide but shall meet at least once in every two months.

Meetings of the Commission.

(2) The Chairman shall at the request in writing of not less than four members of the Commission, call an extraordinary meeting of the Commission at such time and place as he may determine.

(3) The Chairman shall preside at every meeting of the Commission and in his absence any member of the Commission designated by the Chairman shall preside at the meeting.

(4) If no member of the Commission is so designated the members of the Commission present shall elect one of their number to preside at the meeting.

(5) The quorum at every meeting of the Commission shall be five including the Chief Executive of the Commission or in his absence a Deputy Chief Executive.

(6) All questions proposed at a meeting of the Commission shall be determined by a simple majority of the members present and voting and where the votes are equal the Chairman or the person presiding shall have a second or casting vote.

(7) The Commission may request the attendance of any person to act as adviser at any of its meetings but such person shall not vote on any matter for decision by the Commission.

(8) The validity of any act or proceedings of the Commission shall

SECURITIES INDUSTRY LAW, 1993

not be affected by any vacancy among its members or any defect in the appointment of a member.

(9) Subject to this section the Commission shall regulate its own procedure

Chief Execu-
tive and other
staff of Com-
mission.

5. (1) There shall be appointed by the PNDC a Director General of the Commission who shall be the chief executive of the Commission and shall hold office on such terms and conditions as may be specified in his letter of appointment.

(2) There shall be appointed by the PNDC two Deputy Executive Directors of the Commission on such terms and conditions as the PNDC shall determine.

(3) The Deputy Directors shall assist the Executive Director in the performance of his duties and perform such functions as the Commission may direct.

(4) The Commission may employ such officers and staff as may be necessary for the proper discharge of its functions under this Law and on such terms and conditions as the Commission in consultation with the Secretary may determine.

(5) Public officers may be transferred or seconded to the Commission.

(6) The Commission may also engage the services of such consultants, advisers and other persons upon such conditions as the Commission may, in consultation with the Secretary determine.

Funds of Com-
mission.

6. (1) The funds of the Commission shall include—

(a) grants received from the Government by the Commission for the discharge of its functions;

(b) any loans granted to the Commission by the Government or any other body or person;

(c) any money accruing to the Commission in the course of the performance of its functions under this Law; and

(d) any grants made by donors approved by the Secretary.

(2) All moneys received by or on behalf of the Commission shall be deposited to the credit of the Commission in a bank approved by the Commission.

Accounts and
Audit.

7. (1) The Commission shall keep proper books of accounts and prepare proper records in relation to the accounts; all the accounts of the Commission shall be in such form as the Auditor-General may approve.

(2) The books and accounts of the Commission shall be audited by the Auditor-General within six months after the end of every financial year.

(3) The Auditor-General shall make a report on the accounts to the Commission.

SECURITIES INDUSTRY LAW, 1993

(4) The Commission shall on receipt of the report forward the report to the Secretary who shall submit the report with his comments thereon to the PNDC.

(5) The Commission shall submit to the Secretary such other report on the Commission's financial affairs as the Secretary may request.

8. The members of the Commission other than the Executive Director and the two Deputy Executive Directors shall be paid such allowances as the Secretary may determine.

Allowances for members of Commission.

PART II - FUNCTIONS OF THE COMMISSION

9. The functions of the Commission are—

- (a) to advise the Secretary on all matters relating to the securities industry;
- (b) to maintain surveillance over activities in securities to ensure orderly, fair and equitable dealings in securities;
- (c) to register, license, authorise or regulate, in accordance with this Law or any regulations made under it, stock exchanges, investment advisers, unit trust schemes, mutual funds, securities dealers, and their agents and to control and supervise their activities with a view to maintaining proper standards of conduct and acceptable practices in the securities business;
- (d) to formulate principles for the guidance of the industry;
- (e) to monitor the solvency of licence holders and take measures to protect the interest of customers where the solvency of any such licence holder is in doubt;
- (f) to protect the integrity of the securities market against any abuses arising from the practice of insider trading;
- (g) to adopt measures to minimize and supervise any conflict of interests that may arise for dealers;
- (h) to review, approve and regulate takeovers, mergers, acquisitions and all forms of business combinations in accordance with any law or code of practice requiring it to do so;
- (i) to create the necessary atmosphere for the orderly growth and development of the capital market;
- (j) to perform the functions referred to in section 279 (9a) of the Companies Code 1963; *University for commission*
- (k) to undertake such other activities as are necessary or expedient for giving full effect to the provisions of this Law; and
- (l) to perform other functions specified under this Law.

General functions of the Commission.

SECURITIES INDUSTRY LAW, 1993

(5) The Commission may in writing authorise a person possessed of such qualification as it considers adequate to exercise the power to request for the production of books conferred on it under this section.

(6) A reference in subsection (1) to a dealing in securities or to a business carried on by a person includes a reference to a dealing in securities by a person as a trustee.

(7) An authorisation from the Commission to any person under subsection (5) may be of general application or may be limited to making requirements of a particular stock exchange, manager of a unit trust scheme or manager of a mutual fund or other person.

(8) Where the Commission, or a person authorised by the Commission, requires the production of any books under this section and a person has a lien on the books, the production of the books shall not prejudice the lien.

(9) An authorised officer shall where required to do so produce evidence of his authorisation.

(10) No action shall lie against any person for complying with a direction or requirement made or given under this section to produce books.

(11) A power conferred by this section to make a requirement of a person extends if the person is a body corporate, to making that requirement of any person who is or has been an officer of the body corporate whether that body corporate is in the course of being wound up or has been dissolved.

11. (1) Where the required books are produced under section 10, the person to whom they are produced—

- (a) may take possession of them, make copies of them, or take extracts from them;
- (b) may require the other person or any person who was party to the compilation of the books to make a statement providing an explanation of any of the books;
- (c) may retain possession of the books for as long as the Commission considers necessary to enable the books to be inspected and copies of or extracts from the books to be made or taken by or on behalf of the Commission; and
- (d) shall permit the person who produced them, upon giving a reasonable notice and specification of the books, to have access to them.

Action on production of the books or when books are not produced.

(2) Where the books are not produced, the Commission or the authorised person may require the person who should have produced the books—

- (a) to state, to the best of his knowledge and belief, where the books may be found;
- (b) to identify the person who, to the best of his knowledge

SECURITIES INDUSTRY LAW, 1993

- and belief, last had custody of the books and where he may be found; or
- (c) to state the reasons why the books cannot be produced.

Order by magistrate to search premises.

12. (1) Where it appears to a District Magistrate, upon written information on oath, and after any enquiry he may think necessary, that there are reasonable grounds for suspecting that there are on any premises books the production of which has been directed and have not been produced in compliance with the direction, the magistrate may issue a warrant authorising the Commission or any other person named in it—

- (a) to search the premises and to break open and search any cupboard, drawer, container or other receptacle, whether a fixture or not, in the premises; and
- (b) to take possession of, or secure against interference, any books that appear to be books the production of which was so directed.

(2) The powers conferred under subsection (1) are in addition to, and not in derogation of, any other powers conferred by the Criminal Code 1960 (Act 29) relating to search of premises.

(3) In this section "premises" includes any structure, building, place, aircraft, vehicle or vessel.

Incriminating statement.

13. (1) It is no excuse for any person to fail to provide a statement explaining any matter relating to the compilation of any books or any matter requested of him under section 10 on the grounds that the statement might tend to incriminate him.

(2) Where the person claims before making a statement required of him that the statement might tend to incriminate him, the statement provided in answer to the request shall not be admissible in evidence against him in any criminal proceedings other than proceedings under section 10, 11 or 12 of this Law.

(3) Subject to subsection (2) of this section, a statement made by a person in compliance with a requirement under section 10 may be used in evidence in any criminal or civil proceedings against the person.

Penalties.

14. A person who—

- (a) without reasonable excuse, refuses or fails to comply with a direction given under section 10, 11 or 12; or
- (b) furnishes information or makes a statement that is false or misleading in a material particular for the purposes of section 10, 11 or 12; or

SECURITIES INDUSTRY LAW, 1993

(c) without reasonable excuse, obstructs or hinders the Commission or any person in the exercise of a power under section 10, 11 or 12

commits an offence and is liable on conviction to a fine not exceeding 1 million cedis or to imprisonment for a term not exceeding one year or to both.

15. (1) Subject to this section and section 17, a copy of or extract from a book relating to a matter specified in subsection (1) or (2) of section 10 is admissible in evidence as if it were the original book.

Copies or extracts of books to be admitted in evidence.

(2) A copy of or extract from a book is not admissible in evidence under subsection (1) unless it is proved that the copy or extract is a true copy of the book or of the relevant part of the book.

(3) For the purposes of subsection (2), evidence that a copy of or extract from a book is a true copy of the book or of a part of the book may be given by a person who has compared the copy or extract with the book or the relevant part of the book and may be given orally or by an affidavit or statutory declaration.

16. Nothing in section 10, 11 or 12 shall compel a legal practitioner to produce a document that contains privileged communication made by or to him in his professional capacity or authorise the taking of possession of any such document which is in his possession but if the legal practitioner refuses to produce the document he shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom or by or on whose behalf the communication was made.

Savings for lawyers.

17. (1) No information obtained from any books that have been produced under section 10, 11 or 12 shall, without the previous consent in writing of the person who has custody or control of the books, be published or disclosed, except to the Commission and its officers and employees, unless the publication or disclosure is required—

Secrecy of information from books.

(a) with a view to the institution of, or for the purposes of, criminal proceedings; or

(b) for the purpose of proceedings under section 10, 11 or 12 of this Law.

(2) A person who publishes any information in contravention of this section commits an offence and is liable on conviction to a fine not exceeding 1 million cedis or to imprisonment for a term not exceeding one year or to both.

SECURITIES INDUSTRY LAW, 1993

Disclosure to
the Commis-
sion.

18. (1) The Commission may, where it considers it necessary for the protection of investors, require a dealer or an exempt dealer to disclose to it, in relation to any acquisition or disposal of securities, the name of the person from or through whom or on whose behalf the securities were acquired or disposed of and the nature of the instructions given to the dealer in respect of the acquisition or disposal.

(2) The Commission may require a person who has acquired, held or disposed of securities to disclose to it—

- (a) whether he acquired, held or disposed of securities as a trustee for or on behalf of another person or as a nominee;
- (b) the name of that person; and
- (c) the nature of any instruction given to him as trustee or nominee in respect of the acquisition, holding or disposal.

(3) The Commission may require a stock exchange to disclose to it, in relation to an acquisition or disposal of securities on the stock market of that stock exchange, the names of the members of that stock exchange who acted in the acquisition or disposal.

Where Com-
mission sus-
pects breach of
specified provi-
sions.

19. (1) Where the Commission considers—

- (a) that it may be necessary to prohibit trading in securities of, or made available by a body corporate pursuant to section 31; or
- (b) that a person may have contravened the provisions of Part X in relation to securities of, or made available by a body corporate; or
- (c) that a person may have contravened a provision of Part F of Chapter II of the Companies Code, 1963 (Act 179) in relation to securities in a body corporate;

it may require a director, secretary or executive officer of the body corporate referred to in paragraph (a), (b) or (c) to disclose to the Commission any information of which he is aware, being information that might have affected any dealing that has taken place, or that might affect any future dealing in securities of, or made available by, the body corporate.

(2) For the purposes of paragraph (a), (b) or (c) of subsection (1) the Commission may require a person whom the Commission believes on reasonable grounds to be capable of giving information concerning—

SECURITIES INDUSTRY LAW, 1993

- (a) any dealing in relevant securities;
- (b) any advice given by a dealer, an investment adviser, a dealer's representative or an investment representative concerning securities;
- (c) the issuing or publication of a report or analysis by a dealer, an investment adviser, a dealer's representative concerning relevant securities;
- (d) the financial position of any business carried on by a person who is or has been (either alone or together with other persons) a dealer or an investment adviser and has dealt in, or given advice concerning relevant securities;
- (e) the financial position of any business carried on by a nominee controlled by a person referred to in paragraph (c) or jointly controlled by two or more persons at least one of whom is a person referred to in that paragraph; or
- (f) an audit of, or any report of an auditor concerning any accounts or records of a dealer or of an investment adviser, being accounts or records relating to dealings in relevant securities,

to disclose to the Commission the information that the person has in relation to any of the matters specified in this subsection.

(3) "Relevant securities" in subsection (2) means securities of, or made available by, the body corporate referred to in subsection (1).

(4) A person is not excused from disclosing information to the Commission pursuant to a requirement made of him under subsection (1) and (2) on the ground that the disclosure of the information might tend to incriminate him.

(5) Where a person claims, before making an oral statement disclosing information which he is required to disclose under subsection (1) or (2), that the statement might tend to incriminate him, the statement provided in answer to the request is not admissible in evidence against him in criminal proceedings other than proceedings under this section.

(6) A person who or stock exchange which, without reasonable excuse, refuses or fails to comply with a requirement of the Commission under subsection (1), (2), or (3) of section 18 or subsections (1) or (2) of this section commits an offence and is liable on conviction to a fine not exceeding 1 million cedis or to imprisonment not exceeding one year or to both.

(7) A person who, for the purposes of subsection (1), (2) or (3) of section 18 or subsection (1) or (2) or this section, discloses information, or makes a statement, that is false or misleading in a material

SECURITIES INDUSTRY LAW, 1993

particular commits an offence and is liable on conviction to a fine not exceeding 1 million cedis or to imprisonment not exceeding one year or to both.

(8) It is a defence to a prosecution for an offence under subsection (7) for the defendant to prove that he believed on reasonable grounds that the information or statement was true and was not misleading.

(9) In this section a reference to disclosing information includes, in relation to information that is contained in a document, the furnishing of the document.

(10) A person shall not be subject to any liability by reason that he complied with a requirement made or purported to have been made under this section.

Investigation
of certain mat-
ters.

20. Where the Commission has reason to suspect that a person has committed an offence under this Law or the Companies Code, 1963 (Act 179) or has been guilty of fraud or dishonesty in relation to dealing in securities, it may make such investigation as it thinks proper in pursuance of this Law.

Inspection by
Commission.

21. (1) The Commission may, inspect the books, accounts, documents and transactions of a stock exchange, a unit trust scheme, a mutual fund, a dealer or an investment adviser.

(2) The Commission may appoint a person possessed of such qualification as it considers adequate to exercise the power of the Commission under subsection (1).

(3) For the purposes of an inspection under this section, the stock exchange or any of the persons referred to in subsection (1), shall afford the Commission access to, and shall produce books, accounts and documents and shall give such information facilities as may be required to conduct the inspection.

(4) A person appointed by the Commission shall have the power to copy or take possession of the books, accounts and other documents of a stock exchange, the manager of a unit trust scheme or mutual fund, a dealer or investment adviser.

(5) A person who or stock exchange or unit trust scheme, or mutual fund which fails, without reasonable excuse, to produce any book, account or document, information or facilities in accordance with subsection (3) commits an offence and is liable on conviction to a fine not exceeding 1 million cedis or to imprisonment for a term not exceeding one year or to both.

Power of court
to make certain
orders.

22. (1) Where—

(a) on the application of the Commission, it appears to a court that a person has committed an offence under this Law, or has contravened the conditions or restrictions of a licence or the rules or listing rules of a stock exchange or is about to do an act with respect to dealing in securities that, if done, would be such an offence or contravention; or

SECURITIES INDUSTRY LAW, 1993

(b) on the application of a stock exchange, it appears to the court that a person has contravened the rules or listing rules of the stock exchange,

the court may, without prejudice to any other orders it may make, make one or more of the following orders—

- (i) in the case of persistent or continuing breaches of this Law, or of the conditions or restriction of a license, or of the rules or listing rules of a stock exchange, an order restraining the person from carrying on a business of dealing in securities, acting as an investment adviser or as a dealer's representative or investment representative, or from holding himself out as carrying on such business or so acting;
- (ii) an order restraining a person from acquiring, disposing of or otherwise dealing with any securities that are specified in the order;
- (iii) an order appointing a receiver of the property of a dealer or of property that is held by a dealer for or on behalf of another person whether on trust or otherwise;
- (iv) an order declaring a contract relating to securities to be void or voidable;
- (v) for the purposes of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act; or
- (vi) any order ancillary to any of the orders specified in this paragraph considered necessary.

(2) The court may, before making an order under subsection (1), direct that notice of the application be given to such persons as it thinks

SECURITIES INDUSTRY LAW, 1993

fit or direct that notice of the application be published in such manner as it thinks fit, or both.

(3) A person appointed by order of the court under subsection (1) as a receiver of the property of a dealer may—

- (a) require the dealer to deliver to the receiver any property of which the latter has been appointed receiver and to give to the receiver all information concerning that property that may reasonably be required;
- (b) acquire and take possession of any property of which the dealer has been appointed receiver;
- (c) deal with any property that he has acquired or of which he has taken possession in any manner in which the dealer might lawfully have dealt with the property; and
- (d) exercise such other powers in respect of the property as are specified in the order.

(4) In subsections (1) and (3), “property” in relation to a dealer includes moneys, securities and documents of title to securities and other property entrusted to or received on behalf of any other person by a dealer or another person in the course of or in connection with a business of dealing in securities carried on by the dealer.

(5) Any person who, without reasonable excuse, contravenes subsection (1) fails to comply with—

- (a) an order under subsection (1) applicable to him;
- (b) a requirement of a receiver appointed by order of the court under subsection (1),

commits an offence and is liable on conviction to a fine not exceeding one million cedis or to imprisonment for a term not exceeding one year or both.

(6) Subsection (5) does not affect the powers of the court for contempt of court.

(7) The court may rescind, vary or discharge an order made under this section or suspend the operation of an order.

Statements of principle. 23. (1) The Commission may issue statements of principle relating to the conduct and financial standing expected of persons licensed under this Law.

(2) The conduct expected may include compliance with standards issued with the permission of the Commission by a body other than the Commission.

SECURITIES INDUSTRY LAW, 1993

(3) Failure to comply with a statement of principle under this section is grounds for the taking of disciplinary action or the exercise of powers of intervention, but does not constitute an offence or give rise to any right of action by investors or other persons affected or affect the validity of any transaction.

(4) The exercise of disciplinary action under subsection (3) includes the exercise of any power under section 57 or 62 and those sections shall be construed accordingly.

(5) Where a statement of principle relates to compliance with a code or standard issued by a person or body other than the Commission, the statement of principle may provide-

(a) that failure to comply with the code or standard shall be a ground for taking disciplinary action or exercising any power under section 57 or 62, only in such cases and to such extent as may be specified; and

(b) that no such action shall be taken, or any such power exercised, except at the request of the person or authority by whom the code or standard in question was issued.

(6) The Commission shall exercise its power in such manner as appears to it appropriate to secure compliance with statements of principle under this section.

PART III - STOCK EXCHANGES

24. No person shall establish or assist in establishing or maintain or hold himself out as providing or maintaining a stock market unless it is authorized under this Law. Establishment etc., of stock markets.

25. (1) Application for approval as a stock exchange may be made to the Commission in the prescribed form. Power of Commission to approve a stock exchange.

(2) No approval shall be granted to any person to operate as a stock exchange other than a body corporate.

(3) The Commission may in consultation with the Secretary approve a body corporate as a stock exchange if it is satisfied-

(a) that at least 3 members of the body corporate will carry on the business of dealing in securities independently of and in competition with each other;

(b) that the rules of the body corporate will make satisfactory provision-

(i) for the exclusion from membership of persons who are not of good character and high business integrity;

SECURITIES INDUSTRY LAW, 1993

- (ii) for the expulsion, suspension or disciplining of members for conduct inconsistent with just, and equitable principles, in the transaction of business or for a contravention of or failure to comply with the rules of the stock exchange or the provisions of this Law;
 - (iii) for the making of a report to the Commission by the body corporate whenever it rejects any application for membership or where it suspends or expels a member;
 - (iv) for the terms and conditions of the chief executive officer of the body corporate, including a term that the chief executive officer shall not be liable to dismissal or removal from his office without the prior approval of the Commission;
 - (v) with respect to the conditions under which securities may be listed for trading in the market proposed to be conducted by the body corporate;
 - (vi) with respect to the conditions governing dealing in securities by members;
 - (vii) with respect to the class of securities that may be dealt in by members;
 - (viii) with respect to a fair representation of persons in the selection of its council members and administration of its affairs and provide that one or more council members shall be representative of listed companies, investors, and the professions relevant to securities trading and not be associated with a stock broker, or dealer; and
 - (ix) generally, for the carrying on of the business of the stock exchange with due regard to the interest of the public; and
- (c) that the interests of the public will be served by the granting of the approval.
- (4) Nothing in this section shall preclude the Commission from appointing any person who is knowledgeable in the securities industry and who is not associated with a stockbroker or dealer, to be on the council of a stock exchange to represent the public interest; and the person so appointed—

SECURITIES INDUSTRY LAW, 1993

(a) shall have the same rights, powers, duties and obligations, liberties and privileges as any other member of the council of the stock exchange; and

(b) shall hold office for a period specified by the Commission which may at any time revoke such an appointment.

(5) The Commission shall publish in the Gazette notice of approval for the establishment of a stock exchange and every cancellation or suspension of any approval.

(6) Where the Commission is of opinion that an approval granted to a stock exchange under subsection (3) should be withdrawn in the public interest, it may serve on the council of that stock exchange a written notice that it is considering the withdrawal of the approval for the reasons stated in the notice and after giving an opportunity to the council to be heard on the matter, it may cancel the approval made under subsection (3).

(7) A cancellation under subsection (6) shall not take effect until after the expiration of three months from the date on which the cancellation is published in the *Gazette*.

(8) With effect from the date on which a notice of cancellation of approval under subsection (7) is published in the *Gazette*, the council shall ensure that trading on the stock exchange ceases. During the three months between the said publication and the effective date of the cancellation, the council shall take steps to wind up the business of the stock exchange.

26. (1) Where an amendment is made, whether by way of rescission, alteration or addition, to the rules of a stock exchange or the listing rules of a stock exchange, the council of the stock exchange shall forward a written notice of it to the Commission for approval.

(2) The Commission may give notice in writing to the stock exchange concerned that it approves the amendment or that it disapproves the whole or any specified part of the amendment in question and until such notice is given the amendment shall not have any effect.

(3) Nothing in this section shall preclude the Commission, after consultation with the council of stock exchange, from amending the rules of an approved stock exchange by written notice specifying the amendments and the dates those amendments shall come into force, but the Commission may dispense with such consultation if it considers it necessary to do so for the protection of investors.

(4) Any notice under this section may be served personally or by post.

Commission to approve amendments to rules.

SECURITIES INDUSTRY LAW, 1993

Stock exchange to provide assistance to the Commission.

27. (1) A stock exchange shall provide such assistance to the Commission as the Commission reasonably requires for the performance of its functions and duties, including the furnishing of returns and providing such information relating to the exchange's business or in respect of its dealing in securities or any other specified information as the Commission may require for the proper administration of this Law.

(2) Where a stock exchange reprimands, fines, suspends, expels or otherwise takes disciplinary action against a member of the stock exchange, it shall, within seven days, give to the Commission written particulars of the name of the member, the reason for and nature of the action taken, the amount of the fine, if any, and the period of the suspension, if any.

Disciplinary power of the Commission.

28. (1) The Commission may review any disciplinary action taken by a stock exchange under subsection (2) of section 27 and may affirm or set aside a stock exchange decision after giving the member and the stock exchange an opportunity to be heard.

(2) Nothing in this section precludes the Commission, in a case where a stock exchange fails to act against a member of the stock exchange, from suspending, expelling or otherwise disciplining a member of the exchange but before doing so the Commission shall give the member and the stock exchange an opportunity to be heard.

(3) Any person who is aggrieved by the decision of a stock exchange or the Commission under this section may, within one month after he is notified of the decision, appeal to the Secretary whose decision on it shall be final.

Power of court to order observance or enforcement of rules of a stock exchange.

29. (1) Where a person who is under an obligation to comply with, observe, enforce or give effect to the rules or regulations of a stock exchange fails in performing the duty, the court, on the application of the Commission, a stock exchange or a person aggrieved by the failure, and after giving to the person against whom the order is sought an opportunity of being heard, may make an order giving directions to that person to perform the duty.

(2) For the purpose of subsection (1)—

(a) a body corporate that has been admitted to any official list of a stock exchange and has not been removed from that official list; or

(b) a person associated with a body corporate that has been admitted to any official list of a stock exchange and has not been removed from that official list,

SECURITIES INDUSTRY LAW, 1993

is under an obligation to comply with, observe and give effect to the rules of that stock exchange to the extent to which those rules apply in relation to it or him.

30. (1) The Commission may, where it appears to be in the public interest, issue directions to a stock exchange—

Power to issue
directions to a
stock exchange.

- (a) with respect to trading on or through the facilities of that stock exchange or with respect to any security listed on that stock exchange; or
- (b) with respect to the manner in which a stock exchange carries on its business, including the manner of reporting off-market purchases; or
- (c) with respect to any other matters which the Commission considers necessary for the effective administration of this Law,

and the stock exchange shall comply with any such direction.

(2) A stock exchange which, without reasonable excuse, fails or refuses to comply with a direction given under subsection (1), commits an offence and is liable on conviction to a fine of ₦200,000.00 and to a further fine of ₦5,000.00 for each day the non-compliance continues after conviction.

(3) A stock exchange that is aggrieved by any direction of the Commission under subsection (1) may appeal to the Secretary within 30 days of the date of the direction.

(4) In any appeal under subsection (3), the decision of the Secretary shall be final.

(5) Where the Commission is satisfied that an executive officer of a stock exchange—

- (a) has wilfully contravened this Law or any regulations made under it or the rules of a stock exchange; or
- (b) has without reasonable justification or excuse, failed to enforce compliance with such provisions by a member of the stock exchange or a person associated with that member;

the Commission may, if it thinks it necessary in the public interest or for the protection of investors, and after giving the executive officer, an opportunity of being heard, direct by notice in writing the stock exchange to remove from office or employment the executive officer, and the stock exchange shall comply with the direction; and the Commission may instead censure the executive officer.

SECURITIES INDUSTRY LAW, 1993

Power of Commission to prohibit trading in particular securities.

31. (1) Without prejudice to the generality of section 30, where the Commission is of the opinion that it is necessary to prohibit trading in particular securities of, or made available by, a body corporate on the stock market of a stock exchange in order to protect the interest of the public, the Commission may give notice in writing to the stock exchange stating that it has formed that opinion and setting out its reasons.

(2) If, after the receipt of the notice, the stock exchange does not take action to prevent trading in the securities to which the notice relates on the stock market of the stock exchange and the Commission is still of the opinion that it is necessary to prohibit trading in those securities on that stock market, the Commission may, by notice in writing to the stock exchange, prohibit trading in those securities on that stock market during such period, not exceeding 14 days, as may be specified in the notice.

(3) Where the Commission gives a notice to a stock exchange under subsection (2) the Commission shall—

(a) at the same time send a copy of the notice to the body corporate together with a statement setting out the reasons for the giving of the notice; and

(b) as soon as practicable furnish to the Secretary a written report setting out the reasons for the giving of the notice and send a copy of the report to the stock exchange.

(4) Where the Commission gives a notice to a stock exchange under subsection (2), the stock exchange may request the Commission in writing to refer the matter to the Secretary.

(5) Where such a request is made, the Commission shall forthwith refer the matter to the Secretary, who may, if he thinks fit, direct the Commission to revoke the notice or confirm the prohibition imposed by the Commission; and the decision of the Secretary shall be final.

(6) A stock exchange which permits trading in securities on the stock market of the stock exchange in contravention of a notice under subsection (2) commits an offence and is liable on conviction a fine of not more than ₦100,000.00 for each day the contravention continues.

PART IV - UNIT TRUSTS AND MUTUAL FUNDS

Unit trust schemes.

32. No person shall—

(a) establish or operate a unit trust scheme; or

(b) carry on or purport to carry on the business of dealing in units of a unit trust scheme,

unless the scheme is approved by and registered with the Commission.

SECURITIES INDUSTRY LAW, 1993

33. (1) An application for approval of a unit trust scheme shall be in a form prescribed by the Commission and shall be accompanied by a copy of the trust deed. Application and approval of unit trust schemes.

(2) The Commission may approve and register a scheme if it is satisfied that—

- (a) the manager and trustee are qualified to act as such;
- (b) the manager is a company incorporated in Ghana;
- (c) the trustee is either a bank or insurance company or a wholly owned subsidiary of either of them;
- (d) the trustee has the requisite minimum paid up capital;
- (e) the business of the manager in relation to the scheme is administered independently of the trustee; and
- (f) the trust deed complies with the provisions of this Law.

34. No person shall deal in units either directly or indirectly unless— Dealings in units

- (a) the unit trust scheme in respect of the units is registered with the Commission; and
- (b) the particulars of the scheme have been approved by the Commission.

35. (1) The manager of a unit trust scheme shall prepare and submit to the Commission particulars of the unit trust scheme which shall include— Preparation of scheme particulars.

- (a) names and qualifications of the manager, trustee, directors and other principal officers of the scheme; and
- (b) a copy of the trust deed, and the certificate of incorporation of the manager.

(2) The Commission may determine from time to time the information to be published in the scheme particulars.

36. The calculation of prices at which units of any unit trust scheme may be bought or sold shall be in accordance with formula approved by the Commission. Pricing of units.

37. (1) The Commission shall keep a register of all authorized unit trust schemes. Commission to keep register of unit trust schemes.

(2) Any person who so wishes may inspect the register and upon the payment of the prescribed fee obtain a copy of the register.

38. (1) Subject to the other provisions of this section the Commission may cancel the authorization of a scheme— Revocation of authorisation of scheme.

- (a) if in the opinion of the Commission the interests of the holder of the units created under the scheme require that

SECURITIES INDUSTRY LAW, 1993

or;

(b) if the Commission is satisfied that the scheme as provided no longer qualifies as provided under section 33.

(2) The Commission shall before cancelling the approval notify the manager and trustee of the scheme.

(3) The manager or the trustee may within 21 days of the notification make representations in writing in respect of the proposed cancellation to the Commission.

(4) The Commission shall consider the representations made before deciding whether to cancel the approval or not.

(5) The Commission shall communicate its decision to cancel the approval of the scheme within 30 days after representations have been made or if none is made, within 30 days after the last day for making the representation.

Redemption
of units.

39. (1) The manager of an authorized unit trust scheme shall, when requested by a holder for units of the scheme, buy from the holder the number of units the holder may specify and at the price at which the manager buys the units of the scheme.

(2) Where a scheme has been cancelled the manager shall buy all the units under the scheme at the price at which the manager buys units of the scheme.

Prospectus re-
quirements

40. (1) Any letter, notice, circular document or prospectus prepared by the manager for the purpose of offering units of a unit trust scheme to the public shall be approved by the trustees and submitted to the Commission for information before the letter, notice, circular, document or prospectus is published.

(2) There shall be included in a document of the kind referred to in subsection (1) of this section, information in relation to such matters (if any) as may be specified, from time to time, by the Commission.

Prohibition of
certain trans-
actions by
manager.

41. No company that is a manager of a scheme or is a subsidiary or holding company of the manager shall—

- (a) borrow money on behalf of a scheme for the purpose of acquiring securities or other property for the scheme;
- (b) lend money that is subject to the scheme to a person to enable him to purchase units of the scheme;
- (c) mortgage, charge or impose any other encumbrance on any securities or other property subject to the scheme; or
- (d) engage in any transaction that is not in the interest of the

SECURITIES INDUSTRY LAW, 1993

holders of the units of the scheme.

42. Notwithstanding any other law for the time being in force—

- (a) a unit trust scheme approved under this Law shall not be liable to pay income tax or any other tax including levy in respect of income, profits or gains derived by it from any source;
- (b) no deductions in respect of income tax shall be made from any interest or dividend payable to the trust in respect of any securities or shares owned by it or in which it has full beneficial interest.

Exemption of authorised unit trust scheme from income and other taxes.

43. Notwithstanding the provisions of the Income Tax Decree, 1975 (SMCD 5)—

- (a) where the chargeable income or profits of a unit holder is being ascertained for the purposes of that Decree, there shall not be included in the chargeable income or profits, dividend not exceeding 1 million cedis or such other sum as the Secretary may by legislative instrument prescribe, received from the trust by the unit holder in respect of his holding; and
- (b) no deduction of income tax or any other tax shall be made by the trust from income or dividend payable to a unit holder.

Exemption of unit holder and contributing institution.

44. (1) The manager of an authorized unit trust scheme shall cause proper books of account to be kept which give a true view of the financial affairs of the scheme during the year covered by the accounts.

Audit of accounts of scheme.

(2) The accounts shall be audited by a person appointed as auditor, by the manager with approval of the trustee.

(3) The manager shall submit a copy of the audited accounts to the Commission within 30 days after receiving them from the auditor.

(4) The manager shall cause the accounts to be published in the national newspapers within four months after the end of the period to which the accounts relate, or as the Commission may specify.

(5) If the manager fails to comply with this section the Commission may revoke the authorization of the scheme of which he is the manager.

45. (1) Subject to subsection (2) of this section the Commission may on application made by—

Commission to regulate mutual funds.

(a) a company incorporated in Ghana; or

(b) an external company with a place of business in Ghana, register the company to deal in mutual funds and issue a certificate in

SECURITIES INDUSTRY LAW, 1993

respect of the registration.

(2) The Commission shall not register any company unless it is satisfied that—

(a) if any invitation is made to the public to subscribe for the company's shares the price at which the shares are offered are based on net value of its assets at the time of the offer with no addition except for a reasonable service charge; and

(b) the company shall at any time repurchase the share from the holder at a price based on the net value of its assets at the time of purchase without any deduction except for a reasonable service charge.

(3) An application for registration shall be in the form prescribed by the Commission.

(4) The Commission may issue the certificate subject to such conditions or restrictions as it may determine.

(5) The Commission may vary the conditions or restrictions subject to which a certificate is issued.

Commission to
keep register of
mutual funds.

46. The Commission shall keep a register of all mutual funds.

Cancellation of
registration etc.

47. (1) Subject to subsection (2) of this section, the Commission may cancel the registration and withdraw the certificate of a company registered as a mutual fund if it is satisfied that the company has breached any condition of its registration.

(2) The Commission shall—

(a) before cancelling the registration and withdrawing the certificate of a company, notify the company of its intentions; and

(b) by the notice invite the company to make, within a period of not more than thirty days from the date of the service of the notice, any representations it may desire to make in respect of the cancellation and withdrawal of the certificate.

(3) The Commission may cancel the registration and withdraw the certificate of a company if—

(i) after the expiration of the period the company has not made any representations; or

(ii) it is not satisfied with representations made by the com-

SECURITIES INDUSTRY LAW, 1993

pany.

PART V - LICENCES

48. (1) No person shall carry on a business of dealing in securities or hold himself out as carrying on such a business unless he is the holder of a dealer's licence issued under this Part. Dealer's licence.

49. No person shall act as a dealer's representative unless he is the holder of a dealer's representative's licence issued under this Part. Dealer's representative's licence.

50. No person shall act as an investment adviser or hold himself out to be an investment adviser unless he is the holder of an investment adviser's licence issued under this Part. Investment adviser's licence.

51. No person shall act as an investment representative unless he is the holder of an investment representative's licence issued under this Part. Investment representative's licence.

52. (1) An application for a licence or for the renewal of a licence shall be made to the Commission in the prescribed form and shall be accompanied by the prescribed fee and, in the case of an application for renewal of a licence, shall be made not later than one month before the expiry of the licence. Applications for licence or renewal.

(2) The Commission may require an applicant to supply it with such further information as it considers necessary in relation to the application.

(3) The Commission shall not refuse to grant or renew a licence without first giving the applicant or the holder of the licence an opportunity of being heard.

(4) Where the Commission rejects an application for a licence or the renewal of a licence, the prescribed fee shall be refundable to the applicant but the fee shall not be refundable on the withdrawal of an application.

53. (1) A dealer's licence shall only be granted to a body corporate including an incorporated private partnership. Grant of dealer's licence or investment adviser's licence.

(2) A dealer's licence shall only be granted if the dealer meets and continues to meet the minimum financial requirements determined by the Commission either generally or specifically, or as are provided in the rules of a stock exchange approved by the Commission.

(3) Subject to section 52 (3) and the regulations made under this Law, where an application is made for the grant or renewal of an

SECURITIES INDUSTRY LAW, 1993

investment adviser's licence, the Commission shall refuse the application if in the case of an applicant who is a natural person—

- (a) the applicant has been adjudged bankrupt anywhere;
- (b) the applicant has been convicted, either within Ghana or elsewhere, within the period of 10 years immediately preceding the date on which the application is made, of an offence involving fraud or dishonesty punishable on conviction with imprisonment for a term of 3 months or more;
- (c) the Commission is not satisfied as to the educational qualifications or experience of the applicant having regard to the nature of the duties of a holder of an investment adviser's licence;
- (d) the Commission has reason to believe that the applicant is not of good reputation or character; or
- (e) the Commission has reason to believe that the applicant will not perform the duties of a holder of an investment adviser's licence efficiently, honestly and fairly.

(4) Subject to section 52(3) and regulations made under this Law, where an application is made for the grant or renewal of a dealer's licence or for an investment adviser's licence by a body corporate including an incorporated private partnership the Commission shall refuse the application if—

- (a) the body corporate or the partnership is in the course of being wound up under the Companies Code, 1963 (Act 179); or Incorporated Private Partnership Act, 1962 (Act 152)
- (b) the body corporate is one in respect of which a receiver, or a receiver and manager, has been appointed under the Companies Code, 1963 (Act 179);
- (c) the body corporate or partnership has, whether within or outside Ghana, entered into a compromise or scheme of arrangement with its creditors, which is still in operation;
- (d) the Commission is not satisfied as to the educational qualifications or experience of the officers of, or partners of the applicant who are to perform duties in connection with the dealer's licence or investment adviser's licence, as the case may be; or
- (e) the Commission has reason to believe that the applicant will not perform the duties of a holder of a dealer's

SECURITIES INDUSTRY LAW, 1993

licence, efficiently, honestly and fairly.

54. Subject to section 52(3) and regulations made under this Law, the Commission shall grant or renew a dealer's representative's licence or investment representative's licence if after consideration of the application it considers that the applicant will perform the duties efficiently, honestly and fairly.

Grant of representative's licence.

55. A person who, in connection with an application for a licence or for the renewal of a licence, wilfully and knowingly makes a statement which is false or misleading in a material particular or wilfully omits to state any matter or thing without which the application is misleading in respect of a material particular commits an offence and is liable on conviction to a fine not exceeding 1 million cedis or to imprisonment for a term not exceeding one year or to both.

False statements.

56. (1) In deciding whether a dealer or his representative or an investment adviser or his representative shall hold a licence under this Law, the Commission may enquire into any transactions involving the purchase or sale of securities entered into by that person, whether directly or indirectly, during any period of 12 months preceding the application for the licence or renewal of the licence, (referred to in this section as the relevant period) to ascertain if that person has in such transaction or series of transactions used dishonest, unfair or unethical methods or trading practices, whether such method or trading practices constitute an offence under this Law or not.

Power of the Commission to enquire into securities transactions in relation to the holding of a licence.

(2) For the purpose of subsection (1), the Commission may, in such form and within such time as it may specify by notice in writing, require a dealer or his representative or an investment adviser or his representative to submit detailed information of all or any transactions involving the purchase or sale of securities, whether such transactions were completed during the relevant period before or after the commencement of this Law.

(3) Any person who, without reasonable excuse, fails or refuses to submit information to the Commission within the time specified in the notice referred to in subsection (2) or who gives false or misleading information shall, in addition to any other penalty that may be imposed under this Law, be liable in the case of an application for renewal of a licence to have his licence revoked under section 62 and in the case of first application for a licence to have his application refused.

57. (1) The Commission may grant or renew a licence subject to such conditions or restrictions as it thinks fit and the Commission may, at any time by written notice to a licence holder, vary any condition or restriction in relation to the licence.

Power of Commission to impose conditions or restrictions.

SECURITIES INDUSTRY LAW, 1993

(2) Without limiting the generality of subsection (1), the Commission may in granting or renewing an investment adviser's licence impose a condition or restriction as to the class of business that the investment adviser may carry on including a condition or restriction that—

- (a) he shall only carry on the class of business of advising others concerning securities; or
- (b) he shall only carry on the class of business of issuing or promulgating analyses in reports concerning securities; or
- (c) he shall only carry on a class of business involving the management of a portfolio of securities on behalf of clients for investment purposes; or
- (d) he shall carry on any of the classes of business in paragraphs (a), (b) and (c) in combination with each other.

(3) The Commission may also by written notice to a licence holder suspend, cancel, restrict or impose terms and conditions on the right of the licence holder to—

- (a) call at any residence; or
- (b) telephone any residence in Ghana for the purpose of dealing in any securities.

(4) A person who contravenes or fails to comply with any condition or restriction in his licence shall be guilty of an offence.

(5) In this section "residence" includes any building or part of a building where the occupant resides either permanently or temporarily.

Deposit to be lodged in respect of dealer's licence.

58. (1) The Commission shall not grant a dealer's licence unless a deposit in the sum of 5 million cedis or such greater sum as the Commission may determine in respect of the licence.

(2) A deposit required under subsection (1) shall be in cash or in such other form as the Commission may in any particular case direct.

(3) All amounts paid under this section shall be deposited in an account at the Bank of Ghana by the Commission.

(4) A deposit lodged under subsection (1) shall be applied by the Commission subject to and in accordance with regulations made under this Law.

Period of licence.

59. (1) Subject to subsection (2), a licence shall expire one year after the date of issue.

(2) A licence that has been renewed in accordance with the provisions of this Part shall continue in force for a period of one year.

SECURITIES INDUSTRY LAW, 1993

the date of the renewal.

66. Where

- (a) the holder of a dealer's licence or investment adviser's licence ceases to carry on the business to which the licence relates; or
- (b) the holder of a representative's licence ceases to be a representative of the dealer or investment adviser in relation to whom the representative's licence was issued; or
- (c) a change occurs in any matter, particulars of which are required by section 61 to be entered in the register of licence holders in relation to the holder of a licence,

Notification of change of particulars.

the holder of the licence shall, not later than 14 days after the occurrence of the event give to the Commission, in the prescribed form, particulars in writing of the event.

61. (1) The Commission shall keep in such form as it thinks fit a register of the holders of current licences, specifying—

Register of licence holders.

- (a) in relation to each holder of a dealer's or investment adviser's licence—
 - (i) his name;
 - (ii) the address of the principal place of business at which he carries on the business;
 - (iii) where the business is carried on under a name or style other than the name of the holder of the licence, the name or style under which the business is carried on; and
- (b) in relation to each holder of a representative's licence—
 - (i) his name;
 - (ii) the name of the dealer or investment adviser in relation to whom the licence was issued; and
 - (iii) where the business of that dealer or investment adviser is carried on under a name or style other than the name of the dealer or investment adviser, the name or style under which that business is carried on.

(2) Any person may, upon payment of the prescribed fee, inspect

SECURITIES INDUSTRY LAW, 1993

and take extracts from the register kept under subsection (1).

Revocation or
suspension of
licences.

62. (1) A licence shall be deemed to be revoked in the case of -

- (a) an individual, if the individual dies; or
- (b) a body corporate or incorporated private partnership, if it is wound up.

(2) The Commission may revoke a licence-

- (a) in the case of a licensed person who is an individual-
 - (i) if a levy of execution in respect of him has not been satisfied;
 - (ii) if he ceases to carry on business for which he was licensed;
 - (iii) if he has been adjudged bankrupt in any jurisdiction;
 - (iv) if, in the case of a representative, the licence of the dealer or investment adviser, in relation to whom the licence was granted, is revoked;
 - (v) if the Commission has reason to believe that the licensed person has not performed his duties efficiently, honestly or fairly;
 - (vi) if he is convicted of an offence involving fraud or dishonesty punishable by imprisonment for a term of not less than 3 months; or
 - (vii) if the licensed person contravenes or fails to comply with any condition or restriction applicable in respect of the licence or any other provision of this Law;
- (b) in the case of a body corporate or an incorporated private partnership-
 - (i) if it is being or will be wound up;
 - (ii) if a levy of execution in respect of it has not been satisfied;
 - (iii) if a receiver or a receiver and manager have been appointed whether by a court or creditors in respect of its property;
 - (iv) if it has entered into any composition or arrangement with its creditors;
 - (v) if it ceases to carry on the business for which it was licensed;
 - (vi) if the Commission has reason to believe that the licensed body or any of its directors or employees, has not performed its or his duties

SECURITIES INDUSTRY LAW, 1993

efficiently, honestly or fairly; or
 (vii) if the licensed body contravenes or fails to comply with any conditions or restrictions applicable in respect of the licence or any other provision of this Law.

(3) In a case to which subsection (2) applies, the Commission, may instead of revoking a licence, suspend the licence for a specific period and may at any time remove the suspension.

(4) The Commission shall not revoke or suspend a licence under subsection (2) or (3) without first giving the licence holder an opportunity of being heard.

(5) A person whose licence is revoked under this section shall, for the purpose of this Part, be deemed not to be licensed from the date that the Commission revokes or suspends the licence.

(6) A revocation or suspension of a licence of a person shall not operate so as to--

- (a) avoid or affect any agreement, transaction or arrangement relating to the trading in securities entered into by the person, whether the agreement, transaction or arrangement was entered into before or after the revocation or suspension of the licence; or
- (b) affect any right, obligation or liability arising under any agreement, transaction or arrangement.

63. Where a person who holds a licence issued under this Law has before the expiration of the licence applied for a renewal of the licence and the licence has not been issued, he shall not, until the licence is renewed or his application for the licence is refused or withdrawn, be held liable for not holding a licence. Operation pending renewal etc. of licence.

64. (1) Any person who is aggrieved by the refusal of the Commission to grant or renew a licence may appeal to the Secretary within 30 days of the Commission's decisions. Appeals.

(2) Any person aggrieved by the revocation of a licence by the Commission may appeal to the Court, within 30 days of the Commission's decision.

(3) The Court may confirm the revocation or give such directions in the matter as seems just.

(4) An appeal against the decision of the Secretary or the Commission shall lie to the Court of Appeal.

65. The following specified persons or bodies corporate shall be exempt dealers-- Exempt dealers

SECURITIES INDUSTRY LAW, 1993

- (a) any person acting in the capacity of manager or trustee under a unit trust scheme or mutual fund;
- (b) any bank as defined in section 48 of the Banking Law, 1989 (PNDCL.225); except that no employee of a bank shall advise others concerning securities unless he is qualified in terms of criteria prescribed by the Commission for holders of an investment adviser's licence under section 50 of this Law;
- (c) any merchant bank approved by the Bank of Ghana, if the main business carried on by the merchant bank is a business other than the dealing in securities, and if the dealing is by way of-
 - (i) making or offering to make with any person an agreement for or with a view to the underwriting of securities;
 - (ii) making an invitation to persons to subscribe for securities or to purchase securities on the first sale;
 - (iii) issuing any document which is or is deemed to be a prospectus within the meaning of the Companies Code;
 - (iv) acquiring or disposing of securities only through the holder of a dealer's licence; or
 - (v) such other way as the Commission may from time to time decide;

PART VI-REGISTERS OF INTERESTS IN SECURITIES

Application of
this Part.

66. (1) This Part applies to a person who is-

- (a) a dealer;
- (b) a dealer's representative;
- (c) an investment representative; or
- (d) a financial journalist.

(2) In this Part, "financial journalist" means a person who contributes advice concerning securities or prepares analysis or reports concerning securities for publication in a bona fide newspaper or periodical.

(3) In this Part, a reference to securities is a reference to securities of a body that is a public company within the meaning of the Companies Code, 1963 (Act 179) or securities which are quoted on a stock exchange in Ghana.

1994

SECURITIES INDUSTRY LAW, 1993

67. (1) A person to whom this Part applies shall maintain a register in the prescribed form of the securities in which he has an interest. Register of securities.

(2) Particulars of the securities in which a person to whom this Part applies has an interest and particulars of his interest in them shall be entered in the register within 7 days of the acquisition of the interest.

68. (1) A person to whom this Part applies shall notify the Commission in the prescribed form of such particulars as are prescribed including the place at which he will keep the register. Notice of particulars to Commission.

(2) The notice shall be given—

(a) in the case of a person who is required by this Law to hold a licence, as part of his application for the licence; or

(b) in the case of any other person, if the person becomes a person to whom this Part applies, within 14 days after becoming such a person.

(3) The notice shall be given notwithstanding that the person has ceased to be a person to whom this Part applies before the expiration of the period referred to in subsection (2).

(4) Where a person ceases to be a person to whom this Part applies he shall, within 14 days of his ceasing to be such a person, give notice of the fact to the Commission.

(5) A person who fails or neglects to give notice as required by this section commits an offence and is liable on conviction to a fine of £100,000.

69. (1) It is a defence to a prosecution for failing to comply with section 67 or 68 if the defendant proves that his failure was due to his not being aware of a fact or an occurrence the existence of which constitutes the offence and that— Defence to prosecution.

(a) he was not aware of the date of the summons; or

(b) he became aware not less than 14 days before the date of the summons and complied with the relevant section within 14 days after becoming aware.

(2) For the purposes of subsection (1), a person shall, in the absence of proof to the contrary, be conclusively presumed to have been aware of a fact or occurrence at the time when an employee or agent of his, who has duties or acts in relation to his employer's or principal's interest in the securities concerned, became aware.

70. (1) The Commission or any person authorized by it may require any person to whom this Part applies to produce for inspection the register required to be kept under section 67 and the Commission or any person authorized may make extracts from the register. Production of register.

SECURITIES INDUSTRY LAW, 1993

(2) Any person who fails to produce a register for inspection or fails to allow any person authorized under subsection (1) to make a copy or extracts from the register commits an offence.

Particulars of financial journalists.

71. (1) The Commission or any person authorized by it may by notice in writing require the proprietor or publisher of a newspaper or periodical to supply it or him with the name and address of the financial journalist who has contributed any advice or prepared any analysis or report that has been published in a newspaper or periodical owned or published by that proprietor or publisher or with names and addresses of all the financial journalists who have contributed advice or prepared any analysis or report within a period specified in the notice.

(2) A proprietor or publisher of a newspaper or periodical who, without reasonable excuse, fails to comply with a notice under subsection (1) shall be guilty of an offence.

Extract of register.

72. The Commission may supply a copy of the extract of a register obtained under section 70 to a person who in the opinion of the Commission, would, in the public interest, be informed of the dealing in securities disclosed in the register.

PART VII—CONDUCT OF SECURITIES BUSINESS

Certain representations prohibited.

73. (1) No person who is the holder of a licence shall represent or imply or knowingly permit it to be represented or implied to any person that his abilities or qualifications have in any respect been approved by the Commission.

(2) A statement that a person is the holder of a licence under this Law is not a contravention of subsection (1).

Issue of contract notes.

74. (1) A dealer shall, in respect of a transaction of sale or purchase of securities, give a contract that complies with subsection (2) of this section to—

- (a) the person for whom the dealer entered into the transaction where the transaction took place in the ordinary course of business at a stock exchange and the dealer entered into the transaction otherwise than as a principal;
- (b) the person for whom the dealer entered into the transaction and the person with whom the dealer entered into the transaction where the transaction does not take place in the ordinary course of business at a stock exchange and the dealer entered into the transaction otherwise than as principal;
- (c) the person with whom the dealer entered into the transaction where the transaction did not take place in the

SECURITIES INDUSTRY LAW, 1993

ordinary course of business at a stock exchange and the dealer entered into the transaction as principal.

(2) A contract note given by a dealer under subsection (1) shall include—

- (a) the name or style under which the dealer carries on his business as a dealer and the address of the principal place at which he carries on business;
- (b) where the dealer is dealing as principal with a person who is not the holder of a dealer's licence, a statement that he is so acting;
- (c) the name and address of the person to whom the dealer gives the contract note;
- (d) the day on which the transaction took place and, if the transaction did not take place in the ordinary course of business at a stock exchange, a statement to that effect;
- (e) the number, or amount and description, of the securities that are the subject of the contract;
- (f) the price per unit of the securities;
- (g) the amount of the consideration;
- (h) the rate and amount of commission (if any) charged;
- (i) the amounts of all stamp duties or other duties and taxes payable in connection with the contract; and
- (j) if an amount is to be added or deducted from the settlement amount in respect of the right to a benefit purchased or sold together with the securities, the amount and the nature of the benefit.

(3) A dealer shall not include in a contract note given under subsection (1), as the name of the person with or for whom he has entered into the transaction, a name that he knows, or could reasonably be expected to know, is not the name by which that person is ordinarily known.

(4) A reference in this section to a dealer dealing, or entering into a transaction, as principal includes a reference to a person—

- (a) dealing or entering into a transaction on behalf of a person associated with him;
- (b) dealing in securities on behalf of a body corporate in which he has a controlling interest; or
- (c) where he carries on business as a dealer on behalf of a body corporate in which his interest and the interest of his directors together constitute a controlling interest.

(5) For the purposes of this section—

SECURITIES INDUSTRY LAW, 1993

- (a) a dealer who is a member of a stock exchange shall not be taken to have entered into a transaction as principal by reason only that the transaction was entered into with another dealer who is a member of a stock exchange; and
- (b) a transaction takes place in the ordinary course of business at a stock exchange if it takes place in prescribed circumstances or is a transaction that is a prescribed transaction for the purpose of this section.

(6) Notwithstanding section 144, a person is not associated with another person for the purposes of this section by reason only that he is a director of a body corporate of which the other person is also a director, whether or not the body corporate carries on a business of dealing in securities.

Certain persons to disclose certain interests in securities

75. (1) Where a person who is a dealer, investment adviser, dealer's representative or investment representative sends circulars or other similar written communications in which he makes a recommendation, whether expressly or by implication, with respect to securities or a class of securities, he shall cause to be included in each circular or communication, in type, not less legible than that used in the remainder of the circular or communication, a concise statement of the nature of any interest in, or any interest in the acquisition or disposal of those securities, or securities included in that class, that he or a person associated with him has, at the date on which the circular or communication is sent.

(2) It is a defence to a prosecution for contravention of subsection (1) in relation to a failure to include in a circular or other communication a statement of the nature of an interest as provided in subsection (1), for the defendant to establish that, at the time when the circular or communication was sent, he was not aware and could not reasonably be expected to have been aware—

- (a) that he had an interest in, or an interest in the acquisition or disposal of those securities or securities included in that class; or
- (b) that the person associated with him had an interest in, or an interest in the acquisition or disposal of, those securities or securities included in that class.

(3) For the purposes of subsections (1) and (2)—

- (a) an interest of a person in the disposal of securities includes any financial benefit or advantage that will, or is likely to, accrue directly or indirectly to the person upon or arising out of the disposal of the securities;

SECURITIES INDUSTRY LAW, 1993

- (b) without limiting the generality of paragraph (a), a person who has entered into an underwriting agreement in respect of securities shall be deemed to have an interest in the acquisition or disposal of those securities; and
- (c) notwithstanding section 144, a person is not associated with another person by reason only that he is a director of a body corporate of which the other person is also a director, whether or not the body corporate carries on a business of dealing in securities unless they are acting jointly or together or in accordance with an arrangement made between them, in relation to the sending of the circular or communication or the making of the recommendation.

(4) Where—

- (a) a person has subscribed for or purchased securities for purchase; and
- (b) he offers any of those securities for purchase, he shall not make a recommendation, whether orally or in writing and whether expressly or by implication, with respect to the securities offered for purchase unless he has informed each person to whom the recommendation is made that he acquired the securities for that purpose.

(5) Where—

- (a) securities have been offered for subscription or purchase; and
- (b) a person has subscribed for or purchased or will or may be required to subscribe for or purchase, any of those securities under an underwriting or sub-underwriting agreement

the person shall not, during the period of 90 days after the close of the offer, make an offer to sell those securities, otherwise than in the ordinary course of trading on a stock exchange, or make a recommendation with respect to those securities unless the offer or recommendation contains or is accompanied by a statement to the effect that the offer or recommendation relates to securities that he has acquired, or will or may be required to acquire, under an underwriting or sub-underwriting agreement because some or all of the securities have not been subscribed for or purchased.

(6) A person who is a dealer, investment adviser, dealer's representative or investment representative shall not send to any person a circular or other communication or written offer or recommendation to

SECURITIES INDUSTRY LAW, 1993

which subsection (1), (4) or (5) applies unless the circular or communication or the offer or recommendation is signed by—

- (a) that person if he is a natural person;
- (b) a director, executive officer or secretary of the body corporate if the person is a company; or
- (c) by a partner if the person is an incorporated private partnership.

(7) When a person who is a dealer, investment adviser, dealer's representative or investment representative, sends to another person a circular, communication, a written offer or recommendation to which subsection (1), (4) or (5) applies, he shall preserve a copy of the circular, communication, the written offer or recommendation, duly signed as specified in subsection (6) for 7 years from the date of signing.

(8) Reference in this section to an offer of securities shall be construed to include a reference to statement, however, expressed, that is not an offer but expressly or impliedly invites a person to whom it is made to offer to acquire securities.

(9) For the purposes of this section, a circular, communication, a written offer or recommendation sent to a person shall, if it is signed by a director, executive officer or secretary of a body corporate, be deemed to have been sent by the body corporate and if it is signed by a partner in an incorporated private partnership be deemed to have been sent by the partnership.

(10) The Commission may, if it is in the public interest, exempt a security or any class of securities from the application of this section.

(11) Any person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding 1 million cedis or to imprisonment for a term not exceeding one year or to both.

Recommendations by adviser.

76. (1) An adviser shall not make a recommendation with respect to securities or a class of securities to a person who may reasonably be expected to rely on the recommendation unless he has a reasonable basis for making the recommendation to the person:

(2) For the purposes of subsection (1), an adviser does not have a reasonable basis for making a recommendation to a person unless—

- (a) the adviser has, for the purposes of ascertaining that the recommendation is appropriate, given consideration to, and conducted investigation on the subject matter of the recommendation as is reasonable in all the circumstances and having regard to the information possessed by him

SECURITIES INDUSTRY LAW, 1993

concerning the investment objectives, financial situation and particular needs of the person; and

(b) the recommendation is based on that consideration and investigation.

(3) An adviser who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding 1 million cedis or imprisonment for a term not exceeding one year.

(4) Where—

(a) an adviser contravenes subsection (1) by making a recommendation to a person; and

(b) the person relying on the recommendation does any particular act or refrains from doing any particular act; and

(c) it is reasonable, having regard to the recommendation and all other relevant circumstances for the person relying on the recommendation to have done that act or to have refrained from doing that act; and

(d) the person suffers loss or damage as a result of doing that act or refraining from doing that act, the adviser is liable to pay damages to the person in respect of that loss or damage.

(5) In this section—

(a) a reference to an adviser is a reference to a person who is a dealer, investment adviser, dealer's representative or investment representative; and

(b) a reference to the making of a recommendation may be express or by implication.

77. (1) Subject to subsection (4), a dealer shall not deal in any securities as principal with a person, who is not a dealer, unless he first informs the person with whom he is dealing that he is acting in the transaction as principal and not as agent. Dealings as principal.

(2) A reference in this section to a dealer dealing or entering into a transaction, as principal includes a reference to a person—

(a) dealing or entering into a transaction on behalf of a person associated with him;

(b) dealing in securities on behalf of a body corporate in which he has a controlling interest; or

(c) where he carries on business as a dealer on behalf of a body corporate in which his interest and the interests of his directors together constitute a controlling interest.

SECURITIES INDUSTRY LAW, 1993

(3) A dealer who, as principal, enters into a transaction of sale or purchase of securities with a person who is not a dealer shall state in the contract note that he is acting in the transaction as principal and not as agent.

(4) Subsection (1) shall not apply in relation to a transaction entered into by a dealer who is a member of a stock exchange and specializes in transactions relating to odd lots of securities, being a transaction of sale or purchase of an odd lot of securities.

(5) Where a dealer fails to comply with subsection (1) or (3) in respect of a contract for the sale of securities by him, the purchaser of the securities may, if he has not disposed of them, rescind the contract by a notice of rescission in writing given to the dealer not later than 30 days after the receipt of the contract note; and, where a dealer fails to comply with subsection (1) or (3) in respect of a contract for the purchase of securities by him, the vendor of the securities may, in like manner, rescind the contract.

(6) Nothing in subsection (5) affects any right that a person has apart from that provided under the subsection.

(7) A person who contravenes or fails to comply with any of the provisions of this section commits an offence and is liable on conviction to a fine not exceeding ₦500,000 or to imprisonment for a term not exceeding six months or to both.

Dealings by employees of holders of licences.

78. (1) A dealer or an investment adviser shall not give unsecured credit to his employee or to a person whom he knows is associated with such employee where—

- (a) the unsecured credit is given for the purpose of enabling or assisting the person to whom the unsecured credit is given to purchase or subscribe for securities; or
- (b) the person giving the unsecured credit knows or has reason to believe that the unsecured credit will be used to purchase or subscribe for securities.

(2) A person who contravenes or fails to comply with any of the provisions of subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding ₦500,000 or to imprisonment for a term not exceeding six months or to both.

Dealer to give priority to client's orders.

79. (1) A dealer shall not, except as permitted by subsection (3), enter, as principal or on behalf of a person associated with him, into a transaction of purchase or sale of securities that are permitted to be

112.

SECURITIES INDUSTRY LAW, 1993

traded on the stock market of a stock exchange if a client of the dealer, who is not associated with the dealer, has instructed the dealer to purchase or sell, respectively, securities of the same class and the dealer has not complied with the instruction.

(2) A dealer who contravenes this section is guilty of an offence and liable on conviction to a fine of ₦500,000 or to imprisonment for a term not exceeding six months or to both

(3) Subsection (1) does not apply in relation to the entering into of a transaction by a dealer as principal or on behalf of a person associated with him where—

- (a) the instructions from the client of the dealer required the purchase or sale of securities on behalf of the client to be effected only on specified conditions at which the securities were to be purchased or sold and the dealer has been unable to purchase or sell the securities because of those conditions; or
- (b) the transaction is entered into in the prescribed circumstances.

80. (1) Where a client deposits money with or lends money to a dealer, the dealer shall—

Use by dealer
of client's
money.

- (a) deposit the money in an account in a bank, not later than the next day on which the bank is open for business after the receipt of the money and the account shall not contain any money other than money deposited with or lent to the dealer;
- (b) furnish the client a document, in the prescribed form, setting out the terms and conditions on which the deposit or loan is made and accepted, including the purpose for which and the manner in which the money is to be used by the dealer;
- (c) retain the money in the bank account until the client gives him a written statement acknowledging that the client has received the document referred to in paragraph (b); and
- (d) use the money only—
 - (i) for the purpose and in the manner set out in the document referred to in paragraph (b); or
 - (ii) for a purpose or in a manner agreed to by the client in writing after the document referred to in paragraph (b) was furnished to the client.

SECURITIES INDUSTRY LAW, 1993

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding 1 million cedis or to imprisonment for a term not exceeding one year or to both; and shall in addition be liable to refund the money together with interest at the prevailing commercial bank rate to the client.

Right to vest securities through sale.

81. (1) Subject to this section and regulations made under it, a person shall not sell securities to a purchaser unless, at the time when he sells them—

(a) he has or, where he is selling as agent, his principal has; or

(b) he believes on reasonable grounds that he has, or where he is selling as agent, that his principal has,

an existing exercisable and unconditional right to vest the securities in the purchaser.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding ₵500,000 or to imprisonment for a term not exceeding six months or to both.

(3) For the purpose of this section, where a person—

(a) implies the sale of securities;

(b) offers to sell securities;

(c) holds himself out as entitled to sell securities; or

(d) instructs a dealer to sell securities,

he shall be deemed to sell the securities.

PART VIII - ACCOUNTS AND AUDIT

Application of this Part.

82. (1) This Part applies to the holder of a dealer's licence and to the business of dealing in securities carried on by the holder of a dealer's licence, whether in Ghana or elsewhere.

(2) In this Part, unless the contrary intention appears, a reference to a book, security, trust account or business or in relation to a dealer who carries on business in partnership, shall be read as a reference to such a book, security, trust account or business in relation to the partnership.

Accounts to be kept by dealers.

83. (1) A dealer shall—

(a) keep such accounting records as will correctly record and explain the transactions and financial position of the business of dealing in securities carried on by him;

(b) keep his accounting records in such a manner as will enable true and fair profit and loss accounts and balance sheets to be prepared from time to time; and

114

SECURITIES INDUSTRY LAW, 1993

(c) keep his accounting records in such a manner as will enable profit and loss accounts and balance sheets of the business of dealing in securities carried on by him to be conveniently and properly audited.

(2) A dealer who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one million cedis or to imprisonment for a term not exceeding one year or to both.

(3) A dealer shall be deemed not to have complied with subsection (1) in relation to records unless those records—

- (a) are kept in writing in the English Language or in such a manner as will enable them to be readily accessible and readily converted into writing in the English Language;
- (b) are kept in sufficient detail to show particulars of—
 - (i) all moneys received or paid by the dealer, including moneys paid to, or disbursed from, a trust account;
 - (ii) all purchases and sales of securities made by the dealer, the charges and credits arising from them, and the names of the buyer and seller, respectively, of each of those securities;
 - (iii) all income received from commissions, interests, and other sources, and all expenses, commissions, and interest paid, by dealer;
 - (iv) all the assets and liabilities, including contingent liabilities, of the dealer;
 - (v) all securities that are the property of the dealer, showing by whom the securities, or the documents of title to the securities, are held and, where they are held by some other person, whether or not they are held as security against loans or advances;
 - (vi) all securities that are not the property of the dealer and for which the dealer or any nominee controlled by the dealer is accountable, showing by whom, and for whom, the securities or the documents of title to the securities are held and the extent to which they are either held for safe custody or deposited with a third party as security for loans or advances made to the dealer;

SECURITIES INDUSTRY LAW, 1993

(vii) all arbitrage transactions entered into by the dealer; and

(viii) all underwriting transactions entered into by the dealer;

(c) are kept in sufficient detail to show separately particulars of every transaction by the dealer;

(d) specify the day on which or the period during which each transaction by the dealer took place; and

(e) contained copies of acknowledgments of the receipt of securities or of documents of title to securities received by the dealer from clients for sale or safe custody clearly showing the name or names in which the particular securities are registered.

(4) Without prejudice to subsection (3), a dealer shall keep the records in sufficient detail to show separately, particulars of all transactions undertaken by him with or for the account of—

(a) his clients excluding, where the dealer carries on business in partnership, the partners of the firm;

(b) the dealer himself, or where the dealer carries on business in partnership, the partners of the firm;

(c) other dealers carrying on business in Ghana;

(d) dealers outside Ghana; and

(e) employees of the dealers.

(5) An entry in the accounting and other records of a dealer required to be kept in accordance with this section shall be deemed to have been made by or with the authority of the dealer.

(6) Where a record required by this section to be kept is not kept in writing in the English Language, the dealer shall, if required to convert the record into writing in the English Language by a person who is entitled to examine the record, comply with the requirement within a reasonable time.

(7) Notwithstanding any other provision of this section, a dealer shall not be deemed to have failed to keep a record referred to in subsection (1) because the record is kept as a part of, or in conjunction with records that relate to a business other than dealing in securities that is carried on by him.

(8) Where accounting or other records are kept by a dealer at a place outside Ghana, the dealer shall cause to be sent to and kept at a place in Ghana such particulars with respect to the business dealt with in those records as will enable true and fair profit and loss accounts and balance sheets to be prepared.

SECURITIES INDUSTRY LAW, 1993

84. (1) Where a dealer receives for safe custody documents that are securities or are documents of title to securities of any person (in this subsection referred to as "the client") and for which the dealer or nominee controlled by the dealer is accountable, the dealer shall—

Security documents in custody of dealer

- (a) if the documents are not registered in the name of the client by the body corporate by whom the securities were issued, or made available and the client does not make a request as mentioned in paragraph (b) or (c) of this sub-section, cause the documents to be registered;
- (b) if the client requests that the documents be registered by the body corporate by whom the securities were issued or made available in the name of a nominee controlled by the dealer, cause them to be registered; or
- (c) if the client requests that the documents be deposited in safe custody with the dealer's bankers, cause them to be so deposited.

(2) A dealer shall not deposit a security for a loan or advance, documents that are securities or are documents of title to securities of a client and for which the dealer or a nominee controlled by the dealer is accountable, unless an amount is owed to the dealer by the client in connection with a transaction entered into on behalf of the client and the dealer—

- (a) gives a written notice to the client identifying the documents and stating that he intends to deposit them as security for a loan or advance made to the dealer; and
- (b) deposits the documents as security for a loan or advance that does not exceed the amount owed to the dealer on the day of the deposit by the client, in connection with a transaction entered into on his behalf by the dealer.

(3) Where—

- (a) a dealer has given notice to a person mentioned in subsection (2) and has deposited the documents referred to in the notice as security for a loan or advance; and
- (b) the person pays the amount owed by him to the dealer, the dealer shall withdraw the documents from deposit as soon as practicable after he receives the amount owed to him.

(4) Where a dealer deposits, as security for a loan or advance made to him, documents that are securities, or are documents of title of another person, and for which the dealer or a nominee controlled by the dealer is accountable, the dealer shall, at the expiration of 6 months after the date

SECURITIES INDUSTRY LAW, 1993

on which the documents are deposited, and at the expiration of each subsequent period of 6 months, if the documents are still maintained on deposit, send to the other person written notice to that effect.

(5) A dealer who fails to comply with subsection (4) commits an offence and is liable on conviction to a fine not exceeding ₵500,000 or to imprisonment for a term not exceeding 6 months or to both.

Dealer's trust
account.

85. (1) A dealer shall open and maintain with a bank in Ghana an account designated as a trust account.

(2) A dealer shall pay into such an account all moneys held by him in trust for a client not later than the next day on which the bank is open for business following the day on which the moneys are received by the dealer.

(3) Notwithstanding subsection (1), where moneys that are required by this section to be paid into a trust account are received by a dealer in a place outside Ghana, the dealer may pay those moneys into a trust account maintained by the dealer in that place.

(4) For the purposes of subsection (2), all moneys received by a dealer from a client other than—

(a) moneys received in respect of brokerage and other proper charges;

(b) moneys received in payment or part payment for securities delivered to the dealer before the moneys are received; or

(c) moneys to which section 80 applies, shall be deemed to be held in trust for that client.

(5) Subsection (2) does not apply to a cheque, bank draft, money order or postal order made payable to or to the order of a specified person or bearer (not being a cheque, bank draft, money order or postal order in which the payee is the dealer, a partner of the dealer or the firm in which the dealer is a partner) received from or on behalf of a client with instructions, express or implied, that the cheque, bank draft, money order or postal order is to be delivered to the person to whom it is payable.

(6) A person who contravenes or fails to comply with a provision of this section that is applicable to him commits an offence and is liable on conviction to a fine not exceeding one million cedis or to a term of imprisonment not exceeding one year or to both.

(7) A person who, with intent to defraud, contravenes or fails to comply with a provision of this section that is applicable to him commits an offence and is liable on conviction to a fine not exceeding 2 million

SECURITIES INDUSTRY LAW, 1993

cedis or to a term of imprisonment not exceeding 2 years or to both and shall be liable to refund the money of the client at the prevailing commercial bank rate of interest.

86. (1) A dealer who withdraws moneys from a trust account except for the purpose of—

Purposes for which money may be withdrawn from a trust account.

- (a) making a payment to a person entitled to the moneys or in accordance with the written directions of a person entitled to the moneys;
 - (b) defraying brokerage and other proper charges;
 - (c) paying himself moneys to which he the dealer is entitled, being moneys that were not required to be so paid; or
 - (d) making a payment that is otherwise authorized by law,
- commits an offence and is liable on conviction to a fine not exceeding one million cedis or to imprisonment for a term not exceeding one year or both.

(2) A dealer who, with intent to defraud, withdraws moneys from a trust account commits an offence and is liable on conviction to a fine not exceeding 2 million cedis or to imprisonment for a term not exceeding 2 years or to both.

(3) Except as otherwise provided in this Part, moneys held in a trust account are not available for payment of the debts of a dealer or liable to be paid or taken in execution under the order or process of a court.

(4) Nothing in this Part takes away or affects a lawful claim or lien that a person has against or on any moneys for a trust account or any moneys received for the purchase of securities or from the sale of securities before those moneys are paid into a trust account.

(5) A dealer is not guilty of an offence under subsection (1) where he withdraws from a trust account an amount that is the whole or any part of the amount of a cheque that has been deposited into the account but that has not been paid, but has not been refused payment by the banker on whom it is drawn.

(6) Where a dealer withdraws from a trust account an amount that is the whole or any part of the amount of a cheque that has been deposited into the account but that has not been paid by the banker on whom it is drawn and the banker on whom it is drawn refuses payment of the cheque, the dealer shall immediately pay into the trust account by cash or bank cheque an amount equal to the amount withdrawn from the trust.

(7) Where a dealer fails to comply with subsection (6)—

- (a) he commits an offence; and
- (b) where the dealer is a member of a stock exchange the

SECURITIES INDUSTRY LAW, 1993

failure shall, for the purposes of Part IX, be deemed to be a defalcation by the dealer.

(8) A person guilty of an offence under subsection (7) (a) is liable on conviction to a fine not exceeding 2 million cedis or to imprisonment for a term not exceeding 2 years or to both.

Appointment
and qualifica-
tion of auditor.

87. (1) Within one month after a person becomes the holder of a dealer's licence he shall appoint an auditor to audit his account.

(2) No person shall consent to be appointed as an auditor of a dealer, act as an auditor of a dealer or prepare a report required to be prepared under this Law by an auditor of a dealer—

(a) if in the case of a natural person he—

(i) is not a qualified company auditor; or

(ii) is indebted in an amount exceeding 3 million cedis to the dealer; or

(iii) is a partner or employee of the dealer; or

(b) in the case of a body corporate unless—

(i) at least one member of the body is ordinarily resident in Ghana;

(ii) all the members of the body ordinarily resident in Ghana are qualified company auditors;

(iii) no member of the body is indebted in an amount exceeding 6 million cedis to the dealer; and

(iv) no member of the body is a partner or employee of the dealer.

(3) The appointment of a company or a firm as auditor of a dealer shall be taken to be the appointment of all persons who are members of the firm or company, whether resident in Ghana or not, at the date of the appointment.

(4) Where a body corporate contravenes this section, each member of the company or firm shall be guilty of an offence.

(5) A person shall not if he has been appointed auditor of a dealer wilfully disqualify himself or itself while the appointment continues, from acting as auditor of the dealer.

(6) An auditor of a dealer shall hold office until he is removed or resigns from office in accordance with section 88 unless he ceases to qualify as auditor under subsection (2) of this section.

(7) Within 14 days after a vacancy occurs in the office of an auditor

SECURITIES INDUSTRY LAW, 1993

of a dealer, if there is no surviving or continuing auditor of the dealer, the dealer shall appoint another to fill the vacancy.

(8) While a vacancy in the office of an auditor continues, the surviving or continuing auditor (if any) may act.

(9) A dealer shall not appoint a person as his auditor unless that person has, before the appointment, consented by notice in writing given to the dealer, to act as auditor and has not withdrawn his or its consent by notice in writing given to the dealer.

(10) A report or notice made or given by a firm or company appointed as auditor of a dealer for the purposes of this Part shall be signed in the name of the firm or company which is a qualified company auditor.

(11) Where a person is appointed as auditor under subsection (1), not being an appointment made by virtue of subsection (8), the dealer shall within 14 days after the appointment lodge with the Commission a notice in writing stating that he has made the appointment and specifying the name of the person or firm.

(12) The provisions of this Part relating to auditor shall apply in addition to the provisions applicable to auditors under the Companies Code 1963, (Act 179).

88. (1) A dealer may, with the consent of the Commission, remove his auditor from office.

Removal and registration of auditors.

(2) An auditor of a dealer may, by notice in writing given to the dealer, resign as auditor of the dealer if—

(a) he has, by notice in writing given to the Commission, applied for consent to resign and has, at or about the same time as he gave notice to the Commission, notified the dealer in writing of his application to the Commission; and

(b) he has received the consent of the Commission.

(3) The Commission shall, as soon as practicable after receiving a notice from an auditor under subsection (2), notify the auditor and the dealer whether it consents to the resignation of the auditor.

(4) A statement made by an auditor in an application to the Commission under subsection (2) or in answer to an inquiry by the Commission relating to the reasons for the application—

(a) is not admissible in evidence in any civil or criminal proceedings against the auditor other than proceedings for an offence under section 55; and

(b) may not be made the ground of a prosecution other than a prosecution for an offence under section 55, or for an action or suit against the auditor, and a certificate of the Commission that the statement was made in the applica-

SECURITIES INDUSTRY LAW, 1993

tion or in answer to an inquiry by the Commission is conclusive evidence that the statement was so made.

(5) Subject to subsection (6) and to any order of a court under subsection (8), the resignation of an auditor takes effect—

- (a) on the date, (if any), specified for the purpose in the notice of resignation; or
- (b) on the date on which the Commission consents to the resignations; or
- (c) on the date, (if any) fixed by the Commission for the purpose,

whichever last occurs.

(6) Where, on the retirement or withdrawal from a firm or company of a member, the body will no longer be capable, because of the provisions of sections 87 2(b) (i) from acting as auditor of a dealer, the member retiring or withdrawing shall, if not disqualified from acting as auditor of the dealer, be deemed to be the auditor of the dealer until he obtains the consent of the commission to his retirement or withdrawal.

(7) Within 14 days after the receipt of a notice of resignation from an auditor or a dealer or, where an auditor of a dealer is removed the dealer shall lodge a notice of the resignation or removal in accordance with the prescribed form with the Commission.

(8) A person aggrieved by the refusal of consent by the Commission to the removal or resignation of an auditor of a dealer may, within one month after the date of refusal, appeal to the court against the refusal and the court may confirm or reverse the refusal and may make such further order in the matter as it considers proper.

89. The reasonable fees and expenses of an auditor of a dealer shall be payable by the dealer.

Fees and expenses of auditors.

Dealer's account.

90. (1) A dealer shall, in respect of each financial year, other than a financial year that ended before the date of commencement of this Law or ended on or after that date but before the date on which the dealer commenced to carry on business as a dealer prepare a true and fair profit and loss account and balance sheet on the basis of accounting principles and containing such information and matters as are prescribed, and lodge them with the Commission before the prescribed day for that financial year, together with an auditor's report containing the prescribed information matters.

(2) The Commission may, on application made by a dealer and his auditor before the expiration of the period of 2 months or as the

SECURITIES INDUSTRY LAW, 1993

case requires, the period of 3 months referred to in the definition as "prescribed day" in sub-section (4) or, if that period has been extended pursuant to an approval previously given under this subsection, before the expiration of the extended period, approve an execution or further extension of the period, and such an approval may be given subject to such conditions, (if any), as the Commission may impose.

(3) Where an approval under subsection (2) in relation to a dealer is given subject to conditions, the dealer shall comply with those conditions.

(4) In this section—

"financial year", in relation to a dealer being a body corporate, means the financial year of the body corporate within the meaning of the Companies Code, 1963 (Act 179); and

"prescribed day", in relation to a financial year of a dealer, being a body corporate, means the day that is 3 months after the end of that financial year, or where time is approved under sub-section (2), the day on which the extended time expires.

91. (1) Where an auditor, in the performance of his duties as auditor of a dealer, becomes aware of a prescribed matter, he shall, within 7 days after becoming aware of that matter, lodge with the Commission a written report on the matter and send a copy of the report to the dealer and to each stock exchange of which the dealer is a member.

Auditor to report to Commission in certain cases etc.

(2) In this section "prescribed matter" means a matter which, in the opinion of the auditor—

- (a) has adversely affected, is adversely affecting or may adversely affect the ability of the dealer to meet his obligations as a dealer;
- (b) constitutes or may constitute a breach of section 83, 84, 85 or 86 or Part IX of this Law; or
- (c) constitutes or may constitute a breach of a condition of a licence issued to the dealer under this Law.

92. (1) Where, in relation to a dealer who is a member of a stock exchange, the stock exchange becomes aware of a prescribed matter, the stock exchange shall, as soon as practicable after becoming aware of the matter, lodge with the Commission a written report on the matter and send a copy of the report to the dealer.

Certain matters to be reported to Commission.

SECURITIES INDUSTRY LAW, 1993

(2) In this section, "prescribed matter", in relation to a dealer, means a matter which, in the opinion of the stock exchange concerned—

- (a) has adversely, is adversely affecting or may adversely affect the ability of the dealer to meet his obligation as a dealer;
- (b) constitutes or may constitute a breach of section 83, 84, 85 or 86 or Part IX; or
- (c) constitutes or may constitute a breach of a condition of a licence issued to the dealer under this Law.

Defamation.

93. (1) An auditor is not, in the absence of malice on his part, liable to an action for defamation in respect of a statement, whether oral or written, made or issued by him in the course of his duties as an auditor.

(2) A person is not, in the absence of malice on his part, liable to an action for defamation in respect of the publication of a document prepared by an auditor in the course of his duties as an auditor and required by or under this Law to be lodged with the Commission, whether or not the document has been lodged.

(3) Nothing in this section limits or affects any other right, privilege or immunity that an auditor or other person has as a defendant in an action for defamation.

Right of stock exchange to impose obligation, etc., on members not affected by this Part.

94. Nothing in this Part prevents a stock exchange imposing on members of that stock exchange obligations or requirements, not inconsistent with this Law, that the stock exchange thinks fit with respect to—

- (a) the audit of accounts (including the audit of accounts by an auditor appointed by the stock exchange);
- (b) the information to be furnished in reports from auditors; or
- (c) the keeping of books.

Power of court to restrain dealings with dealer's bank

95. Where the Commission shows to the satisfaction of a court—

- (a) that there are reasonable grounds for believing that there is a deficiency in a trust account, whether kept within or outside Ghana, of a person who is or has been a dealer or in an account kept by virtue of section 80 (1) (a), whether within or outside Ghana, by a person who is or has been a dealer;
- (b) that there has been undue delay, or unreasonable refusal, on the part of a person who is or has been a dealer, in paying, applying or accounting for trust moneys as required by this Law;
- (c) that a person who is or has been a dealer has not paid moneys into a trust account as provided by section 85 or

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124

SECURITIES INDUSTRY LAW, 1993

into an account as provided by the section;

(d) that a business of dealing in securities is carried on or was carried on by a person not in partnership;

(e) that the dealer's licence of that person under Part V has been revoked or suspended;

(f) that the person is incapable, by reason of physical or mental infirmity, of managing his affairs;

(g) that the person has ceased to carry on a business of dealing in securities; or

(h) that the person has died,

the court may make an order restraining dealing in respect of all or any of the bank accounts of that person, subject to such terms and conditions as the court may impose.

96. Where an order made under section 95 is directed to a banker, the banker shall—

(a) disclose to the Commission every account kept at the bank in the name of the person to whom the order relates, and

any account that the banker reasonably suspects is held or kept at the bank for the benefit of that person; and

(b) permit the Commission to make a copy of, or to take an extract from, any account of the person to whom the order

relates or any of the banker's books relating to that person.

97. Where an order is made under section 95, the court may, on the application of the Commission or of a person affected by the order, make further orders—

(a) dealing with such ancillary matters as the court considered necessary or desirable;

(b) directing that all or any of the money in an account affected by an order so made shall be paid by the bank to the

Commission or to a person nominated by the Commission, on such terms and conditions as the court thinks

fit; or

(c) discharging or varying an earlier order;

98. (1) An order made under section 97 may include directives to the person to whom the moneys are paid directing him—

(a) to pay the money into a separate trust account; or

(b) to prepare a scheme for distributing the money during a period of 6 months after the receipt of the money, to persons who claim to be entitled to the money and to the satisfaction of the Commission that they are so entitled;

Duty of banker to make full disclosure.

Power of court to make further orders and give directions.

Power of court to make order relating to the payment of moneys.

125

SECURITIES INDUSTRY LAW, 1993

and where the money received is not sufficient to pay all proved claims, to apportion the money among the claimants in proportion to their proven claims shown in the scheme.

(2) Where a person prepares a scheme for a distribution of money under subsection (1), he shall apply to the court for approval of the scheme and for directions in respect of it.

(3) The court may give such direction as to the money held in a separate trust account under subsection (1), as to the persons to whom and in what amounts the whole or any portion of those money shall be paid, and as to the payment of the balance of the moneys, if any, as the court thinks fit.

PART IX - FIDELITY FUNDS

Establishment
of fidelity
funds.

99. (1) Every stock exchange shall establish and keep a fidelity fund which shall be administered by its council on behalf of the stock exchange.

(2) The assets of a fidelity fund shall be the property of the stock exchange but shall be kept separate from all other properties and shall be held in trust for the purposes set out in this Part.

Moneys consti-
tuting fidelity
fund.

100. The fidelity fund of a stock exchange shall consist of—

- (a) all moneys paid to the stock exchange by member companies and members firms in accordance with the provisions of this Part;
- (b) the interest and profits accruing from the investment of the fidelity fund;
- (c) all moneys paid to the fidelity fund by the stock exchange;
- (d) all moneys recovered by or on behalf of the stock exchange in the exercise of any right of action conferred by this Part;
- (e) all moneys paid by an insurer under a contract of insurance or indemnity entered into by the council of the stock exchange under section 119; and
- (f) all other moneys lawfully paid into the fidelity fund.

Fund to be kept
in separate
bank account.

101. All moneys forming part of a fidelity fund shall, pending the investment or application of it in accordance with this Part, be paid or transferred into a bank in Ghana.

Payments out
of fidelity fund.

102. Subject to this Part, there shall be paid out of the fidelity fund of a stock exchange as required and in such order as the council of the stock exchange considers proper—

- (a) the amount of all claims, including costs, allowed by the

SECURITIES INDUSTRY LAW, 1993

council or established against the stock exchange under this Part;

- (b) all legal and other expenses incurred in investigating or defending claims made under this Part or incurred in relation to the fidelity fund or in the exercise by the council of the rights, powers and authorities vested in it by this Part in relation to the fund;
- (c) all premiums payable in respect of contracts or insurance or indemnity entered into by the council under section 119;
- (d) the expenses incurred or involved in the administration of the fund including the salaries and wages of persons employed by the council in relation to it; and
- (e) all other moneys payable out of the fund in accordance with the provisions of this Law.

103. (1) A stock exchange shall establish and keep proper accounts of its fidelity fund and shall within three months after the end of each financial year cause a balance-sheet of the account as at the end of that financial year to be prepared. Accounts of fund.

(2) The council of the stock exchange shall appoint an auditor to audit the account of the fidelity fund.

(3) The auditor appointed by the council shall regularly and fully audit the accounts of the fidelity fund and shall audit each balance-sheet and cause it to be laid before the council not later than 3 months after the balance-sheet is made out.

104. (1) The council of a stock exchange may appoint a management committee of not less than 3 and not more than 5 persons, of whom at least one shall be a member of the council. Management committee.

(2) The council of a stock exchange may by resolution delegate to the management committee all or any of its powers under this Part other than those under this section, sections 107 and 110 (3), (4), (5) and (6).

(3) Any power, authority or discretion so delegated may be exercised by a majority of the management committee.

(4) Any such delegation may at any time in like manner be rescinded or varied.

(5) The council of a stock exchange may at any time remove any member of the management committee appointed by it under this section and may fill any vacancy in the committee.

105. (1) The fidelity fund of a stock exchange shall consist of an amount of not less than 5 million cedis, or such other sum as the Secretary may by legislative instrument direct to be paid to the credit of the fund on Fidelity fund to consist of an amount of 5 million cedis.

SECURITIES INDUSTRY LAW, 1993

the establishment of a stock exchange under this Law.

(2) The fidelity fund shall be increased by an annual payment into the fund of a sum that is equal to 10% or more of the net income of a stock exchange for any one financial year, but the Secretary may, after consultation with the stock exchange, increase that percentage.

Provisions if fund is reduced below 5 million cedis.

106. Where the fidelity fund is reduced below the sum of 5 million cedis or such other sum as the Secretary may, by legislative instrument determine, the council shall take steps to make up the deficiency—

- (a) by transferring an amount that is equal to the deficiency from other funds of the stock exchange to the fidelity fund; or
- (b) in the event that there are insufficient funds to transfer under paragraph (a), by determining the amount which each member company and member firm shall contribute to the fund.

Levy of liabilities.

107. (1) If at any time a fidelity fund is not sufficient to satisfy the liabilities that are ascertained to relate to the stock exchange, the council may impose on every company and member firm a levy of such amount as it thinks fit or, if directed by the Secretary, the council shall impose a levy of such sum which shall in the aggregate be equivalent to the amount so directed.

(2) The amount of the levy shall be paid within the time and in the manner specified by the council either generally or in relation to any particular case.

Power of stock exchange to make advances to fund.

108. (1) A stock exchange may from its general funds give or advance on such terms as the council thinks fit any sum of money to its fidelity fund.

(2) Any money advanced under subsection (1) may be repaid from the fidelity fund to the general funds of the stock exchange.

(3) Any such advance shall not be deemed to be in contravention of any banking or money lending law.

Investment of fund.

109. Any moneys in a fidelity fund that are not immediately required for its purposes may be invested by the council in any manner in which trustees are for the time being authorized by law to invest trust funds.

Application of fund.

110. (1) Subject to this Part, a fidelity fund shall be held and applied for the purpose of compensating persons who suffer pecuniary loss from any defalcation committed by a member company or member firm or any of its directors or partners or by any of the employees of such a member company or member firm in relation to money or other property which in the course of or in connection with the business of that company or firm—

SECURITIES INDUSTRY LAW, 1993

(a) was entrusted to or received by a member company or any of its directors or partners or employees of the company or firm for or on behalf of any other person; or

(b) was entrusted to or received by the member entrusted to or received by the member company or member firm or any of the employees of the company or firm as trustees or for or on behalf of the trustees of that money or property.

(2) Except as otherwise provided in this section, the total amount that may be paid under this Part to persons who suffer loss through defalcations by a member company or member firm or any of its directors or partners or through defalcations by any of the employees of the company or firm shall not, in any event, exceed in respect of that member company or member firm the sum of 2 million cedis, but for the purposes of this subsection any amount paid from a fidelity fund shall to the extent to which the fund is subsequently reimbursed be disregarded.

(3) Where, after taking into account all ascertained or contingent liabilities of a fidelity fund, the council considers that the assets of the fund so permit, the council may decide to increase the total amount which may be applied from that fund under subsection (2) and shall inform the Commission accordingly.

(4) The Commission shall then cause notice of the decision to be published in the Gazette; from the date of the publication until the notice is revoked or varied, the amount specified in the notice shall be the total amount which may be applied for compensation for pecuniary loss.

(5) Where the council decides to revoke or vary the contents of the notice under subsection (4), the council shall inform the Commission which shall then cause notice of such revocation or variation to be published in the Gazette.

(6) If, in any particular case after taking into account all ascertained or contingent liabilities of a fidelity fund, the council considers that the assets of the fund so permit, the council may apply out of the fund such sum in excess of the total amount limited by or under this section as the council in its discretion thinks fit, towards the compensation of persons who have suffered pecuniary loss as provided in subsection (1).

(7) Notwithstanding any provision in subsections (2), (3), (4) and (6), the Secretary may, direct the council to increase the total amount which shall be applied from a fidelity fund of a particular member company or member firm in payment to persons who suffer loss through defalcations by that particular member company or member firm or by any of its directors or partners or by any of the employees of that company or firm.

SECURITIES INDUSTRY LAW, 1993

(8) For the purposes of this section, "director of a member company" or "partner of a member firm" includes a person who has been, but at the time of any defalcation in question has ceased to be such director or partner if, at the time of the defalcations, the person claiming compensation has reasonable grounds for believing that person to be a director of a member company or a partner of a member firm.

Claims against
fund

111. (1) Subject to this Part, every person who suffers pecuniary loss as provided in subsection (1) of section 110 shall be entitled to claim compensation from the fidelity fund and to take proceedings in a court against the stock exchange.

(2) Subject to subsection (3), a person shall not have any claim against the fidelity fund in respect of a defalcation in respect of money or other property which prior to the commission of the defalcation had in the course of the administration of a trust ceased to be under the sole control of the director of the member company concerned or the partner of the member firm concerned.

(3) Subject to this Part, the amount which any claimant shall be entitled to claim as compensation from a fidelity fund shall be the amount of the actual pecuniary loss suffered by him, including the reasonable costs of his disbursements incidental to the making of proof of claim, less the amount or value of all moneys or other benefits received or receivable by him from sources other than the fund in reduction of the loss.

(4) In addition to any compensation payable under this Part, interest shall be paid out of the fidelity fund concerned on the amount of compensation, less any amount attributable to costs and disbursements, at the rate of 5% per annum calculated from the day upon which the defalcation was committed and continuing until the day upon which the claim is satisfied.

Notice calling
for claims
against fund.

112. (1) The council of a stock exchange may publish in a daily newspaper published and circulating generally in Ghana a notice, in or to the effect of the form prescribed, specifying a date, not being earlier than 3 months after the said publication, on or before which claims for compensation from the fidelity fund, in relation to the person specified in the notice, may be made.

(2) A claim for compensation from a fidelity fund in respect of a defalcation shall be made in writing to the council—

(a) where a notice under subsection (1) has been published on or before the date specified in the said notice; or

(b) where no such notice has been published within 6 months after the claimant becomes aware of the defalcation,

and any claim which is not so made shall be barred unless the council otherwise determines.

SECURITIES INDUSTRY LAW, 1993

(3) No action for damages shall lie against a stock exchange or against any member or employee of a stock exchange or of a council or management committee as a result of any notice published in good faith and without malice for the purposes of this section.

113.(1) The council may, subject to this Part, allow and settle any proper claim for compensation from a fidelity fund at any time after the commission of the defalcation in respect of which the claim arose.

Power of council to settle claims.

(2) Subject to subsection (3) of this section, a person shall not commence legal proceedings under this Part against a stock exchange without leave of the council unless—

- (a) the council has disallowed his claim; and
- (b) the claimant has exhausted all relevant rights of action and other legal remedies for recovery of the money or other property, in respect of which the defalcation was committed, available against the member company or member firm in relation to which the claim arose and against all other persons liable in respect of the loss suffered by the claimant.

(3) A person who has been refused leave by a council may apply for leave to a judge of the High Court who may make such order in the matter as he thinks fit.

(4) A council after disallowing, whether wholly or partly, a claim for compensation from a fidelity fund shall serve notice of the disallowance in the prescribed form on the claimant or his lawyer.

(5) Notwithstanding the provisions of the Limitations Decree, 1972 (NRCD 54), no proceedings against a stock exchange in respect of a claim which has been disallowed by the council shall be commenced after the expiration of 3 months after service of notice of disallowance under subsection (4).

(6) In any proceedings brought to establish a claim, evidence of any admission or confession by, or other evidence which would be admissible against, the member company, member firm, or other person by whom it is alleged a defalcation was committed, shall be admissible to prove the commission of the defalcation, notwithstanding that the member company, member firm or other person is not the defendant in or a part to those proceedings, and all defences which would have been available to that member company, member firm or other person shall be available to the stock exchange.

(7) The council or, where proceedings are brought to establish a claim, the court, if satisfied that the defalcation on which the claim is

SECURITIES INDUSTRY LAW, 1993

founded was actually committed, may allow the claim and act accordingly, notwithstanding that the person who committed the defalcation has not been convicted or prosecuted for the act or that the evidence on which the council or court acts would not be sufficient to establish the guilt of the person upon a criminal trial in respect of the defalcation.

Orders of court
on establish-
ment of claim.

114. Where in any proceedings brought to establish a claim the court is satisfied that the defalcation on which the claim is founded was actually committed and that the claimant has valid claim, the court shall by order—

- (a) declare the fact and the date of the defalcation and the amount of the claim; and
- (b) direct that the council concerned allows the claim as so declared and deal with the claim in accordance with the provisions of this Part.

Power
of council
to require
production of
securities, etc.

115. (1) The council may require a person to produce and deliver any securities, documents or statements of evidence necessary—

- (a) to support a claim made by him; or
- (b) for the purpose either of exercising his rights against a member company, a member firm or the director or partners of the stock exchange or any other person concerned; or
- (c) to enable criminal proceedings to be taken against any person in respect of a defalcation.

(2) Where the person fails to deliver any such securities, documents or statements of evidence, the council may disallow any claim by him under this Part.

Entitlement of
stock exchange
to rights, etc.,
of claimant
upon payment
from fund.

116. On payment out of a fidelity fund of any moneys in respect of a claim under this Part, the stock exchange shall be entitled to the extent of the payment to all the rights and remedies of the claimant in relation to the loss suffered by him from the defalcation.

Payment of
claims only
from fund.

117: No moneys or other property belonging to a stock exchange, other than the fidelity fund, shall be available for the payment of any claim under this Part whether the claim is allowed by the council or is made the subject of an order of the court.

Provision
where fund in-
sufficient to
meet claims or
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amount pay-
able.

118. (1) Where the amount at credit in a fidelity fund is insufficient to pay the amount of all claims against it which have been allowed or in respect of which orders of the court have been made, the amount at credit in the fund shall, subject to subsection (2) of this section be apportioned between the claimants in such a manner as the Commission thinks equitable, and any claim that then remains unpaid shall be charged against

SECURITIES INDUSTRY LAW, 1993

future receipts of the funds and paid out of the fund when moneys are available.

(2) Where the aggregate of all claims made in relation to defalcations by or in connection with a member company or member firm exceeds the total amount which may, under section 110 (2) be paid under this Part in respect of that member company or member firm, then the total amount shall be apportioned between the claimants in such manner as the council thinks equitable.

(3) Upon payment out of the fund of all the claims and all other claims against the fund which may later arise or be made in respect of defalcations by or in connection with the member company or member firm, the member company or firm shall be absolutely discharged.

119. (1) A stock exchange may enter into any contract with an insurer in Ghana to be insured or indemnified against liability in respect of claims under this Part

Power of council to enter into contracts of insurance.

(2) Any such contract may be entered into in relation to member companies and member firms generally, or in relation to any particular member companies generally with the exclusion of any particular member company named in the agreement.

(3) No action shall lie against a stock exchange or against any member or servant of a stock exchange or its council or against any member of a management committee for injury alleged to have been suffered by any member company or firm by reason of publication in good faith of a statement that a contract entered into under this section does or does not apply with respect to it.

120. No claimant for money from a fidelity fund shall have a right of action against an insurer with whom a contract of insurance or indemnity is made under this Part or have a right or claim on moneys paid by the insurer under such contract.

Application of insurance moneys.

121. In this Part, unless the context otherwise requires--

Interpretation of this Part.

“council” in relation to a fidelity fund of a stock exchange, means the council of that stock exchange;

“court” means the High Court;

“fidelity fund” or “fund” means a fidelity fund established under section 99;

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SECURITIES INDUSTRY LAW, 1993

(6) In a prosecution for an offence under subsection (2) in relation to a purchase or sale of securities that did not involve a change in the beneficial ownership of those securities, it is a defence if the defendant establishes that the purpose for which he purchased or sold the securities was not, or did not include, the purpose of creating a false or misleading appearance with respect to the market for, or the price of, securities.

(7) The reference in subsection (3) of this section to a transaction of sale or purchase of securities includes—

- (a) a reference to the making of an offer to sell or purchase securities; and
- (b) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to sell or purchase securities.

123. (1) A person who effects, takes part in, is concerned in or carries out, either directly or indirectly, two or more transactions in securities of a body corporate which are transactions that have, or are likely to have, the effect of raising, lowering, maintaining or stabilizing the price of securities of the body corporate on a stock exchange in Ghana with intent to induce other persons to sell, purchase or subscribe for securities of the body corporate or of a related body corporate commits an offence. Stock market manipulation.

(2) A reference in this section to a transaction in relation to securities of a body corporate, includes—

- (a) a reference to the making of an offer to sell or purchase such securities of the body corporate; and
- (b) a reference to the making of an invitation, however expressed that expressly or impliedly invites a person to offer to sell or purchase the securities of the body corporate.

124. A person who makes a statement or disseminates information that is false or misleading in a material particular, that is likely to induce the sale or purchase of securities by other persons or is likely to have the effect of raising, lowering, maintaining or stabilizing the market price of securities if, when he makes the statement or disseminate the information— False or misleading statements, etc.

- (a) he does not care whether the statement or information is true or false; or
 - (b) he ought reasonably to have known that the statement or information is false or misleading in a material particular
- commits an offence.

SECURITIES INDUSTRY LAW, 1993

Fraudulently inducing persons to deal in securities.

125. (1) A person who—

- (a) by making or publishing any statement, promise or forecast which he knows to be misleading, false or deceptive;
- (b) by any dishonest concealment of material facts;
- (c) by the reckless making or publishing, dishonestly or otherwise, of any statement, promise or forecast that is misleading, false or deceptive; or
- (d) by recording or storing in, or by means of any mechanical, electronic or other device, information that he knows to be false or misleading in a material particular,

induces or attempts to induce another person to deal in securities commits an offence.

(2) It is a defence to a prosecution for an offence under subsection (1) (d) to establish that, at the time when the defendant recorded or stored the information, he had no reasonable grounds for expecting that the information would be available to any other person.

Dissemination of information about illegal transactions

126. A person who circulates or disseminates or authorises or is concerned in the circulation or dissemination of any statement or information to the effect that, the price of any securities of a body corporate will or is likely to rise or fall or be maintained by reason of any transaction entered into or other act or thing done in relation to securities of that body corporate, or of a body corporate that is related to that body corporate, in contravention of any of the provisions in this Part where—

- (a) the person, or a person associated with the person, has entered into any such transaction or done any such act or thing; or
- (b) the person has received, or expects to receive directly or indirectly, any consideration or benefit for circulating or disseminating, or authorising or being concerned in the circulation or dissemination of the statement or information

commits an offence.

Employment of manipulative and deceptive devices.

127. It is unlawful for a person directly or indirectly in connection with the purchase or sale of securities—

- (a) to employ any device, scheme or artifice to defraud;
- (b) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any other person; or

SECURITIES INDUSTRY LAW, 1993

- (c) to make any untrue statement of a material fact or to omit to state a material fact necessary with the result that the statements made in the light of the circumstances under which they were made, appear truthful.

128. (1) A person who is, or has at any time in the 6 months immediately prior to a dealing in the securities of a body corporate been connected with that body corporate shall not deal in securities of that body corporate if by reason of his association he is in possession of information that is not generally available but, if it were, might materially affect the price of those securities.

Prohibition of
dealings in
securities
by insiders.

(2) A person who is, or has at any time in the 6 months immediately prior to a dealing in the securities of a body corporate been connected with that body corporate shall not deal in any securities of any other body corporate if by reason of his being, or having been, connected with the first-mentioned body corporate he is in possession of information that—

- (a) is not generally available but, if it were, would be likely to affect materially the price of those securities; and
(b) relates to any transaction (actual or expected) involving both those bodies corporate or involving one of them and the securities of the other.

(3) Where a person is in possession of information as provided in subsection (1) or (2), but he is not precluded by either of those subsections from dealing in these securities, he shall not deal in those securities if—

- (a) he has obtained the information directly from another person and is aware, or ought reasonably to be aware of facts or circumstances by virtue of which that other person is himself precluded by subsection (1) or (2) from dealing in those securities; or
(b) when the information was obtained, he was associated with that other person or had with him an arrangement for the communication of information of a kind to which those subsections apply with a view to dealing in securities by himself or with that other person.

(4) No person shall at any time when he is precluded by subsection (1), (2) or (3) of this section from dealing in securities—

- (a) cause or procure any other person to deal in those securities; or

SECURITIES INDUSTRY LAW, 1993

- (b) communicate that information to any other person if—
- (i) trading in those securities is permitted on a stock exchange whether within or outside Ghana; and
 - (ii) he knows, or ought reasonably to know, that the other person will make use of the information for the purpose of dealing or causing or procuring another person to deal in those securities.

(5) Without prejudice to subsection (3) but subject to subsections (6) and (7), no body corporate shall deal in securities at a time when an officer of that body corporate is precluded by sub-section (1), (2) or (3) from dealing in those securities.

(6) A body corporate is not precluded by subsection (5) from entering into a transaction at any time by reason only of information in the possession of an officer of that body corporate if—

- (a) the decision to enter into the transaction was taken on its behalf by a person other than that officer; and
- (b) it had in operation at that time arrangements to ensure that the information was not communicated to any person and that no advice with respect to the transaction was given to him by a person in possession of the information; and
- (c) the information was not communicated and the advice was not so given.

(7) A body corporate is not precluded by subsection (5) from dealing in securities of another body corporate by reason only of information in possession of its officer which was obtained by the officer in the course of his duties as its officer but relates to proposed dealings by the first-mentioned body corporation in securities of the other body corporate.

(8) For the purposes of this section, a person is connected with a body corporate if, being a natural person—

- (a) he is an officer of that body corporate or of a related body corporate;
- (b) he is a substantial shareholder in that body corporate or in a related body corporate; or

SECURITIES INDUSTRY LAW, 1993

(c) he occupies a position that may reasonably be expected to give him access to information of a kind to which subsections (1) and (2) apply by virtue of—

- (i) any professional or business relationship existing between himself or his employer or a body corporate of which he is an officer and that body corporate or a related body corporate; or
- (ii) his being an officer of a substantial shareholder in that body corporate or in a related body corporate.

(9) This section does not preclude the holder of a dealer's licence from dealing in securities or rights or interests in securities of a body corporate, where the securities, rights or interests are permitted by a stock exchange to be traded on the stock market of that stock exchange, if—

- (a) the holder of the licence enters into the transaction concerned as an agent for another person in accordance with a specific instruction to effect that transaction; and
- (b) the holder of the licence has not given any advice to the other person in relation to dealing in securities, or rights or interests in securities, of that body corporate that are included in the same class as the first-mentioned securities; and
- (c) the other person is not associated with the holder of the licence.

(10) Where prosecution is instituted against a person for entering into a transaction whilst in possession of certain information contrary to this section, it is a defence if the person satisfies the court that the other party to the transaction knew, or ought reasonably to have known, of the information before entering into the transaction.

(11) For the purposes of subsection (7), "officer", in relation to a body corporate, includes—

- (a) a director, secretary, executive officer or employee of the body corporate;
- (b) a receiver or receiver and manager of property of the body corporate;
- (c) an official manager or a deputy official manager of the body corporate;
- (d) a liquidator of the body corporate; and
- (e) a trustee or other person administering a compromise or arrangement made between the body corporate and another person.

SECURITIES INDUSTRY LAW, 1993

Penalties

129. A person who contravenes any of the provisions of this Part is liable on conviction—

- (a) in the case of a person not being a body corporate, to a fine not exceeding ₦5 million or to imprisonment for a term not exceeding 3 years; or
- (b) in the case of a person being a body corporate, to a fine not exceeding ₦5 million.

Convicted persons liable to pay compensation.

130. (1) A person convicted of an offence under this Part is liable to pay compensation to any person who, in a transaction for the purchase or sale of securities entered into with him or with a person acting for or on his behalf, suffers loss because of the difference between the price at which the securities were dealt in and the price at which they might have been dealt in at the time when the transaction took place if the contravention had not occurred.

(2) The amount of compensation for which a person is liable under subsection (1) is the amount of the loss sustained by the person claiming the compensation.

(3) Notwithstanding the provisions of the Limitations Decree 1972 (N.R.C.D. 54) an action under this section for the recovery of a loss shall not be commenced after the expiration of two years after the date of completion of the transaction in which the loss occurred.

(4) Nothing in subsection (1) affects any other liability that a person may incur under any other law.

PART XI - MISCELLANEOUS PROVISIONS

Restriction on use of title "stock broker" or "stock exchange".

131. (1) A person who is not a stockbroker within the meaning of this Law shall not use or by inference adopt the name or title of stockbroker or exhibit at any place a name, title or description implying or tending to create the belief that he is a stockbroker.

(2) A body corporate that is not a stock exchange shall not use or by inference adopt the name or title of stock exchange or exhibit at any place a name, title or description implying or tending to create the belief that the body corporate is a stock exchange.

Offences by directors or managers, etc.

132. (1) A director or manager of a stock exchange, unit trust scheme, mutual fund or of a dealer or of an investment adviser, who—

- (a) fails to take all reasonable steps to ensure compliance with the provisions of this Law; or
- (b) fails to take all reasonable steps to ensure the accuracy and correctness of any statement submitted by him under this Law,

SECURITIES INDUSTRY LAW, 1993

commits an offence and is liable on conviction to a fine not exceeding £500,000 or to imprisonment for a term not exceeding one year or to both.

(2) in any proceedings against a person under subsection (1), it shall be a defence for the accused to prove that he had reasonable grounds for believing that another person was charged with the duty of ensuring compliance with the requirements of this Law, or with the duty of ensuring that those statements were accurate, and that person was competent and in a position to discharge that duty.

(3) A person shall not be sentenced to imprisonment for any offence under subsection (1) unless, in the opinion of the court, he committed the offence wilfully.

133. (1) Any director, manager, auditor, employee or agent of a stock exchange of a dealer or of an investment adviser, who—

- (a) wilfully makes, or causes to be made, a false entry;
- (b) wilfully omits to make an entry or causes such entry to be omitted; or
- (c) wilfully alters, abstracts, conceals or destroys an entry or wilfully causes such entry to be altered, abstracted, concealed or destroyed,

Falsification of records by directors, employees and agents.

in any book or report, slip, document or statement of the business affairs, transactions, conditions, assets or accounts of that stock exchange, dealer or investment adviser, commits an offence and is liable on conviction to a fine not exceeding £1 million or to imprisonment for a term not exceeding one year or to both.

134. Any person who, with intent to deceive makes or furnishes, or knowingly and wilfully authorises or permits the making or furnishing of any false or misleading statement or report to the Commission, a stock exchange or any officers of the Commission relating to—

False reports to Commission or stock exchange.

- (a) dealing in securities;
- (b) any matter or thing required by the Commission for the proper administration of this Law; or
- (c) the enforcement of the rules of a stock exchange,

commits an offence and is liable on conviction to a fine not exceeding £1 million or to imprisonment for a term not exceeding one year or to both.

135. No action or other legal proceedings shall lie against the Commission or an officer or employee of the Commission or a person, including a stock exchange, acting under the direction of the Commission for any act done in good faith in the performance or intended performance, of any

Immunity of Commission and its employees, etc.

SECURITIES INDUSTRY LAW, 1993

duty, or in the exercise of any power under this Law or regulations made under it, or for any neglect or default in the performance or exercise in good faith of such duty or power.

Offences by
body corpo-
rate.

136. Where a body corporate is guilty of an offence under this Law, any director, executive officer, secretary or employee of the body corporate who was in any way, by act or omission, directly or indirectly knowingly concerned in or a party to the commission of the offence shall also be guilty of that offence.

Power of Court
to prohibit pay-
ment or trans-
fer of moneys,
securities or
other property.

137. (1) Where—

- (a) an investigation which constitutes or may constitute an offence under this Law is being carried out in relation to an act or omission by a person; or
- (b) prosecution has been instituted against a person for an offence under this Law; or
- (c) civil proceedings have been instituted against a person under this Law,

and the Court considers it necessary or desirable for the purpose of protecting the interests of any persons to whom a person referred to in paragraph (a), (b) or (c) of this subsection, (referred to in this section as the relevant person), is liable or may become liable to pay any moneys, whether in respect of a debt or by way of damages or compensation or otherwise account for any securities or other property, the court may, on application by the Commission, make any one or more of the orders specified in subsection (2).

(2) The court may make—

- (a) an order prohibiting either absolutely or subject to conditions a person who is indebted to the relevant person or to any person associated with the relevant person, from making a payment in total or partial discharge of the debt;
- (b) an order prohibiting, either absolutely or subject to conditions, a person holding money or securities or other property on behalf of the relevant person or on behalf of any person associated with the relevant person, from paying all or any of the money or transferring or otherwise parting with possession of the securities or other property to any person;
- (c) an order prohibiting, either absolutely or subject to conditions, the taking or sending out of Ghana of moneys of the relevant person or of any person associated with the relevant person;

SECURITIES INDUSTRY LAW, 1993

- (d) an order prohibiting, either absolutely or subject to conditions, the taking, sending or transfer of securities or other property of the relevant person or of any person who is associated with the relevant person from a place in Ghana to a place outside Ghana, including the transfer of securities from a register in Ghana to a register outside Ghana;
- (e) an order appointing a receiver or receiver and manager with such powers as the court may order of the property or part of the property of the relevant person;
- (f) an order where the relevant person is a natural person—
 - (i) requiring him to deliver up to the court his passport and such other documents as the court thinks fit; or
 - (ii) prohibiting him from leaving Ghana without the consent of court.

(3) Where an application is made to a court for an order under subsection (1), the court may, before considering the application, on a further application by the Commission grant an interim order pending the determination of the original application.

(4) Where the Commission makes an application to the court for an order under subsection (1), the court shall not require the Commission or any other person, as a condition of granting an interim order under subsection (3) to give any undertakings as to damages.

(5) Where the court has made an order under this section, it may, on application by the Commission or by any person affected by the order, make a further order rescinding or varying the earlier order.

(6) An order made under this section may be expressed to operate for a period specified in the order or until the order is rescinded by a further order under subsection (5).

(7) A person who contravenes or fails to comply with an order by the court under this section applicable to him commits an offence and is liable on conviction to a fine not exceeding ₵1 million or to imprisonment for a term not exceeding one year or to both.

138. A person who is guilty of an offence under this Law for which no specific penalty is provided shall be liable on conviction to a fine not exceeding ₵1 million or imprisonment for a term not exceeding one year or to both. General
penalty.

SECURITIES INDUSTRY LAW, 1993

Proceedings,
by whom to
be taken and
power to
compound
offences.

139. (1) Prosecution for an offence against any provision of this Law may be taken by the Attorney-General or by the Commission.

(2) The Commission may, without instituting proceedings against any person for an offence punishable by a fine under this Law or the regulations made under it demand the amount of the fine or such reduced amount as it thinks fit from the person liable and—

(a) where the person pays the amount to the Commission within 14 days of the demand, no proceedings shall be taken against him in relation to the offence;

(b) where the person does not pay the amount the Commission may commence proceedings in relation to the offence.

(3) The powers conferred on the Commission under subsection **(2)** shall only be exercised where a person admits the offence and agrees in writing to the offence being dealt with under that subsection.

Power of Sec-
retary to give
directions to
Commission.

140. The Secretary may give to the Commission directions of a general or specific character as to the exercise of the Commission's functions; and it shall be the duty of the Commission to give effect to any such direction.

Regulations.

141. (1) The Secretary may on the recommendation of the Commission by legislative instrument make regulations prescribing all matters required or permitted by this Law to be prescribed, and for carrying out or giving effect to this Law.

(2) Without prejudice to subsection **(1)** regulations may provide for—

(a) the forms to be used for the purposes of this Law;

(b) the publication of advertisements offering the services of dealers or investment advisers or offering securities for purchase or sale, and the form and content of those advertisements;

(c) the form of balance sheets and profit and loss accounts required by this Law to be prepared by dealers;

(d) the furnishing to the Commission of information in addition to, or in variation of, the information contained in a prescribed form lodged with it;

(e) the times within which information required to be furnished to the Commission under this Law shall be furnished; and

(f) procedures under which and the conditions on which a public company may appeal to the Commission against a refusal of a stock exchange to list its securities.

SECURITIES INDUSTRY LAW, 1993

142. (1) In this Law; unless the context otherwise requires—

Interpretation.

- “agent” in relation to a dealer, includes a person who is or has at any time been a banker of the dealer;
- “arbitrage” means profiting from differences in price of the same security traded on two or more markets;
- “auditor” means a company auditor qualified as such under the Companies Code, 1963 (Act 179);
- “body corporate” includes an incorporated body under the Incorporated Private Partnerships Act 1962 (Act 152) ;
- “book” includes any register, document or other record of information and any account or accounting record, however compiled, recorded or stored whether in written or printed form or microfilm by electronic process or otherwise;
- “chairman” means the chairman of the Commission;
- “Commission” means the Securities Regulatory Commission established by section 1;
- “company” has the same meaning as is assigned to it in the Companies Code, 1963 (Act 179);
- “council” in relation to a stock exchange, means the persons for the time being in whom the management of the stock exchange is vested;
- “court” means the Commercial Division of the High Court;
- “dealer” means a person who carries on a business of dealing in securities whether he carries on any other business or not, but does not include an exempt dealer;
- “dealer’s representative” means a person, in the direct employment of, or acting for, or by arrangement with a dealer, who performs for that dealer any of the functions of a dealer.

145

SECURITIES INDUSTRY LAW, 1993

- ” (other than work ordinarily performed by accountants, clerks or cashiers) whether his remuneration is by way of salary, wages, commission or otherwise; and where the dealer is a body corporate, includes any director or officer of the body corporate who performs for the body corporate any of the said functions;
- “dealing in securities” means, whether as principal or agent making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into—
- (a) any agreement for or with a view to acquiring, disposing of, subscribing for or underwriting securities; or
 - (b) any agreement the purpose or intended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the price of securities;
- “director” has the same meaning as is assigned to that expression in section 179 of the Companies Code 1963 (Act 179);
- “executive officer”, in relation to a body corporate, means any person by whatever name called who is concerned or takes part in the management of the body corporate whether or not he is a director of the body corporate;
- “exempt dealer” means a person specified under section 65;
- “investment adviser” means a person who—
- (a) carries on a business of advising others concerning securities;
 - (b) as part of a regular business issues or publishes analysis or reports concerning securities; or
 - (c) pursuant to a contract or arrangement with a client, undertakes on behalf of the client (whether on a discretionary authority granted by the client or otherwise) the management of a portfolio of securities for the purpose of investment,

SECURITIES INDUSTRY LAW, 1993

but does not include—

- (d) a bank as defined in section 48 of the Banking Law, 1989 (PNDCL.225);
- (e) a company registered under the Insurance Law; 1989 (PNDCL.227);
- (f) a lawyer or accountant in practice whose carrying on of that business is solely incidental to the practice of his profession;
- (g) a dealer or his employee or a dealer's representative whose carrying on of that business is solely incidental to the conduct of his business of dealing in securities; or
- (h) a person who is the proprietor of a newspaper where—
 - (i) in so far as the newspaper is distributed generally to the public, it is distributed only to subscribers to, and purchasers of, the newspaper for value;
 - (ii) the advice is given or the analysis or reports are issued or published only through that newspaper;
 - (iii) that person receives no commission or other consideration for giving the advice or for issuing or publishing the analysis or reports; and
 - (iv) the advice is given and the analysis and reports are issued or published solely as incidental to the conduct of that person's business as a newspaper proprietor;

“investment representative” means a person, in the direct employment of or acting for or by arrangement with an investment adviser, who performs for the investment adviser any of the functions of an investment adviser (other than work ordinarily performed by accountants, clerks or cashiers) whether his remuneration is by way of salary, wages, commission or otherwise and includes a director or

SECURITIES INDUSTRY LAW, 1993

“ officer of a body corporate who performs for the body corporate any of the said functions;

“licence” means—

- (a) a dealer’s licence;
- (b) an investment adviser’s licence; or
- (c) a representative’s licence, issued under Part V;

“listing rules”, in relation to a body corporate that maintains or provides, a stock market of a stock exchange, means rules made by its council governing or relating to—

- (a) the admission to the official list of the body corporate, of bodies corporate, governments, unincorporated bodies or other persons for the purpose of the quotation on the stock market, or made available by bodies corporate, governments, unincorporated bodies or other persons or the removal from that official list and for other purposes; or
- (b) the activities or conduct of bodies corporate, governments, unincorporated bodies and other persons who are admitted to that list,

whether those rules—

- (i) are made by the body corporate or are contained in any of the constituent documents of the body corporate; or
- (ii) are made by another person and adopted by the body corporate;

“member company” means a company which carries on a business of dealing in securities and is recognised as a dealing member by a stock exchange;

“member firm” means an incorporated private partnership which carries on a business of

SECURITIES INDUSTRY LAW, 1993

dealing in securities and is recognised as a dealing member by a stock exchange;

“mutual fund” shall have the same meaning as that provided in section 319 of the Companies Code 1963 (Act 179);

“prescribed interest” means any right to participate or any interest, whether enforceable or not and whether actual, prospective or contingent—

(a) in any profits, assets or realization of any financial or business undertaking or scheme whether in Ghana or elsewhere;

(b) in any common enterprise, whether in Ghana or elsewhere, in relation to which the holder of the right or interest is led to expect profits, rent or interest from the efforts of the promoter of the enterprise or a third party;

(c) in a class or kind of rights or interests, declared by the regulations to be an exempt right or interest; or

(d) in any investment contract, whether or not the right or interest is evidenced by a formal document and whether or not the right or interest relates to a physical asset,

but does not include—

(e) any share in, or debenture of a corporation;

(f) any interest in, or arising out of a policy of life insurance; or

(g) an interest in a partnership agreement, unless the agreement or proposed agreement—

(i) relates to an undertaking, scheme, enterprise or investment contract promoted by or on behalf of a person whose ordinary business is or includes the promotion of similar undertakings, schemes, enterprises or investment contracts, whether or not that person is, or is to become, a

SECURITIES INDUSTRY LAW, 1993

- party to the agreement or proposed agreement; or
- (ii) is or would be an agreement, within a class of agreements, prescribed by the regulations for the purposes of this paragraph;

“relevant authority”–

- (a) in relation to member company or member firm, means the stock exchange by which the company is recognised; and
- (b) in relation to any other person, means the Commission;

“rules”, in relation to a stock exchange, means the rules governing the conduct of the stock exchange or its members and includes regulations made by the council of a stock exchange for the purpose;

“Secretary” means the Secretary responsible for Finance;

“securities” means–

- (a) shares or debentures within the meaning of the Companies Code, 1963 (Act 179);
- (b) bonds or other loan instrument of the Government of Ghana or any other country;
- (c) bonds or other loan instruments of a corporation established under an enactment for the time being in force;
- (d) rights or interests (whether described as units or otherwise) under any unit trust;
- (e) such other instruments as the Secretary may by notice in the Gazette prescribe;

“share” means the interest of members of a body corporate who are entitled to share in the capital or income of such body corporate;

SECURITIES INDUSTRY LAW, 1993

- “stockbroker” means a person who is—
(a) a director of a member company; or
(b) a partner of a member firm.
- “stock exchange” means any body corporate which has been approved by the Commission under section 25 of this Law;
- “stock market” means a market, exchange or other place, at which, or a facility by means of which securities are regularly offered for sale, purchased or exchanged;
- “substantial shareholder” means a share holder entitled to exercise or control the exercise of 30% or more of the voting power at general meetings of the company or one who is in a position to control the composition of a majority of the board of directors of a company;
- “trust account” means a trust account opened and maintained under section 85;
- “trustee” means the corporate body in which the property for the time being subject to any trust created in pursuance of the scheme is or may be vested in accordance with the terms of the trust deed;
- “units” means any portion or division of a unit trust fund (whether described as units or otherwise) into which are divided the beneficial interest in the assets subject to a trust created under the scheme;
- “unit trust scheme” means any arrangement whereby securities or any other charge (other than a charge to secure the debentures of one body corporate) are vested in trustees and the beneficial interest in it is divided into units, sub-units or other interests by whatever name called with a view to an invitation being made to the public to acquire such units or any of them.

SECURITIES INDUSTRY LAW, 1993

Associated
person.

143. (1). A reference in this Law to a person associated with another person shall be construed as follows—

(a) where the other person is a body corporate—

- (i) a director or secretary of the body corporate;
- (ii) a body corporate that is related to the other person; or
- (iii) a director or secretary of such a related body corporate;

(b) where the matter to which the reference relates is the extent of power to exercise or to control the exercise of the voting power attached to voting shares in a body corporate, a person with whom the other person has or proposes to enter into an agreement, arrangement, understanding or undertaking, whether formal or informal and whether express or implied—

- (i) by reason of which either of those persons may either, directly or indirectly, control the exercise of or substantially influence the exercise of any voting power attached to a share in the body corporate;
- (ii) with a view to controlling or influencing the composition of the board of directors or the conduct of affairs of the body corporate; or
- (iii) under which either of those persons may acquire from each other shares in the body corporate or may be required to dispose of such shares in accordance with the directions of the other body;

(c) a person in concert with whom the other person is acting or proposes to act in relation to the matter to which the reference relates;

(d) where the matter to which the reference relates is a matter, other than the extent of power to exercise or to control the exercise of the voting power attached to voting shares in a body corporate—

- (i) subject to subsection (2), a person who is a director of a body corporate that carried on a business of dealing in securities and of which the other person is also a director;

SECURITIES INDUSTRY LAW, 1993

- (ii) subject to subsection (2), a person who is a director of a body corporate of which the other person is a director, not being a body corporate that carried on a business of dealing in securities; or
- (iii) a trustee of a trust in relation to which the other person benefits or is capable of benefiting otherwise than by reason of transactions entered into in the ordinary course of business in connection with the lending of money;
- (e) a person with whom the other person is, by virtue of any regulation that may be introduced, regarded as associated in respect of the matter to which the reference relates;
- (f) a person with whom the other person is, or proposes to become associated, whether formally or informally, in any other way in respect of the matter to which the reference relates; or
- (g) where the other person has entered into, or proposes to enter into a transaction or has done, or proposes to do, any other act or thing, with a view to becoming associated with a person as mentioned in paragraph (a), (b), (c), (d), (e) or (f).

(2) where, in proceedings under this Law, it is alleged that a person referred to in subsections (1) (d) (i) and (ii) was associated with another person at a particular time, that person shall be deemed not to have been associated in relation to a matter to which the proceedings relate unless the person alleging the association proves that the first mentioned person at that time knew or ought reasonably to have known the material particulars of that matter.

(3) A person shall not be taken to be associated with another person by virtue of sub-section (1) (b), (c), (e) or (f) by reason only that one of those persons furnishes advice to, or acts on behalf of, the other person in the proper performance of functions that relate to his professional capacity or to his business relationship with the other person.

144. (1) Where any property held in trust consists of or includes securities in which a person knows or has reasonable grounds for believing that he has an interest, he shall be deemed to have an interest in those securities. Interest in securities.

SECURITIES INDUSTRY LAW, 1993

- (2) A right does not constitute an interest in a security where—
- (a) the right was issued or offered to the public for subscription or purchase;
 - (b) the public was invited to subscribe for or purchase such right, and the right was subscribed for or purchased; or
 - (c) such right is held by the management company and was issued for the purpose of an offer to the public within the meaning of section 266 of the Companies Code, 1963 (Act 179).
- (3) A person shall be deemed to have an interest in a security where a body corporate has an interest in a security and—
- (a) the body corporate is, or its directors are under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that person in relation to that security;
 - (b) that person has a controlling interest in the body corporate; or
 - (c) that person is, or the associates of that person or all are entitled to exercise or control the exercise of not less than 30% of the votes attached to the voting shares in the body corporate.
- (4) For the purposes of subsection (3) (c) of this section, a person is an associate of another person if the person is—
- (a) a body corporate which, by virtue of section 3 of the Companies Code, is an associated company in relation to the other person;
 - (b) a person in accordance with whose directions, instructions or wishes that other person is accustomed to or is under an obligation, whether formal or informal, to act in relation to the security referred to in subsection (3);
 - (c) a body corporate which is, or the directors of which are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that other person in relation to that security; or
 - (d) a body corporate in accordance with the directions, instructions or wishes of which, or the directors of which, that other person is accustomed or under an obligation, whether formal or informal, to act in relation to that security.

1576

SECURITIES INDUSTRY LAW, 1993

(5) A person shall be deemed to have an interest in a security in any one or more of the following circumstances—

- (a) where he has entered into a contract to purchase a security;
- (b) where he has a right, otherwise than by reason of having an interest under a trust, to have a security transferred to himself or to his order, whether the right is exercisable presently or in the future and whether on the fulfillment of a condition or not;
- (c) where he has the right to acquire a security or an interest in a security, under an option; or
- (d) where he is entitled, otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of a body corporate or of a class of its members, to exercise or control the exercise of a right attached to a security, not being a security of which he is the registered holder.

(6) A person shall be deemed to have an interest in a security if that security is held jointly with another person.

(7) For the purpose of determining whether a person has an interest in a security, it is immaterial that the interest cannot be related to a particular security.

(8) There shall be disregarded—

- (a) an interest in a security if the interest is that of a person who holds the security as a bare trustee;
- (b) an interest in a security of a person whose ordinary business includes the lending of money if he holds the interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money;
- (c) an interest of a person in a security being an interest held by him by reason of his holding a prescribed office; and
- (d) such interest in securities as may be prescribed.

(9) An interest in a security shall not be disregarded by reason only of—

- (a) its remoteness;
- (b) the manner in which it arose; or
- (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made subject to restraint or restriction.

127

SECURITIES INDUSTRY LAW, 1993

Consequential
amendment to
companies
Code.

145. (1) Section 279 of the Companies Code, 1963 (Act 179) is amended by the insertion immediately after subsection (9) of the following new subsection—

“(9a) In any case not falling within subsection (5) or (6) of this section the Registrar may, for the purpose of reaching an opinion on whether a prospectus—

(a) does not comply with the provisions of this Code; or

(b) contains any untrue statement; or

(c) omits to state any material fact; or

(d) is otherwise incomplete or misleading,

refer the prospectus to the Securities Regulatory Commission for its opinion and in such a case the Commission shall give its opinion within the period of 21 days, in relation to the prospectus, referred to in subsection (8) of this section”.

(2) Section 280 of the Companies Code, 1963 (Act 179) is amended by the substitution for subsection (1) of the following subsection—

“(1) For the purposes of this Code, “approved stock exchange” means a body corporate approved as a stock exchange under section 25 of the Securities Industry Law, 1993 (P.N.D.C.L. 333)”.

Repeals.

146. The following enactments are hereby repealed section 318 of the Companies Code, 1963 (Act 179); Stock Exchange Act, 1971 (Act 384).

Savings.

147. (1) Notwithstanding the repeal of the Stock Exchange Act, 1971 (Act 384) any stock exchange authorised under section 1 of that Act shall be deemed to have been approved by the Commission under section 25 of this Law and this Law shall apply accordingly in relation to the stock exchange.

(2) The regulations and rules governing the conduct of any stock exchange referred to in subsection (1) which are in force immediately before the commencement of this Law shall, after the commencement of this Law, be deemed to be the regulations and rules of the stock exchange and this Law shall apply accordingly in relation to those rules and regulations.

Interim powers
of the Govern-
or of the Bank
of Ghana.

148. Until the Commission commences operations, its functions and powers shall be exercised by the Governor of the Bank of Ghana, and any reference in this Law to the Commission shall be construed accordingly.

Made this 5th day of January, 1993.

JERRY JOHN RAWLINGS
Chairman of the Provisional National Defense Council

Date of Gazette notification: 19th November, 1993

ATTACHMENT E

BANK OF GHANA

NOTICE TO THE PUBLIC

NOTICE NO. BG/GOVISEC/195/118

NON-BANKING FINANCIAL INSTITUTIONS - VENTURE CAPITAL FUNDING COMPANIES CATEGORY OF INSTITUTIONS - DRAFT OPERATING GUIDELINES

The Bank of Ghana announces for the information of the public that, as part of its exercise to set up the necessary supervisory measures for the prudential management of Venture Capital Funding Companies, it has formulated draft operating guidelines for these institutions.

The guidelines are to be issued to the institutions, pursuant to the Bank's supervisory authority under the Financial Institutions (Non-Banking) Law, after an opportunity has been given to the public and all the interested parties/groups to comment on the proposals.

Accordingly, the Bank will be pleased to receive comments/suggestions on any part of the proposed guidelines which are provided hereunder for its further consideration.

1.0 Investment Operation

1.1 Licensed Venture Capital Funds Companies (VCFC) shall make all financing by way of equity or equity-cum debt or in any other acceptable manner according to investment policies which are agreed to by all the investors' shareholders prior to commencing investment operations, and the related memoranda shall be filed in advance with the Bank of Ghana.

1.2 The financing/investment policies shall include policies on:

- exposure limits to individual enterprises and groups which are in conformity with the relevant provisions of the FINBL, 1993
- types of investment instruments
- proposed duration/maturity period of individual investments
- the decision-making process and procedure
- investment of unutilized surpluses

1.3 Bank of Ghana's prior authorization may be obtained for any changes proposed to be made in investment policies and procedures before such changes are given effect to by the VCFC.

1.4 No investment shall be made by a licensed VCFC which is not in accordance with its investment policies as set out in the Investment Memoranda filed with the Bank of Ghana before commencing the VCFC operations.

1.5 No licensed VCFC shall accept capital contribution without sufficient knowledge of the identity of the investor-shareholder.

1.6 No licensed VCFC shall accept capital contribution without making the investor fully aware of:

- the risks attached to the investment
- the investment policies.

2.0 Fund Manager - Qualifications, etc.

2.1 Every licensed VCFC shall ensure that a fund manager appointed by it, is competent and qualified with a good track record to manage such funds and has necessary business integrity.

2.2 Each Fund Manager/Management Company shall hold an "Investment Advisor's" Licence in terms of Section 53 of the Securities Industry Law, 1993 (PNDC Law 333) and is authorised by Bank of Ghana/SRC to engage in Portfolio/Fund Management activities.

2.3 Each licensed VCFC and its appointed Fund Manager shall have joint responsibility in the investment operation and shall accordingly ensure together compliance with the FINB Law, Regulations and Operating guidelines.

2.4 The Management or other fees payable to the fund managers shall be duly reported to the Bank of Ghana.

3.0 Risk Management - Norms

3.1 Related Transactions

While making any loans or advances and/or equity investments to one or more of the VCFC's own subsidiaries, or affiliates, the limit on all such facilities in the aggregate shall not exceed 25% of the net worth of the VCFC.

3.2 Connected Transactions

Any transaction with a company/firm by way of equity investment or equity-cum-debt or otherwise in which any of the VCFC's directors, officials or employees is interested as a partner, a guarantor, or as a principal shareholder shall be reported at least thirty (30) days in advance to the Bank of Ghana of the VCFC's intention to extend such facilities and the Bank of Ghana's advice/comments, if any, shall be taken into account before going ahead with such a transaction.

3.3 Any unsecured credit to a director shall not exceed 2% of VCFC's networth and 2-year's salary for the officer or employee.

3.4 Inter-Institutional transactions

Any proposal of providing equity investment and/or granting any loans or undertaking any other financial guarantees or indemnities to any banking institutions or non-banking financial institutions including the VCFC shall forthwith be reported to the Bank of Ghana with complete details of such a transaction, including name of the counterparty, nature of facility, type and value of collateral if any, rate of interest/commission.

4.0 Portfolio Classification

4.1 The VCFC shall review its investments by equity or debt on an on-going basis and shall make a health grading of all the financial assets at least two (2) categories as "current" and "problem investments".

4.2 "Problem Investments" are those in which there is diminution in the value of assets and/or the expected/scheduled receivables/returns by way of interest/dividends that are past due for 180 days from the expected date.

4.3 The VCFC shall make adequate provisions covering the diminution in the value of assets/receivables, and ensure that the position of investments/assets shown in the VCFC's Balance Sheet/Asset-Liability Profiles realistically represent the net values of the investments.

4.4 The VCFC shall maintain consistency in the investment valuations and in following other accounting standards and any changes proposed need to be brought to the notice of the Bank of Ghana in advance and properly explained in the audited annual accounts.

4.5 The Board of the VCFC company shall set out proper principles/standards of portfolio valuation to be followed by its company based on models such as "the European Venture Capital Association (EVCA) set of Common European Principles for the valuation of venture capital portfolio" and file copies of such laid-down principles with the Bank of Ghana and provide them to the VCFC's external auditors.

5.0 Capital Funds

5.1 No funds contributed by the investors by way of equity or subordinated debt to form the "owned funds" corpus of the VCFC shall be distributed/transferred/repatriated and adjusted in any manner by the company without the prior consent of the Bank of Ghana.

5.2 Also, the level of such unimpaired "owned funds" shall not at anytime during the period of the life of the Venture Capital Fund, fall below the amount of c100m (One hundred million cedis).

5.0 Deposits from the Public

No VCFC shall accept deposits or investment from the public.

7.0 Interest/Dividends

The Licensed VCFC are free to determine their rates of interest, dividends or any other receivables and charges for any financial services rendered.

8.0 Other Matters

8.1 Changes in the Board's Composition

Licensed VCFC shall notify the Bank of Ghana of every proposal for change of director on the Board or Chief Executive Officer (CEO), thirty (30) days in advance of such a change and, if such change occurs for a sudden reason, within 3 days after its occurrence with reasons for the proposed change/occurrence.

8.2 Undesirable Activities

VCFC's shall not engage in or finance any activity in any way which relates to gambling, betting or any other speculative ventures or any other socially undesirable activities.

8.3 Accounting Year

For the purpose of Section 22 (f) of the FINB Law 1993, the VCFC shall follow the calendar year, commencing on 1st January to 31st December of that year.

8.4 Submission of Audited Accounts

While complying with the Provisions of Sections 22 to 24 of the FINB Law relating to auditing of accounts, each VCFC shall ensure that a copy of the audited accounts is submitted to the Bank of Ghana within four (4) months of the end of the year to which they relate.

All written comments and suggestions on the guidelines should be submitted to the Acting Secretary, Bank of Ghana, P. O. Box 2674, Accra, within one month from the date of this publication.

A. BERNASKO
AG. SECRETARY

31st August, 1995.

158

ATTACHMENT F

MANAGEMENT AGREEMENT

BETWEEN

1) THE ENTERPRISE FUND, a Ghanaian company limited by guarantee (hereinafter referred to as EF).

and

2) THE VENTURE FUND MANAGEMENT COMPANY, a Ghanaian company with head offices in Accra (hereinafter referred to as the Manager).

WHEREAS

- A EF is about to sign a grant agreement with the Ministry of Finance and Economic Planning and the Commission of the European Communities under their joint Small and Medium Enterprises Development Programme (hereinafter referred to as "MFEP/EC").
- B. EF has, as a principal investment objective, the making of investments in small and medium-scale companies in Ghana as defined in its Investment Policy Directive described in Schedule 1 (hereinafter called "the Target Enterprises").
- C. EF is about to enter into loan agreements with a number of Participating Financial Institutions engaged in commercial lending or leasing (hereinafter called "the PFIs"), to wholesale EF's funds to these financial institutions to on-lend to Target Enterprises.
- D. EF is about to enter into a Memorandum of Understanding with the Business Planning Development Fund (hereinafter called the "BDPF"), which is also supported by the Commission of the European Communities Small and Medium Enterprises Development Programme, to collaborate in the review of business plans of Target Enterprises.
- E. EF wishes to contract the services of the Manager which is willing and able to perform all management roles and functions directed to the implementation of EF's objectives.

NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS

-CLAUSE 1 - EXECUTION OF AGREEMENT

- 1.1 The Manager shall have full powers to exercise and perform all the duties and obligations of the management of EF in accordance with the EF's

Regulations, EF's Agreements with other parties, and all applicable laws and regulations and, in particular:

- a) To make and monitor investments and disinvestments in Target Enterprises on behalf of EF;
- b) To loan EF's funds to PFIs for on-lending to Target Enterprises.

1 2 In performance of its duties the Manager shall always act in the interests of EF and shall in particular:

- a) Adhere to the Investment Policy Directive attached hereto as Schedule 1 and which shall form part of this Agreement;
- b) Make decisions regarding investments and disinvestments by applying a standard internal procedure set up specifically by the Manager and approved by the EF Council, which approval shall not be unreasonably withheld, for the purpose of carrying out this Agreement;
- c) Seek to apply in b) above a simplified procedure suited to the smaller size of Target Enterprises, and to process applications in an efficacious manner, endeavouring to make decisions and complete documentation within a reasonable period.
- d) Prepare, prior to referring and making an investment, a report on technical and financial information of the proposed investment or disinvestment, including, inter alia,
 - historical statistics and projections of balance sheet, profit and loss and cash flow statements;
 - market concept, strategy and tactics, existing corporate structure and organisation and any proposed reorganisation;
 - critical aspects of the financial plan, including sources of finance and taxes;
 - risk analysis of the products, markets, technology and operations;
 - management expertise, licensing and technology arrangements;
 - investment incentives being sought;
 - potential and intended exit routes and a timeframe for selling the investment or recovering the loan;

- a timetable for the investment of funds and details of existing and potential other investors.
- e) Carry out EF's undertakings with respect to the Memorandum of Understanding with BDPF, in particular to participate in the BDPF Advisory Group.
- f) Prepare reports on EF's operations as required to be submitted to MFEP/EC.

CLAUSE 2 - FEES

2.1 In consideration for the services performed herein the Manager shall be paid the following fees by EF:

- a) A Flat Fee at the beginning of each year equivalent to one percent (1%) of the total grant funds for investment committed to EF and no less than Ecu 35,000 per annum;
- b) A Flat Fee at the beginning of each quarter equivalent to one point two five percent (1.25%) of the total funds directly invested by the Manager;
- c) A Flat Fee at the beginning of each quarter equivalent to point five percent (0.5%) of the total funds loaned to the PFI's;
- d) A Front End fee on commencement of this Agreement of Ecu 35,000 in respect of costs incurred by the Manager for the recruitment, equipping and establishment of staff to perform the Manager's obligations under this Agreement;
- e) An incentive fee paid as soon as possible after the presentation of EF's annual audited accounts to members of EF equivalent to fifteen percent (15%) of the amount by which audited net assets of EF exceed the performance target as defined in Clause 2.2 below.

All fees payable hereby shall be paid in Cedis at the exchange rate ruling on the date of the payment. Unless otherwise agreed, the exchange rate shall be that shown in the Official Journal of the European Communities for the month in which the payment takes place.

- 2.2 The Performance Target of EF shall be determined by the value of audited net assets at the date of the determination, and is found by increasing the Cedi equivalent of monies paid into the fund, from the date the monies are paid into the fund up the date of the determination, by three quarters of the increase in the Combined Consumer Retail Price Index as issued monthly by the Ghana Statistical Service. This amount shall be certified by EF's auditors. If EF subsequently review its Investment Policy Directive such as to reduce the Performance Target defined therein, the Performance Target as defined in this Agreement shall be amended accordingly.
- 2.3 Each payment of fees to the Manager shall be authorised by two of the ordinary members of the the EF, and within ten days after prior notification to each of GOG and EC
- 2.4 A statement of total fees paid to the Manager in any accounting year shall be attached to the annual audited accounts of the EF for that year and shall be the subject of a separate report to the members of the EF by the auditors of the EF who shall confirm that in their opinion, the amounts paid were properly calculated and payable hereunder.

CLAUSE 3 - COSTS

- 3.1 The following direct costs are to be borne by the Manager:
- a) All salary costs of the Manager's employees;
 - b) All working expenses incurred by these employees (travelling, meals, etc.);
 - c) All investment requirements, both in terms of human resource investments, as well as physical premises, office equipment, data processing equipment etc.;
 - d) All attorney, tax advisory, accountant, consultant, or any other external service costs, when these costs have been incurred in matters related only to affairs of the start-up and operational activity of the Manager;
- 3.2 The following direct costs are to be borne by EF:
- a) All legal, documentary, tax advisory, accountancy or consultancy costs directly incurred in connection with investment in the Target Enterprises. When they are incurred with Target Enterprises that EF does not ultimately invest in, these costs will be allocated to a special account of non-successful investments;

- b) All attorney, tax advisory, accountancy, consultancy or any other external costs, when these costs are related to the start up and establishment of EF, and the subsequent independent financial and technical audits of EF.
- c) All meeting expenses of EF's Board of Directors and Members, company secretarial fees, public relations costs and such other costs as may be agreed by the Directors of EF from time to time subject to EF's annual operating budget, as defined in Clause 4.2.
- d) All sales taxes, duties and other taxes incurred by EF.

All these costs will be incurred during the normal activity of the Manager and will be billed directly to EF. A quarterly report with all these incurred expenses will be distributed to the EF Council.

CLAUSE 4 - MANAGER'S AUTHORITY AND OBLIGATIONS

4.1 Manager's Authority

In furtherance of the management duties of the Manager, the Manager will be and by the terms hereof deemed authorised and empowered subject to the terms of this Agreement, to carry out and implement any and all of the purposes and objectives of EF and without limiting the generality of the foregoing

- a) to enter into consulting agreements with outside experts to assist the Manager in the performance of the Manager's duties;
- b) to employ independent attorneys, accountants, consultants, advisors, appraisers or such other persons as the Manager may deem necessary or advisable, provided that compensation to be paid by EF to such persons is not in excess of normal and reasonable rates for the services performed;
- c) to open, maintain and close bank accounts in Cedís or any other currency as the Manager shall deem appropriate and to draw cheques and other orders for the payment of money;
- d) to enter into, make and perform such contracts, agreements and other undertakings and to do such other legitimate acts as the Manager may deem necessary for the conduct of the business of EF including,

without in any manner limiting the generality of the foregoing, contracts, agreements, undertakings and transactions with any person, firm or corporation having any business, financial or other relationship with the Manager; provided, however, that such transactions with related persons shall be disclosed to the EF Council and shall be on terms no less favourable to EF than are generally afforded to unrelated third parties in comparable transactions;

- e) to enter into and administer loan agreements with PFIs to wholesale EF's funds to these PFIs to on-lend to Target Enterprises;
- f) to manage EF's affairs, including maintaining supervision of EF's portfolio, investigating suitable investment opportunities for EF, and performing all administrative functions including acting as custodian for EF's assets, and the filing and registering of such information and returns and the taking of such other action as is required of EF under Ghanaian law;
- g) with specific authority of the EF Council, to commence or defend litigation that pertains to EF or any of its assets.

4.2 Restrictions on the Manager's Authority

The Manager shall consult with, and be guided by, the EF Council in respect of the following:

- a) The Manager shall present an annual operating budget to the EF Council for approval. If in the course of the year, the Manager deems it necessary to exceed the operating budget by more than an amount set by the EF Council, the Manager will consult with the EF Council and obtain their approval before making such expenditures.
- b) The first operating budget shall cover the period to 31 December 1995 and shall be presented to the EF Council within 30 days of the date of this Agreement.
- c) The Manager shall not incur, assume or permit to exist any indebtedness on behalf of EF, nor create any mortgage, charge, pledge or otherwise encumber any property or assets of EF; except in so far as is approved by the EF Council.

4.3 Reporting by the Manager

4.3.1 The Manager shall keep the EF Council fully informed, both orally and in

writing on all matters which should properly be brought to its attention. Without limiting the generality of the foregoing, the Manager shall provide to the EF Council:

- a) within forty five days after the end of quarter of EF's financial year, a report on the operational progress and prospects of EF's business at the end of such quarter, which report shall include (but shall not be limited to):
 - i) a summary of all investment opportunities received directly by EF, and of all investments made both by EF and by the PFIs, noting how these relate to the Investment Policy Directive;
 - ii) a description of the activities of the Manager during the period
 - iii) an outline of the future investment and management policies and plans;
- b) within forty five days after the end of each half of EF's financial year:
 - i) a report detailing the performance of the investments of EF during the half year;
 - ii) a report on actual operating expenditures compared to budgeted expenditures;
 - iii) a cash flow forecast, including projections for each ensuing six months of EF's liquidity situation and funding requirements;
 - iv) an unaudited profit and loss account and income statement for the half year, a balance sheet showing EF's state of affairs at the end of such half year, together with a valuation report of its assets;
- c) at least one month before the beginning of each financial year of EF, a budget for the forthcoming year for approval by the EF Council;
- d) forthwith on receipt thereof, copies of any report or communication received from the auditor of EF relating to its financial position or affairs;
- e) forthwith on request, such further information regarding EF's operations and affairs as the EF Council may reasonably require.

4.3.2 The Manager shall do everything within its power to ensure that the EF Council receive as soon as possible after (and at the latest within three months after) the end of each financial year of EF, copies of the auditors' report therein and any document referred to therein.

4.3.3 All written reports and all accounts to be provided hereunder shall be in a form satisfactory to the EF Council.

4.4 Monitoring and Evaluation by the MFEP/EC

The Manager shall prepare such reports as directed by the EF Council to submit to the MFEP/EC as required under the MFEP/EC's grant agreement with EF, and to facilitate inspection from time to time of EF's premises, property and assets and its books of accounts and records by representatives of the MFEP/EC.

CLAUSE 5 - TERM OF AGREEMENT

5.1 The initial term of this Agreement shall be four years from the date this Agreement becomes effective.

5.2 Notwithstanding Clause 5.1, the following shall constitute a breach of this Agreement and except as otherwise provided shall entitle the non-breaching party to immediately terminate this Agreement:

i) either party shall fail to perform or observe any material obligation contained herein and any such failure remains unremedied for ninety days after written notice thereof shall have been given to the breaching party by the non-breaching party;

or

ii) either party (a) shall be adjudicated a bankrupt or insolvent or admit in writing its inability to pay its debts as they mature, or make an

assignment for the benefit of creditors; or (b) shall fail generally to pay its debts as such debts become due and payable; or (c) shall apply for or consent to the appointment of any receiver, trustee, custodian or similar officer for it or for all or any substantial part of its property; or such receiver, trustee, custodian or similar officer shall be appointed without the application or consent of such party and such appointment shall continue undischarged for a period of sixty days; or (d) shall institute (by petition, application, answer, consent or otherwise) any bankruptcy, insolvency, reorganisation, arrangement, readjustment of

debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction; or any such proceeding shall be instituted (by petition, application or otherwise) against such party and shall remain undismissed for a period of sixty days.

- 5.3 Notwithstanding Clause 5.1, either party may elect to terminate this Agreement on the forth anniversary of the date this Agreement becomes effective, by issuing 60 days notice in writing, if at that date less than the equivalent of Ecu 1.4 million has been invested by EF in Target Enterprises either directly or through PFIs.
- 5.4 In the event that EF's grant agreement with MFEP/EC is terminated before all grant funds are disbursed, both EF and the Manager shall review their obligations under this Agreement and either party may elect to terminate this Agreement
- 5.5 In the event of termination of this Agreement, the Management Fees for any partial year shall be prorated on the basis of the ratio that the total number of days in that year during which this Agreement was in effect bears to 365. If this Agreement comes to an end during the course of a year the Manager shall refund to EF an appropriate proportion of the Management Fees paid in advance.
- 5.6. Notwithstanding Clause 5.1 above and Clause 3.4 of the Joint Implementation Memorandum No.3, the Manager may require a revision of the fees for the services performed under the present agreement at the end of each year of operation.

CLAUSE 6 - FORCE MAJEURE

- 6.1 The Manager shall not be considered in default in the performance of his duties under this Agreement if such performance is prevented or delayed by war, hostilities, actual or reasonably apprehended acts of violence, strikes, accidents, acts of God or any other cause outside the control of the Manager.

CLAUSE 7 - CONDITIONAL NATURE OF AGREEMENT

- 7.1 This Agreement shall not come into effect until the prior fulfilment of the following conditions precedent:

(a) The EF signs a grant agreement with the GOG and EC under which it receives funds from the Small and Medium Enterprises Development Programme;

(b) Receipt by the Manager of the first payment of Management Fees due under Clause 2.1(a) of this Agreement.

- 7.2 If any of the conditions listed in Clause 7.1 shall not have been fulfilled before the expiry of ninety days from the date hereof, any obligations of the party of the parties then subsisting under this Agreement shall cease, unless both parties agree otherwise.

CLAUSE 8 - LIMITATION OF LIABILITY

- 8.1 The Manager, its officers, employees or agents shall not be liable for any loss or damage EF may suffer otherwise than through gross negligence, dishonesty, fraud, wilful neglect or default on the part of the Manager, its officers, employees or agents.
- 8.2 No claim of whatever nature arising out of or connected with or related to the performance or non-performance by or on behalf of the Manager, its officers, employees or agents, of any obligation under this Agreement shall be brought against the Manager, its officers, employees or agents more than twelve months after the end of the Contract Period.

CLAUSE 9 - INDEMNITY

- 9.1 EF shall keep the Manager, its officers, employees and agents indemnified against all actions, claims, costs and proceedings arising as a result of or in connection with the performance by the Manager of its duties and obligations hereunder except where such actions, claims, costs and proceedings are in respect of the gross negligence, dishonesty, fraud, wilful neglect or default of the Manager, its officers, employees or agents.

CLAUSE 10 - SERVICES TO OTHER COMPANIES

- 10.1 The Manager may provide management services and other services to any company PROVIDED THAT the provision of such services by the Manager to such companies does not cause a conflict of interest with the duties and obligations of the Manager hereunder.
- 10.2 The Manager shall be entitled to retain for itself any fees, commissions and remuneration earned by the Manager from the services it provides to companies other than EF in accordance with Clause 10.1.
- 10.3 The Manager shall not be entitled to receive fees from any Target Enterprises or PFIs in connection with any investment by or monies from EF.
- 10.4 Nothing in this Agreement shall prevent the Manager from making, or acting on behalf of other parties that wish to make subsequent investments in

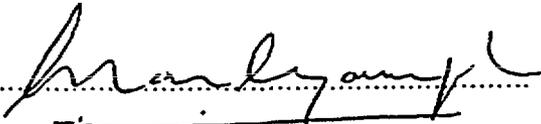
Target Enterprises, providing this is fully disclosed to the Board of EF and does not conflict with EF's interests in the relevant Target Enterprise.

- 10.5 Nothing in this Agreement shall prohibit or prevent the Manager from promoting and or managing venture capital or other funds other than EF and EF's Funds.

CLAUSE 11 - MISCELLANEOUS

- 11.1 EF and the Manager are not partners or joint venturers with each other, and nothing herein shall be construed to make them such partners or joint venturers or impose any liability as such on any of them.
- 11.2 No party may assign any or all of its rights under this Agreement without the written consent of the other party hereto.
- 11.3 Every provision of this Agreement is intended to be severable. If any term or provision hereof is found to be illegal, invalid or unenforceable for any reason whatsoever, such illegality, invalidity or unenforceability shall not affect the validity of the remainder of this Agreement.
- 11.4 The laws of Ghana shall govern the validity of this Agreement, the construction of its terms and the interpretation of the right and duties of the parties.
- 11.5 Except as required to enable the Manager to carry out its obligations hereunder, the Manager shall not during or after the term of this Agreement, except with the written consent of the Directors of EF, disclose to any third party any information of a confidential nature relating to the business or affairs of EF or any person or entity with which EF has dealings which may come to the knowledge of the Manager during the term of this Agreement

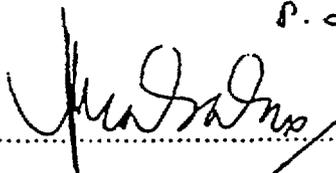
IN WITNESS WHEREOF, this Agreement has been executed by the parties as of the date first above written

By: 

For and on behalf of the Enterprise Fund

Date: 27th June 1995

Address for Notices: 40 Accra Nominees Ltd,
Mobil House,
P.O. Box 242, Accra.

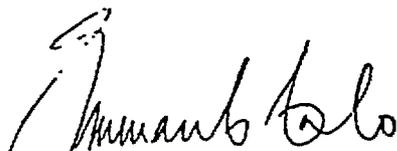
By: 

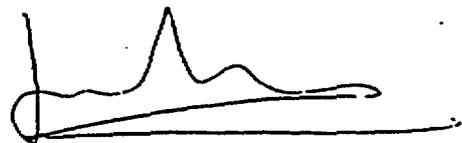
For and on behalf of the Venture Fund Management Company

Date: 27th June 1995

Address for Notices: 5th Floor, Tower Block
Pension House, Accra
P.O. Box 2617
ACCRA.

ENDORSED BY


MINISTRY OF FINANCE
AND ECONOMIC PLANNING
AND NATIONAL AUTHORIZING
OFFICER FOR EDF


HEAD OF DELEGATION OF
THE EUROPEAN COMMISSION
IN GHANA

SCHEDULE 1 - INVESTMENT POLICY DIRECTIVE

SECTION ONE - GENERAL INVESTMENT POLICY

1.1 Objective

EF's principal investment objective is to provide finance to assist the long term growth of Ghanaian companies (Target Enterprises) with potential for growth and for profitability which meet the criteria for Target Enterprises defined in 1.2 below. This objective may be achieved through direct investment of EF funds in Target Enterprises or through EF funds being channelled through PFIs.

1.2 Target Enterprises

The criteria for selection of Target Enterprises will be, in general, that the companies are independent¹ Ghanaian businesses with potential for growth and profitability which require modernisation and expansion capital and in particular:

- a) Have total net assets² before financing of the equivalent of 15,000 - 120,000 Ecus and require term financing in the range 15,000 - 80,000 Ecus for fixed assets and working capital (the acquisition of luxury items is excluded).
- b) Are engaged in activities which add value through processing or exporting and are not environmentally damaging. This will include most manufacturing and service activities except retailing, broking, advertising, real estate agencies and importing of goods for resale. Also excluded are enterprises engaged in activities related to arms and tobacco.
- c) Are established as limited liability companies with current audited accounts and have a constituted Board of Directors.
- d) Have management in place with an established track record.
- e) Have a clear potential either for implementing a technology appropriate for Ghana's development or for achieving market

¹ "independent" means companies whose main activity is not an integral part of a larger operation carried on by a group of companies with common ownership.

² "net assets" means fixed assets plus current assets less current liabilities less long term liabilities. The value of existing assets will be taken from the last audited balance sheet translated to ecus at the prevailing rate at date of balance sheet.

penetration/expansion for a product or service with above average potential for growth and profitability.

- f) Generate increased employment and meet one or more of the following general development criteria: make use of local raw materials; are preferably located outside Greater Accra; will result in increased opportunities for staff training; will bring clear benefits to employees and to local communities.

Seed financing, investments in start-up companies, management buy-outs, privatisations and turn round opportunities are not excluded but should be approached with caution.

1.3 General Rules for Direct and Indirect Investments

The investments made in Target Enterprises by EF and the PFIs should meet the following criteria:

- a) The minimum investment should be (in 1993 terms) approximately the equivalent of 15,000 Ecus and a maximum of the equivalent of 80,000 Ecus. These levels should not be considered absolute and funds may be committed for smaller amounts at the discretion of the Manager and for larger amounts with the approval of the EF Board.
- b) Funds will normally be provided to Target Enterprises in cedis except where a Target Enterprise is generating foreign exchange, wishes to and is able to bear the foreign exchange risk.
- c) EF and the PFIs will favourably consider investment opportunities brought to it through the proposed Business Development Planning Fund but will be under no obligation to make the investment.

SECTION TWO - RULES FOR INDIRECT INVESTMENT

2.1 EF will on-lend funds to PFIs on a long term basis on the following basis:

- a) EF will charge PFIs a lower interest rate (initially either to be set as 80% of the 3 month Treasury Bill rate or as the rate of inflation³, whichever is the higher); and will charge the same interest rate to all PFIs.
- b) EF will require the PFIs to on-lend to Target Enterprises at a rate not in excess of interest rates charged by the PFIs to their other clients.

³ "rate of inflation" means the combined consumer price index issued monthly by the Ghana Statistical Office

SCHEDULE 1 - INVESTMENT POLICY DIRECTIVE

SECTION ONE - GENERAL INVESTMENT POLICY

1.1 Objective

EF's principal investment objective is to provide finance to assist the long term growth of Ghanaian companies (Target Enterprises) with potential for growth and for profitability which meet the criteria for Target Enterprises defined in 1.2 below. This objective may be achieved through direct investment of EF funds in Target Enterprises or through EF funds being channelled through PFIs.

1.2 Target Enterprises

The criteria for selection of Target Enterprises will be, in general, that the companies are independent¹ Ghanaian businesses with potential for growth and profitability which require modernisation and expansion capital and in particular:

- a) Have total net assets² before financing of the equivalent of 15,000 - 120,000 Ecus and require term financing in the range 15,000 - 80,000 Ecus for fixed assets and working capital (the acquisition of luxury items is excluded).
- b) Are engaged in activities which add value through processing or exporting and are not environmentally damaging. This will include most manufacturing and service activities except retailing, broking, advertising, real estate agencies and importing of goods for resale. Also excluded are enterprises engaged in activities related to arms and tobacco.
- c) Are established as limited liability companies with current audited accounts and have a constituted Board of Directors.
- d) Have management in place with an established track record.
- e) Have a clear potential either for implementing a technology appropriate for Ghana's development or for achieving market

¹ "independent" means companies whose main activity is not an integral part of a larger operation carried on by a group of companies with common ownership.

² "net assets" means fixed assets plus current assets less current liabilities less long term liabilities. The value of existing assets will be taken from the last audited balance sheet translated to ecus at the prevailing rate at date of balance sheet.

penetration/expansion for a product or service with above average potential for growth and profitability.

- f) Generate increased employment and meet one or more of the following general development criteria: make use of local raw materials; are preferably located outside Greater Accra; will result in increased opportunities for staff training; will bring clear benefits to employees and to local communities.

Seed financing, investments in start-up companies, management buy-outs, privatisations and turn round opportunities are not excluded but should be approached with caution.

1.3 General Rules for Direct and Indirect Investments

The investments made in Target Enterprises by EF and the PFIs should meet the following criteria:

- a) The minimum investment should be (in 1993 terms) approximately the equivalent of 15,000 Ecus and a maximum of the equivalent of 80,000 Ecus. These levels should not be considered absolute and funds may be committed for smaller amounts at the discretion of the Manager and for larger amounts with the approval of the EF Board.
- b) Funds will normally be provided to Target Enterprises in cedis except where a Target Enterprise is generating foreign exchange, wishes to and is able to bear the foreign exchange risk.
- c) EF and the PFIs will favourably consider investment opportunities brought to it through the proposed Business Development Planning Fund but will be under no obligation to make the investment.

SECTION TWO - RULES FOR INDIRECT INVESTMENT

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- a) EF will charge PFIs a lower interest rate (initially either to be set as 80% of the 3 month Treasury Bill rate or as the rate of inflation³, whichever is the higher); and will charge the same interest rate to all PFIs.
- b) EF will require the PFIs to on-lend to Target Enterprises at a rate not in excess of interest rates charged by the PFIs to their other clients.

³ "rate of inflation" means the combined consumer price index issued monthly by the Ghana Statistical Office

170

as a result of operating difficulties and/or inadequate financial structures. Such investment opportunities are not excluded from EF's activities but they should be subjected to detailed scrutiny.

- 3.2 Where EF is providing term loans to Target Enterprises the average interest rate charged over the life of the loan will not exceed market rates, although the rates may be varied to relate to the performance of the target company in order to reduce the interest burden in the early stages.

SECTION FOUR - PERFORMANCE TARGETS

- 4.1 EF accepts that in order to achieve its investment aims, net returns earned on funds invested may be less than the rate of inflation. In making both direct and indirect investments, the Manager should aim to:
- a) Invest all EF's available funds within four years from its start of operations.
 - b) Ensure that EF's funds increase by at least 75% of the rate of inflation in cedi terms. (It is noted that in the case of equity investments, the carried value on the balance sheet may not reflect their current value, in accordance with prudent rules of accounting.)

SECTION FIVE - PORTFOLIO ADMINISTRATION OF DIRECT INVESTMENTS

- 5.1 The underlying principles of EF's portfolio administration practices shall be:
- a) Within the constraints of EF's approved annual budgets for overhead and consulting services expenditure levels, maximum attention should be given to the protection and development of EF's assets.
 - b) EF will not seek to recover from Target Enterprises the costs of investment nor any costs of assistance provided by EF.
 - c) The level of resources devoted to ailing ventures should be closely monitored, and the Board of EF should be promptly informed of all such cases and consulted on the advisability of writing-down or writing-off any such investments.
 - d) To facilitate a hands-on approach towards successful investment ventures, EF should require regular reporting of operating results, financial position and marketing prospects as well as audited annual accounts from all investment ventures. However, some modification of this requirement may be necessary in the first year of a start-up company.
 - e) EF should reserve the right to require each target company to appoint auditors acceptable to EF.

- c) EF will normally on-lend to PFIs in cedis, unless agreed otherwise with the PFIs, and EF will require that the PFIs finance the Target Enterprises in the same currency.
- d) The PFIs will report quarterly to the Manager.
- e) The PFIs make the decision to invest in Target Enterprises and also take the credit risk. The Manager is responsible for monitoring the PFIs adherence to this Investment Policy Directive.
- f) Unless otherwise agreed the number of PFIs will be limited to four.
- g) EF may on-lend up to 60% of its total funds to participating financial institutions (PFIs). The proportion of funds on-lent may be increased in the event of strong demand from the PFIs or limited opportunities arising for direct investment.

SECTION THREE - RULES FOR DIRECT INVESTMENT OF FUNDS BY THE MANAGER

3.1 With a view to establishing a good quality portfolio and a prudent spread of risk, the following investment rules will be observed:

- (a) Investments may be by way of ordinary share participation, or by use of such other investment instruments available under the laws of Ghana which may include term loans and/or guarantees to Target Enterprises upon suitable security.
- (b) EF will not finance more than 70% of the assets of any target company.
- (c) EF's goal is not to assume or develop a controlling interest in its Target Enterprises, although occasionally such positions may develop. EF's initial equity investment in a company therefore should not exceed forty (40) percent of the total equity, or carry more than forty (40) percent of the voted normally exercisable at general meetings. EF should be safeguarded against any circumstances arising which might result in EF holding a majority interest in a target company.
- (d) Not more than 5% of EF's total funds, valuing investments at cost, shall be invested in one company.
- (e) Not more than thirty (30) percent of EF's total funds for direct investments, valuing investments at cost, may be invested in a particular products sector (e.g. horticulture, pharmaceutical, fish processing etc).
- (f) It is recognised that a number of profitable investment opportunities may arise from existing companies that are in a poor liquidity position

- f) EF should where appropriate have the right to Board representation in all Target Enterprises, this right to be exercised at the discretion of EF.
- g) For each target company, the Manager will appoint a staff member to act as investment manager who will make periodic visits to the target company and report upon the physical and financial progress and prospects of the company's operations.
- h) EF should reserve the right to carry out investigations into any aspect of a target company's activities and affairs at any time.

SECTION SIX - SALE OF DIRECT INVESTMENTS

- 6.1 EF's financial performance will arise from the realisation of capital gains from the sale of shares in Target Enterprises as well as the payment of interest on loans. The realisation of gains at the optimum time will be an essential element to the maximisation of funds available for re-investment in new opportunities.
- 6.2 In those cases where an investment venture does not meet its original growth and profitability expectations and where the prospects for achieving those objectives are not good, careful consideration should be given to the timely liquidation of EF's investment in order that funds can be re-invested in ventures with better prospects.
- 6.3 When disposal of an investment is under consideration the full range of market mechanisms for valuing and promoting such transactions should be explored. In appropriate cases, EF may enter into subscription agreements that would give purchase options to EF. In such cases, a basis for share valuation should preferably be included in the subscription agreement.

SECTION SEVEN - INVESTMENT OF IDLE FUNDS

- 7.1 The aim in managing idle funds will be to achieve the greatest possible returns consistent with maximum security and sufficient liquidity to meet investment and operating requirements.

SECTION EIGHT - PROCEDURE FOR AMENDMENTS

- 8.1 This Investment Policy Directive will be reviewed by EF at the end of its second year of operations. Any amendments to this directive at this time, or at any other time, will require the approval of the Delegate of the Commission of the European Communities in Ghana and the National Authorising Officer of the Ministry of Finance and Economic Planning and the Manager taking into account the views of the PFIs.

ATTACHMENT G

JOHN MAWULI ABABIO
P.O BOX C 274
CANTONMENTS POST COMPLEX
ACCRA
Office tel: 66.61.65/66.74.86
Home tel: 77.75.84
Fax: 233393

BACKGROUND SUMMARY

12 years of results oriented experience in project and trade finance, encompassing financial analysis, preparation of legal documentation, consulting and advisory services, preparation of economic intelligence reports and new business development.

EXPERIENCE

March 1994 - Present - **VENTURE FUND MANAGEMENT COMPANY (VFMC), ACCRA**
General Manager

VFMC are the Managers of the Ghana Venture Capital Fund (GVCF), the first venture capital company in Ghana. GVCF is capitalized at USD 6 million and invests in new and expanding Ghanaian businesses. VFMC also manages the Enterprise Fund (EF), a ECU 3.5m facility for small and medium sized businesses.

June 1991 - March 1994 - **AFRICAN DEVELOPMENT BANK, ABIDJAN COTE D'IVOIRE**
Private Sector Development Unit
Principal Investment Officer, (Central, East Africa and Indian Ocean)

Position involved identification, analysis, appraisal, structuring and negotiation of private sector projects including supervision of legal and technical officers involved in project development, providing financial advice to clients, preparation of appraisal reports and Investment Proposals to ADB's board and supervision of bank investments in regional member countries (RMCs). The position involved substantial travel and frequent contact with other financial institutions and senior government officials and business personalities in RMCs.

Completed projects

- USD 15 million fishing project in Senegal. Project completed October 1992
- USD 10 million agro processing project in El Jadida Morocco. Project completed December 1991
- Complete appraisal for USD 160 million paper mill project , Kenya. Proposed Bank investment USD 10 million

22

CURRICULUM VITAE

NAME : NEUSTADT WILLIAM AMARTEIFIO
DATE OF BIRTH : ██████████
PLACE OF BIRTH : ██████████
PRESENT POSITION AND EMPLOYMENT: BUSINESS ADVISER/PROJECT ANALYST
CURRENTLY ACTING COORDINATOR,
CONSULTANCY AND EXTENSION SERVICES
EMPRETEC GHANA FOUNDATION

EDUCATIONAL QUALIFICATIONS

1982 - UNIVERSITY OF SCIENCE AND TECHNOLOGY, KUMASI
BSC. DEVELOPMENT PLANNING

OTHER TRAINING

<u>DATE</u>	<u>DURATION</u>	<u>INSTITUTION</u>	<u>AREA OF TRAINING</u>
1984	3 MONTHS	GHANA INSTITUTE OF MANAGEMENT AND PUBLIC ADMINISTRATION GIMPA, GREENHILL	CERTIFICATE IN PROJECT PLANNING AND IMPLEMENTATION
1987	2.5 MONTHS	ENTREPRENEURSHIP DEVELOPMENT INSTITUTE OF INDIA (EDI-I) AHMEDABAD, INDIA	ACCREDITED ENTREPRENEURSHIP TRAINER/ MOTIVATORS COURSE
1990	1 MONTH	MANAGEMENT DEVELOPMENT AND PRODUCTIVITY INSTITUTE, ACCRA	CERTIFICATE IN PROJECT APPRAISAL
1992	6 MONTHS	JAPAN INTERNATIONAL COOPERATION AGENCY JICA, NAGOYA, JAPAN	CONSULTANCY SERVICE FOR SMALL AND MEDIUM INDUSTRIES
1994	5 DAYS WORKSHOP	EMPRETEC/APDF	CONSULTANCY SKILLS ENHANCEMENT (BUSINESS PLAN DEVELOPMENT)
1994	4 DAYS WORKSHOP	EMPRETEC	NEGOTIATIONS WITH FOREIGN COMPANIES
1995	5 DAYS		

CREDITLINE FOR SMALL ENTERPRISES.1989

3. *MEMBER OF 2-MAN TEAM WHICH CO-ORDINATED UNDP SPONSORED NATIONAL SURVEY OF SMALL SCALE INDUSTRIES IN THE NORTHERN AND UPPER REGIONS.1989*
4. *REVIEWED EMPRETEC IN KANO,NIGERIA AND RECOMMENDED ITS SUITABILITY/MODIFICATION FOR GHANA 1989.*
5. *RESPONSIBLE FOR INSTALLATION OF EMPRETEC PROJECT IN GHANA,AS LOCAL COUNTERPART FOR UNCTC MISSIONS,RECRUITMENT OF DIRECTOR AND ESTABLISHMENT OF PROJECT OFFICE ETC. 1990.*
6. *MEMBER OF 2-MAN DELEGATION TO UK LED BY EXECUTIVE DIRECTOR OF NBSSI TO STUDY BUSINESS INCUBATORS WITH UNDP SPONSORSHIP.1990*
7. *REVIEWED AND RECOMMENDED "YOUTH ENTERPRISE DEVELOPMENT INITIATIVE" IN GAMBIA AND COLLABORATED WITH HEAD OF STATE AWARDS SCHEME IN GHANA TO INTRODUCE JUNIOR ACHIEVEMENT IN GHANA(ENTERPRISE EDUCATION FOR SECOND CYCLE SCHOOLS). ALSO IDENTIFIED PROJECT COORDINATOR.1993*
8. *DEVELOPED PROPOSAL FOR THE ESTABLISHMENT OF BUSINESS AND TECHNOLOGY INCUBATOR IN KUMASI.SUBMITTED FOR FUNDING BY WORLD BANK(STILL UNDER CONSIDERATION) 1995*
9. *DEVELOPED PROPOSAL FOR THE INTRODUCTION OF ENTREPRENEURSHIP EDUCATION IN UNIVERSITY SYLLABUS.PROPOSAL NEGOTIATED AND ACCEPTED BY UST,KUMASI.1993*
10. *NEGOTIATED WITH YOUTH ENTERPRISE SERVICE INTERNATIONAL FOR EMPRETEC TO MANAGE YOUTH ENTERPRISE FUND TO BE ESTABLISHED IN GHANA.1995*
11. *CURRENTLY OFFICER IN CHARGE OF INSTALLING THE TECHNOLOGY AND ENTERPRISE FUND COMPONENT OF PRIVATE SECTOR DEVELOPMENT SPONSORED BY WORLD BANK.ALSO OFFICER IN CHARGE OF INSTALLING BUSINESS DEVELOPMENT PLANNING FUND SPONSORED BY EUROPEAN UNION.*

MEMBERSHIP OF ASSOCIATIONS

GHANA ASSOCIATION OF CONSULTANTS(G.A.C.)

*EMPRETEC BUSINESS FORUM (E.B.F.)
(VICE PRESIDENT,1991)*

*OAA 1975 YEAR GROUP
(PRESIDENT 1994)*

6640 JS

380,000 net.

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temp.

CURRICULUM VITAE

A. PERSONAL INFORMATION:

1. **NAME:**

SURNAME: KHOLI

OTHER NAMES: JACOB KWAME

2. **DATE OF BIRTH:** [REDACTED]

3. **AGE: 28**

4. **SEX: MALE**

5. **MARITAL STATUS: SINGLE**

6. **NATIONALITY: GHANAIAN**

7. **POSTAL ADDRESS: SHELL GHANA LIMITED
P.O. BOX 1097, ACCRA**

8. **TELEPHONE (OFFICE): 664636, 867671**

B. EDUCATIONAL BACKGROUND:

9. **SECONDARY EDUCATION:**

(1) **KRACHI SECONDARY SCHOOL 1977-1982 GCE 'O' LEVEL**

(2) **TAMALE SECONDARY SCHOOL 1982-1984 GCE 'A' LEVEL**

10. **UNIVERSITY EDUCATION:**

**SCHOOL OF ADMINISTRATION
UNIVERSITY OF GHANA 1986-1989 B.SC (ADMIN)
LEGON ACCOUNTING**

11. **PROFESSIONAL QUALIFICATION:**

**INSTITUTE OF CHARTERED JULY CA
ACCOUNTANTS (GHANA) 1994 GHANA**

12. **COMPUTER TRAINING: IN-HOUSE (SHELL) TRAINING
(& HANDS-ON EXPERIENCE) IN LOTUS 1.2.3, MICROSOFT WINDOWS -
WORD & EXCEL**

C. WORKING EXPERIENCE

13. **KRACHI SECONDARY SCHOOL 1984-1986 BUSINESS SUBJECTS
TEACHER**

14. MINISTRY OF FOREIGN AFFAIRS 1989-1990 ACCOUNTS OFFICER

15. KPMG PEAT MARWICK OKOH & CO. 1990-1991 TRAINEE
ACCOUNTANT

16. SHELL GHANA LTD 1981 TO PRESENT FIXED ASSETS
ACCOUNTANT
(1991-1993)

FINANCIAL
ACCOUNTANT
(1993 TO DATE)

MANAGEMENT
ACCOUNTANT
DESIGNATE
(FROM FEBRUARY 1995)

D. REFEREES:

1. KOBENA ANDAH
FINANCIAL CONTROLLER
SECURITIES DISCOUNT COMPANY LTD
CITY BUILDING
ACCRA.

2. K. A. TUFFOUH
PARTNER
KPMG PEAT MARWICK OKOH & CO.
CHARTERED ACCOUNTANTS
MOBIL HOUSE
P.O. BOX 242
ACCRA.

3. FELIX K. SEMAVOR
FINANCIAL CONTROLLER
SHELL GHANA LTD
P.O. BOX 1097
ACCRA.

SIGNATURE:

Muskhoh

CURRICULUM VITAE

NAME: Eugene Kweku Quayson
DATE OF BIRTH: [REDACTED]
ADDRESS: P.O. Box 572, Accra
MARITAL STATUS: Married

EDUCATIONAL BACKGROUND

1989 Member of the Institute of Chartered Accountants (Ghana).
1982 Tema Secondary School - A Levels
1980 Mfantshipim Secondary School - O Levels.

WORK EXPERIENCE

1986-
To date KPMG Peat Marwick Okoh & Co.
(Chartered Accountants).
P. O. Box 242
Accra

Position - Deputy Manager

I started work with KPMG as an accounting trainee from March 1986 to June 1988, working under supervision in various capacities. I moved through the ranks to Senior Trainee Accountant supervising three trainees on audits.

I was promoted to audit senior in July 1988, when I qualified as a professional accountant. My responsibilities then included the supervision of eight trainees and working directly with the audit partners. In January 1990 I was promoted to Assistant Audit Manager. My duties have been mainly auditing and the preparation of financial accounts and internal control reports. In July 1992 I was again promoted to Deputy Manager. My role as a member of the management team has involved the following:

AS

- Planning - Human Resource
- Audit and Project Management

These were carried out in a supervisory role. Audit teams are usually made up of up to eight people for each audit, these will be selected from a pool of 30 people. This requires the ability to assess a job and define which skills will be required, carefully manage time spent on the job and maintain costs.

- Accounting - Accounts preparation and review of audit work done.

My work has involved the preparation of accounts from incomplete records through to final accounts, computation of tax and other financial matters. My duties also involve carrying out review analysis of the financial state of affairs of client companies and reporting on these both to clients and to Audit Partners.

The role requires involvement with clients at the highest possible level. These include attending and presenting the auditor's report at AGM's, and the discussion of audit findings and the recommendation of solutions.

Major Jobs in the Financial Sector

Over the year's apart from normal audit duties I have been largely responsible for carrying out Financial Reviews (Special Assignments) of World Bank Facilities, IDA loans disbursed, specifically Structural Adjustment Credits (SAC I & II), Transport Rehabilitation Project (TRP) and African Facility Credits. I have also had the opportunity of conducting a review of the European Economic Community's Sectorial Import Programme Auction Facility.

BANKING EXPERIENCE

Manager in charge of the audit of a large scale financial Institution involving the preparation of financial statements and reporting to the Board of Directors and the Central Bank. Performing credit reviews of loans and advances, verifying disbursements from facilities granted by international organizations and reporting thereon.

ATTACHMENT H

VFMC ADMINISTRATION NOTES

VFMC ADMINISTRATION NOTES

Contents

Introduction

- 1 **Legal Framework**
 - 1.1 **Constitution and Legal Documentation**
 - 1.2 **Authority of the Manager**

- 2 **Accounting, Reporting and Control**
 - 2.1 **Reports and Accounts**
 - 2.2 **Treasury Investments**
 - 2.3 **Cash Control and Recording**
 - 2.4 **Fixed Assets Control and Recording**
 - 2.5 **Travel Expenses**
 - 2.6 **Medical Benefits for Staff**
 - 2.7 **Staff Loan Policy**

- 3 **GVCF Investment Procedures**
 - 3.1 **Decision-Making Process**
 - 3.2 **Investment Committee Guidelines**
 - 3.3 **Due Diligence**
 - 3.4 **Investment Disbursement and Monitoring**

VFMC ADMINISTRATION NOTES

Introduction

These administration notes are intended to serve as a reference tool for management. They are subject to change from time to time by the Manager, subject where necessary to Board authorisation, including the addition of notes on new topics where these are appropriate.

Mawuli Ababio
Manager

190

1 LEGAL FRAMEWORK

1.1 CONSTITUTION AND LEGAL DOCUMENTATION

VFMC is governed by:

Letter dated 7 May 1992 from Dr Botchwey to CDC
GIPC Agreement
the Companies Code
the Securities Industry Law
its Regulations, as amended from time to time
the Shareholders Agreement dated 24 July 1992 as amended
resolutions of the Shareholders
resolutions of the Directors

Technical support from CDC, and USAID grant administration are governed by the Management Support Agreement with CDC dated 24 July 1992, as amended.

Relationships with staff are governed by appointment letters and by the laws of the Republic of Ghana.

GVCF is governed by

letter dated 7 May 1992 from Dr Botchwey to CDC
GIPC Agreement
the Financial Institutions (non-banking) law - (is still being reviewed)
the Regulations, as amended from time to time
the Shareholders Agreement dated 24 July 1992
Sharesubscription and Shareholder Loan Agreements with investors
resolutions of the Shareholders
Resolutions of the Directors

Management of GVCF is governed by the GVCF Management Agreement and related documentation.

Management of the Enterprise Fund is governed by the EF Management Agreement signed between the Enterprise Fund and VFMC on 27 June 1995 and related documentation.

1.2 AUTHORITY OF MANAGER

1 Introduction

1.1 The Board of VFMC has delegated to the General Manager its authority to manage VFMC (and GVCF under the Management Agreement) on the terms set out below.

1.2 In all cases, the General Manager's authority is subject to any directions given by the Board on specific matters, to expenditure and other limits set in budgets approved by the Board, and to the provisions of relevant shareholders' resolutions, company regulations, legal agreements, laws and statutory rules.

2 Employees, Terms and Conditions

2.1 The General Manager has authority within budget expenditure and staff limits approved by the Board to engage or dismiss non-managerial staff members and to fix or vary their remuneration and terms of service.

2.2 In the case of managerial staff (excluding the General Manager), decisions to engage or dismiss staff and to fix or vary their remuneration and terms of service must be approved in writing by the Chairman or by a Board resolution.

2.3 In the case of the General Manager, such decisions must be made by a Board resolution. The normal procedure for setting salary increases will be for the Chairman to discuss any proposed increase with the General Manager and together or separately with at least two other directors, before the relevant Board meeting.

2.4 Bonus payments, loans or other unusual items (except of the normal Christmas Bonus to staff other than the General Manager) require the authorisation of the Chairman or the Board.

3 Other Expenditure and Commitments

3.1 The General Manager shall have authority within budget and other limits set by the Board, to commit VFMC (and GVCF) to expenditure and other action in pursuance of their business objectives. The General Manager shall ensure that all expenditure and other commitments, and his approval thereof, are properly documented and recorded.

3.2 For all purchases costing more than US\$5,000 equivalent, the General Manager shall ensure whenever possible that competitive quotes are obtained and document, and the reason for the choice noted.

4 Acting General Manager

While on leave or otherwise absent, the General Manager may delegate authority to the Finance Manager as Acting General Manager, subject to whatever limitation the General Manager considers suitable.

5 Limitations on General Manager's Authority

5.1 The General Manager may not without approval of the Board:

- (a) borrow money on behalf of the VFMC or GVCF
- (b) invest (otherwise than in short term deposits or securities made or acquired to give temporary employment to idle funds) any funds of VFMC or GVCF
- (c) commit VFMC or GVCF to expenditure not covered by budgets approved by the Board
- (d) mortgage, pledge, charge or otherwise encumber any of the property or assets of VFMC or GVCF
- (e) give any guarantees or indemnities or extend credit on behalf of VFMC or GVCF except in the normal course of business
- (f) open or close bank accounts or alter account signature arrangements
- (g) commence or defend litigation
- (h) enter into any contract outside the normal course of business
- (i) solicit new investment by investors in GVCF or any other fund managed or to be managed by VFMC

5.2 In circumstances in which immediate action beyond the General Manager's authority is needed, the General Manager may, after obtaining the approval of the Chairman or (if the Chairman is not available) or two Board members, take the necessary action and incur any necessary expenditure. The General Manager shall report the circumstances and action taken to the Board at the earliest opportunity.

2 ACCOUNTING, REPORTING AND CONTROL

2.1 REPORTS AND ACCOUNTS

The following reports are produced regularly:

<u>VFMC</u>	<u>Deadline</u>	<u>Destination</u>
Annual budget	by 30 November	Board
Long-term Estimates	by 30 November	Board
Quarterly Report	Within 15 days	Board Shareholders
Annual Report	by 31 March	Board, Shareholders Registrar
Quarterly Action Plan	by start of quarter	Management
Cash Report	Weekly on Mondays	Management
 <u>GVCF</u>		
Annual Estimates	by 30 November	GVCF Board & Board
Annual Report	by 31 March	Board, Shareholders Registrars
Quarterly Report	Within 15 days	Board, Shareholders Bank of Ghana, MFEP USAID
Statements	by 25th of month	Borrowers
Pipeline Report	Weekly on Monday	Management
Cash Report	Weekly on Monday	Management

1995

2.2 TREASURY INVESTMENTS

1. GVCF Treasury Investments

GVCF's investment policies require that funds be kept in high quality short or medium term interest bearing deposits. Funds received from investors in foreign exchange will be kept in foreign exchange accounts within or outside Ghana.

VFMC Board minute 8/93 authorised the placement of GVCF funds with discount houses where to do so would earn better rates of interest than otherwise available.

2. VFMC Treasury Investments

VFMC Board minute 7/94 (to be approved at November 1994 Board meeting) reads as follows:

Treasury Operations

Noted: VFMC may need to develop other activities if GVCF's capital cannot be increased to a suitable level this year. One possible area of activity is trade finance. No immediate action is required, but management would like the freedom to explore this area, in the first instance in a very small way, as an extension of VFMC's existing treasury operation.

Agreed: Authorise management at its discretion to expand scope of VFMC's treasury operations, to include short-term commercial notes issued by well established companies as well as bank accounts and treasury bills. Total not to exceed 50% of liquid resources.

195

2.3 CASH CONTROL AND RECORDING

1. Introduction

This memorandum which records the cash control procedures used by VFMC staff during operations. It applies to VFMC's own money, to CDC/USAID grant funds administered on behalf of CDC, and to GVCF cash handled under the Management Agreement. Separate guidelines will be required for EF cash administration.

2. Bank Accounts and Signatories

2.1 GVCF Funds

Under the Management Agreement, bank accounts may be opened and closed by VFMC as manager, but for the avoidance of doubt GVCF's board approval is also sought. A Cedi account is maintained with Merchant Bank (Ghana) Ltd as well as a US Dollar account with Barclays Bank of Ghana Ltd, both of which are in the name of Ghana Venture Capital Fund Ltd.

The signatories to the accounts are Mawuli Ababio and Eugene Quayson, with limits set at:

US\$ current account	US\$ 1,200
Cedi current account	Cedis 1,200,000

Amounts exceeding single signatory limits must be countersigned by the other of the two authorised signatories, or countersigned by any Director except an employee of the bank concerned.

2.2 EF Funds

Bank accounts may be opened and closed by VFMC as Manager with the approval of the members of the EF Council.

Two cedi accounts (grant account and operating account) have been opened with Barclays Bank of Ghana Ltd. Both of these are in the name of the EF. A forex account will also be opened in the name of EF.

The signatories to these accounts are Mawuli Ababio and Eugene Quayson with limits set at:

US\$ current account	US \$5,000
Cedi current account	Cedis equivalent of above

Amounts exceeding single signatory limits must be countersigned by any member of the EF.

2.3 VFMC Funds

Bank accounts may be opened and closed with the approval of the Board of Directors. Appointment of bank signatories also requires approval of the Board.

Venture Fund Management Company Ltd maintains in its own name both a Cedi account and two US Dollar accounts with CAL Merchant Bank Ltd.

The signatories to the accounts are Mawuli Ababio and Eugene Quayson, with limits set at:

US\$ current account	US\$ 1,200
Cedi current account	Cedis 1,200,000

Amounts exceeding single signatory limits must be countersigned by the other of the two authorised signatories, or countersigned by any Director except an employee of the bank concerned.

3 Cash Books

A separate cash book is maintained and kept up to date for each bank account.

All cheque books and bank/cash book must be kept in safe custody at all times.

4. Cheque Payments

All cheques are supported by a cheque payment voucher, to which is attached invoices or other supporting documentation.

Cheque payment vouchers are prepared by the Administrative Secretary, checked and approved for payment by the Finance Manager and authorised by the Manager at the time of signing the cheque.

5. Bank Statements and Reconciliation

Bank Statements are collected monthly and reconciled to the cash book by the Administrative Secretary, before the end of the following month, (except for quarter ends, when statements are obtained and reconciled by the 10th of the following month). All anomalies should be noted and promptly resolved or referred to the Finance Manager.

Reconciliations should be independently reviewed and initialed as evidence of the review by the Finance Manager.

6. Petty Cash

An imprest currently set at Cedis 600,000 is to be maintained and replenished periodically as determined by the Finance Manager.

Payments are recorded on serially numbered petty cash vouchers by the Administrative Secretary, to which is attached invoices or other supporting documentation.

All petty cash vouchers must be reviewed and approved by the Finance Manager and authorised by the Manager.

Cash advanced for petty cash expenditure should be recorded on a petty cash advance form that is to be completed by the Administrative Secretary and initialed by the recipient. All cash advances must be accounted for within a maximum period of three days.

7. Petty Cash Book

The petty cash book is maintained and kept up to date by the Administrative Secretary. A petty cash position form, showing details of cash on hand and outstanding cash advances is prepared by the Administrative Secretary for review by the Finance Manager, who reconciles the petty cash position form to the cash on hand as and when the imprest is due for replenishment.

8. Physical Security

The petty cash, together with all unused cheque books must be kept locked away when not in use.

2.4 FIXED ASSETS CONTROL AND RECORDING

1. Introduction

This memo records procedures used by VFMC staff to procure and safeguard its fixed assets. It considers procedures for ordering, recording, controlling and disposing of fixed assets. The memo takes effect from September 1994 and applies to assets bought from both the USAID grant fund and VFMC's own funds.

2 Acquisition Controls

2.1 Ordering

Major acquisitions must be within authorities given at the time of estimates, or the approval of revised estimates. Wherever possible alternative quotes will be sought for items of capital expenditure approved.

2.2 Authorisation

The general procedures for the authorisation of cash disbursements which are set out in the "cash control and recording memorandum" dated September 1994, will apply to the purchase of fixed assets.

3. Recording

In addition to the entries in the financial books of account, all fixed assets will be recorded in a listing of fixed assets. The listing will provide, in respect of each asset, the description, date of purchase, cost, depreciation rate and annual charge, location and date of disposal.

Assets shall be grouped into suitable categories where appropriate, into sub categories by depreciation rate.

Items of capital nature are not capitalised where the cost of acquisition is less than Cedis 100,000.00, except where the item is a unit within a set of items acquired.

4. Custodial Control

The Finance Manager will conduct physical checks of fixed assets against the fixed assets listing at least once a year.

Where an asset is issued to a member of staff, it must be signed for and witnessed, adequate records of such issues will also be kept. All issues of fixed assets to staff shall be authorised by the Manager.

4.1 Accountability Control

The fixed assets listing will be agreed to the financial books periodically. A reconciliation of this is to be prepared by the Finance Manager and kept.

5. Disposal

Disposals of fixed assets are authorised by the Manager, subject to the approval of the Board of Directors. The Manager will generally have authority to dispose of assets up to a specified value delegated to him by the company's board of directors.

Adequate records in respect of fixed assets disposals should be prepared and kept. Disposals will be recorded also in the fixed assets listing.

200

2.7 STAFF LOAN POLICY

1. As VFMC is expected to expand its staff strength in a few years time, management has proposed the following general policy regarding staff loans.

2. The maximum duration for loans will be ten years and total monthly deductions will not exceed 25% of the staff members gross salary. To be eligible for a loan facility, staff would have to have been confirmed in their position within the company. Staff loans are broken down as follows:

2.1 Housing

Based on discussion with the Chairman, management proposes that all managerial staff excluding the Manager but including the administrative assistant be eligible for a loan from the company to cover the initial deposit required by Home Finance Company under its housing facility.

2.2 Car loans

With the exception of the Manager and Finance Manager, all staff including non managerial personnel will be eligible for car loans as set out below:

<u>Eligible Category</u>	<u>Loan Limit</u>	<u>Loan Duration</u>
Investment Manager	US\$18,000 equiv	5 years
Analysts	US\$15,000 equiv	5 years
Administrative Assistant	US\$7,000 equiv	5 years

2.3 Ordinary Loans

All staff will be eligible to a maximum of 3 months salary provided that sum total of all deduction on outstanding loans does not exceed 25% of the staff member's salary. Maximum duration for such loans will be 12 months.

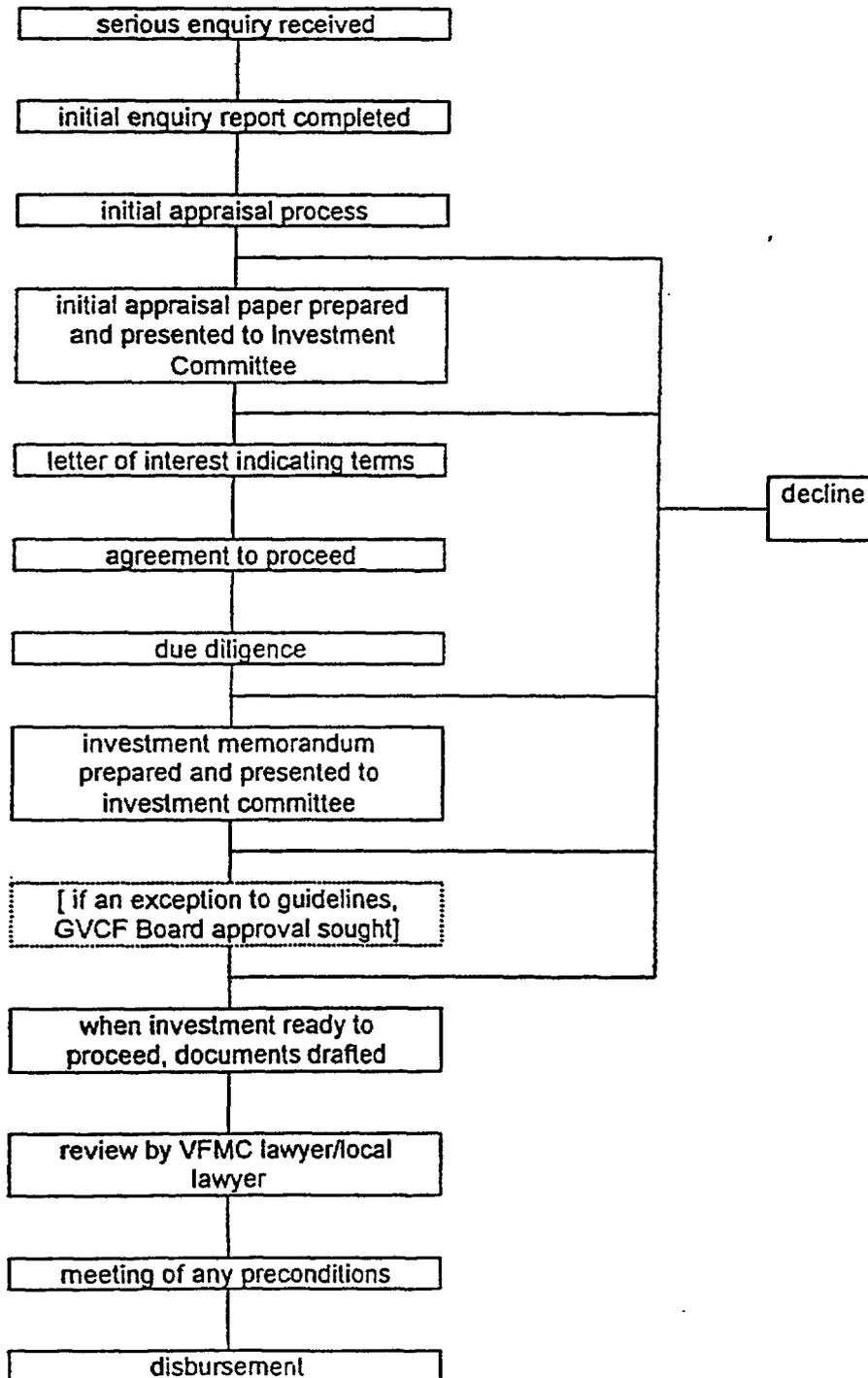
2.4 Applicable Interest Rate

All staff loans will attract a concessionary interest rate of 5% until further notice.

201

3.1 DECISION-MAKING PROCESS

(relating to GVCF Investments)



302

3.2 INVESTMENT COMMITTEE GUIDELINES

(set by the Board: last revised 11.11.93)

Purpose

The purpose of the Committee is to guide the investment process from its early stages.

Constitution

The Committee will consist of 4 directors (or their alternates or substitutes) apart from the Manager.

Two from CDC, SSNIT or Inter-Afrique Holdings (the non-banks), plus
Two from Barclays, Merchant Bank, CAL Merchant Bank or Ecobank (the banks)

The composition of the Committee will be determined by the Manager, based on a rotation of membership, so that each non-bank is represented at two out of three meetings and each bank at one in two. If any director is unable to be represented, rotation will be altered accordingly.

Directors who are not on the Committee may attend meetings. The chair will be taken by the Chairman of the Board of VFMC or in his absence the CDC representative.

The quorum shall be three directors or their alternates or substitutes.

Business

The Committee shall consider initial appraisals of proposed investments and where appropriate, will approve due diligence. As part of the approval process, the Committee will comment on any areas requiring special investigation and will review the terms proposed for investments.

The Committee shall consider proposals for investments and if thought fit, authorise management to conclude negotiations. As part of the authorisation, the Committee will review the terms proposed for the investment and the need for any preconditions to investment.

Any business which can be presented to the Committee may alternatively be dealt with by the Board.

Meetings

Meetings of the Committee are to be called by the Manager as and when required. Notice of a meeting and supporting papers are to be circulated to all directors at least 5 working days before a meeting.

VFMC Administration Notes

Minutes

The Committee will appoint a secretary who shall be responsible for keeping minutes and maintaining records of the order of rotation of membership.

3.3 DUE DILIGENCE

This note gives overall guidance on the VFMC due diligence process. It should be updated in the light of experience. It should be read in conjunction with the BVCA guidelines on due diligence and enquiries.

Why do it?

The aims of due diligence are to:

Avoid making bad investments

Identify, then check all the critical facts. Look for potential problems and risks and consider their likely impact. Get to know management. Assess the risks and returns in detail. Find out what could go wrong - because it will!

Set or revise the terms and conditions of the investment

What needs fixing before we go in? What safeguards do we need? Does the price and structure of the investment adequately meet our needs and the needs of our partners?

Provide evidence to outsiders of the basis of an investment decision

Our investment committee needs to be confident that we have investigated the investment thoroughly, and that we have thought of and answered all the questions. Investors coming in to GVCF or other funds like to see a good standard of work. Co-investors will often find our work useful, giving us greater influence over the deal.

Make a Plan

Due diligence is expensive, time consuming and mostly boring. You should control costs and time and stay awake by planning your work, so as to:

- cover all aspects of the work
- estimate the time taken and initiate lengthy parts early
- get the sequence right so that "showstoppers" are dealt with first
- timetable the process of due diligence, approval and investment to meet the requirements of the investee

It is always useful to discuss this plan with the Manager or with a colleague.

Use the Guidelines

The most important part is deciding which questions to ask, and how to check the answers. We use the BVCA guidelines on Due Diligence and Enquiries as a starting checklist. On technical matters, the CDC Investigation and Negotiation Guidelines are also very useful.

The basic aim for each due diligence exercise is to make a list of questions about the particular company, and to decide what answers are needed.

Skill and judgement are needed to determine which are the important questions and how to answer them. No two investments are the same and guidelines should be treated as ideas lists, not fixed instructions.

And remember...

- Question everything in the business plan
- Only check important things, but check them yourself, and check them thoroughly
- Don't start doing due diligence unless you mean to make an investment
- Don't continue doing due diligence unless you still mean to make an investment
- You should have no qualms about walking away from a deal
- Do what you would do if it was your money you were investing

3.4 INVESTMENT DISBURSEMENT AND MONITORING

This note outlines some of VFMC's procedures for disbursements and monitoring of investments. They represent a starting point and this memorandum will be updated as required.

Original Documents and Share Certificates

These are kept in the safe.

GVCF Project Files

Project files will be opened once there is a legal commitment to make the investment by GVCF.

These files will be GV 3/XX.YY, where XX is the (sequential) project number (Starting with Sydals) and YY is the file number.

File numbers are:

- 01 VFMC/GVCF Investment Committee papers and minutes
- 02 Company Secretarial (certificate of incorporation, certificate to commence business, copies of share register etc, regulations, annual returns, board and shareholders minutes)
- 03 Legal Agreement
- 04 Audited Accounts
- 05 General Correspondence
- 06 Monthly Reports
- 07 Quarterly Accounts
- 08 Budgets and Forecasts
- 09+ Other Information as required

Disbursement Requests

A disbursement request form is attached. The aim is to provide evidence that we have checked that conditions have been met and that all is in order.

Monthly Reports

Report formats will vary from company to company. All businesses we invest in, should be able to provide us with information critical to running the business within a week of the month end. If the report is not received, we must go and get the information ourselves. If the information is not available there is something wrong with the investment.

207

VFMC Administration Notes

Monthly Visit

After the monthly report is received, or in order to get it, the company should be visited at least monthly. The aims of the visits are to check on progress, to identify any problems, and to look for ways to improve the quality of the investment by helping the business.

Quarterly Accounts

These will take a bit longer to produce than monthly reports but are equally essential.

Quarterly Reports

We report to our directors by the 15th of the month following the quarter end. A one-page report on each committed investment will be included, together with a portfolio analysis.

Valuation in quarterly reports will follow historical cost accounting rules until significant unreported excesses in value arise.

208

MEMORANDUM

File Ref: GV 3/XX.09

Date: []

From:

To: Finance Manager

[COMPANY NAME] AUTHORITY FOR RELEASE OF FUNDS

1. DOCUMENTATION AND DISBURSEMENT REQUESTED

1.1 Investment Committee Meeting Minute No[] of [date] approved an investment of [currency][amount] in [company] by way of [instrument(s)].

1.2 Documentation was executed on [date].

1.3 Conditions precedent to the GVCF investment have been complied with.

1.4 A call has been received for [currency][amount][specify instruments if more than one] on or before [date]. The call and date are in accordance with the legal documentation.

1.5 Disbursements on account of the approved investment to date total [currency][amount][state amount in Cedis recorded in GVCF's books if foreign currency is used]. this disbursement will bring the total to [].

1.6 Matters arising are as follows.....

2. HEALTH CERTIFICATE

The last accounts for the company were made up to [date], and suggest that the financial position of the company is acceptable. All information requested has been received. I visited the company on [date] and am satisfied that release of funds is in order.

3. DISBURSEMENT REQUEST

3.1 Please arrange the payment of [currency][amount] on [date] to [account detail/cheque delivery details]

3.2 Charges are to be borne by GVCF.

3.3 The payee is required to deliver a share certificate for [number][class of shares] together with a receipt for payment.

Recommended _____
[name]

Approved _____
Manager

ATTACHMENT I

MEMORANDUM

Your Ref:
Our Ref: IA

Date: 2 November 1995

STAFF CONFIDENTIAL

To: Robert Binyon
FMD Department

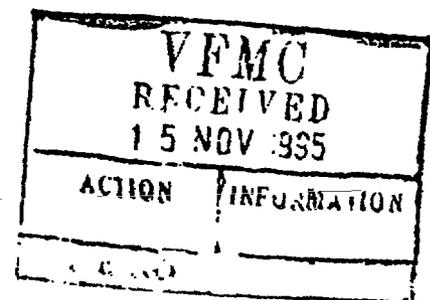
From: Richard Clifton
Internal Auditor

Copied To: Roy Reynolds
Nick Selbie
Nick Denniston
John Downer, Rep Ghana
Mawuli Ababio, GM VFMC ✓

SUBJECT: BTO - VFMC AND GVCF

I carried out an Internal Audit of the Venture Fund Management Company Ltd (VFMC) and Ghana Venture Capital Fund Ltd (GVCF) between 16 and 20 October 1995 and attach hereto my Back-to-Office Report.


Richard Clifton
Internal Auditor



STAFF CONFIDENTIAL

VENTURE FUND MANAGEMENT COMPANY LTD (VFMC) GHANA VENTURE CAPITAL FUND LTD (GVCF)

BACK-TO-OFFICE REPORT

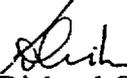
1 I visited VFMC/GVCF between 16 to 20 October to carry out an internal audit at the request of MD, Financial Markets.

2 During my investigation, a number of the existing internal controls were found to be marginally deficient and recommendations on these and other aspects of internal control will be included in my final report. Because of the relatively small size of the current VFMC/GVCF operation, the risk resulting from these deficiencies may not be as serious as it would be in a larger operation but the following points require immediate attention:

- Management Accounts are currently only produced quarterly. The resources needed to prepare monthly accounts are already available in-house and a change to monthly reporting would result in much more timely management attention to budget variances.
- VFMC and GVCF bank accounts are currently able to be operated by a single signatory for amounts up to US\$1,000. While it is appreciated that, in a small office, this is a convenient arrangement, it substantially reduces controls over the operation of the bank accounts and I recommend that two signatures be required for all cheque payments.
- A recently installed computerised cash book has proven unsuitable as it does not operate on the existing Windows network. As a result, both a manual and a computer-based cash book are now operating in parallel leading to duplicated effort and a significant risk of transcription error.
- Agreed policy is that all fixed asset expenditure over ₵100,000 should be capitalised but there were several examples where smaller amounts had been capitalised and larger amounts had been expensed. There is a need for consistent application of the policy.
- The Fixed Asset Register total has differed from the ledger balance by ₵877,300 since the end of the 1994 financial year. This should have been investigated and corrected early in the 1995 year.
- Expenditure which is recoverable from staff members is not charged to individual staff accounts but is collected in cash by the Administrative Secretary and credited to the appropriate expense account. There is, therefore, very little effective control over the recovery of staff personal charges.

- Control over the petty cash float would be significantly improved by requiring cash payments to be entered direct into the Petty Cash Book on an on-going basis rather than at the end of each month. At the same time, irregular, surprise checks of the petty cash float against the Petty Cash Book balance should be made by the GM or FM and noted in the Petty Cash Book. This is presently done annually but not evidenced in writing.
- There is no password protection on any PC and none on the AccPac General Ledger and Excel payroll files. The ledger data files are backed up at irregular intervals but the disks are left on-site. There are no procedures for the back-up of any other computer files. The system is thus vulnerable to irrecoverable damage in the case of a fire or malicious attack on the office building.
- There is no fire-proof storage facility currently in use. All GVCF investment files are stored on-site and, again, irreplaceable accounting records would be vulnerable to loss in the event of a fire. An interim, short-term solution may be to store key files at a suitable off-site location.
- The only insurance policies in force appear to be burglary and fire cover for the office and comprehensive cover for all but one motor vehicle. There is no workers' compensation, fidelity guarantee, cash in transit or public liability insurance cover. Management believe that none of the latter are legally required in Ghana but serious consideration needs to be given to the prudence of this approach.

A round-up meeting at which all of my draft recommendations were agreed was held with Mawuli Ababio (GM) on Friday 20 October.


Richard Clifton
Internal Auditor
25.10.95

For the attention of Robert Binyon

Copied To: Roy Reynolds
Nick Selbie
Nick Denniston
John Downer, Rep Ghana
Mawuli Ababio, GM VFMC

ATTACHMENT J

Deal Flow Report to 31 December 1992

Up to 31 December 1992:

- * 19 enquiries were received
- * 5 were undergoing initial appraisal at 31 December 1992

Enquiries are summarised in the table below.

Ref	Business	Stage	Action
1	Clothing	startup	declined
2	Wire products	privatisation	declined
3	Wooden toys	expansion	declined
4	Pharmaceuticals	expansion	declined
5	Wheelbarrows	expansion	await business plan
6	Pineapples	expansion	await business plan
7	Palm nut cracking	startup	declined
8	Furniture	expansion	declined
9	Cold store	startup	await business plan
10	Salt production	startup	under initial appraisal
11	Prawn farm	startup	declined
12	Cold store	startup	await business plan
13	UPS manufacture	expansion	under initial appraisal
14	Hotel	startup	declined
15	Groundnut oil mill	startup	declined
16	Fruit juice	startup	under initial appraisal
17	Cold store	expansion	under initial appraisal
18	Cocoa trading	startup	under initial appraisal
19	Saucepan manufacture	startup	await business plan

Deal Flow Report to 31 March 1993 (continued)

Enquiries Received in the Quarter to 31 March 1993

Ref	Business	Stage	Status at 31 March 1993
20	payphones	start up	withdrawn
21	industrial gases	start up	withdrawn
22	scrap metal	expansion	declined
23	seafood export	startup	declined
24	pineapples	expansion	withdrawn
25	bottled water	start up	declined
26	plastic bags	start up	withdrawn
27	soft drink distribution	expansion	declined
28	coir exports	start up	declined
29	financial services	expansion	withdrawn
30	guest houses	expansion	under initial appraisal
31	real estate development	expansion	declined
32	frozen meat products	expansion	withdrawn
33	hire purchase	start up	declined
34	pressurized cylinders	start up	under initial appraisal
35	flourmill	expansion	under initial appraisal
36	reinsurance	start up	declined
37	wood products	expansion	under initial appraisal
38	gold and diamond mining	start up	declined
39	poultry farming	expansion	declined
40	packaging and tissue products	expansion	approved for due diligence
41	poultry farming	expansion	under initial appraisal
42	feed milling	expansion	declined
43	printing	expansion	declined
44	paints production	expansion	declined
45	soft drink production	expansion	under initial appraisal
46	cotton wool production	expansion	declined
47	garments	start up	declined
48	cold store, frozen meat products	expansion	under initial appraisal
49	baby food production	start up	declined
50	windows, other wood products	expansion	declined
51	ice cream	start up	withdrawn
52	processed pineapples	expansion	withdrawn
53	maize, legumes processing	expansion	withdrawn

Deal Flow Report to 31 March 1993 (continued)

Enquiries Received in the Quarter to 31 March 1993 (continued)

Ref	Business	Stage	Status at 31 March 1993
54	aluminium pots & pans	expansion	under initial appraisal
55	re-refined engine oil	start up	declined
56	foodstuff and vegetables exports	expansion	under initial appraisal
57	concrete products	start up	declined
58	fishing	restructuring	declined
59	computer stationery	restructuring	declined
60	ceramic products	expansion	declined
61	alum and sulphuric acid	start up	declined
62	shops and offices	start up	declined
63	warehouses and offices	start up	declined
64	formica products	start up	declined
65	electronic billboards	start up	declined
66	salt production	expansion	under initial appraisal

Deal Flow Report to 30 June 1993 (continued)

Enquiries Received in the Quarter to 30 June 1993

Ref	Business	Stage	Status at 30 June 1993
29*	Financial services	Expansion	Approved for due diligence
67	Processed sheanuts	Start up	Declined
68	Leasing	Start up	Initial appraisal
69	Steel products	Expansion	Withdrawn
70	Aluminium pots and pans	Expansion	Withdrawn
71	Processed wood	Restructuring	Declined
72	Real estate dev.	Expansion	Withdrawn
73	Real estate dev.	Expansion	Withdrawn
74	Real estate dev.	Expansion	Declined
75	Advertising	Start up	Declined
76	Boat building & sawmilling	Privatisation	Declined
77	Flower export	Expansion	Declined
78	Bus services	Start up	Declined
79	Aluminium extrusion products	Start up	Initial appraisal
80	Automobile repairs & distribution	Privatisation	Initial appraisal
81	Meat processing	Expansion	Declined
82	Building products supply & mfg.	Expansion	Declined
83	Mobile phones	Expansion	Withdrawn
84	Particleboard manufacture	Start up	Initial appraisal
85	Hotel	Restructuring	Declined
86	Salt farming	Expansion	Declined
87	Retreaded tyres	Expansion	Submit business plan
88	Stone chipping	Expansion	Submit business plan
89	Brick & tiles	Expansion	Submit business plan
90	Diamond mining	Restructuring	Submit business plan
91	Tissue & soft paper products	Start up	Submit business plan
92	Printing press	Start up	Declined
93	Sanitary products	Start up	Declined
94	Telecoms	Start up	Submit business plan
95	Tour operation, business services	Expansion	Initial appraisal
96	Electronic/electrical goods	Privatisation	Submit business plan
97	Match manufacture	Privatisation	Initial appraisal

* Enquiry withdrawn in first quarter resubmitted

Deal Flow Report to 30 September 1993 (continued)

Enquiries Received in the Quarter to 30 September 1993

Ref	Business	Stage	Status at 30 September 1993
101	Gold Mining	Start-up	Withdrawn
102	Retail Sales	Start-up	Declined
103	Foam Mattress	Start-up	Declined
104	Garments	Expansion	Initial appraisal
105	Cardboard boxes	Start-up	Declined
106	Stockbroking	Startup	Initial appraisal
107	Granite slabs & tiles	Startup	Due diligence
108	Particleboard	Start-up	Declined
109	Sandcrete blocks	Expansion	Declined
110	Helicopter services	Start-up	Declined
111	Kiln drying	Start-up	Declined
112	Refuse collection	Start-up	Declined
113	Car dealers	Privatisation	Await DIC approval
114	Gold mining	Start-up	Declined
115	Savings & loans	Start-up	Declined
116	Foam	Startup	Declined
117	Garments	Expansion	Declined
118	Bus service	Startup	Await business plan
119	Canned tuna	Startup	Initial appraisal
120	Office and shopping complex	Startup	Due diligence
121	Lightbulbs, electrical goods	Expansion	Await business plan
122	Ghanaian spices	Start-up	Declined
123	Health club	Expansion	Declined
124	Palm oil	Start-up	Declined
125	Industrial cleaners	Expansion	Declined
126	Beer	Privatisation	Await business plan

Deal Flow Report to 31 December 1993 (continued)

Enquiries Received in the Quarter to 31 December 1993

Ref	Business	Stage	Status at 31 December 1993
127	explosives manufacture	Startup	Withdrawn
128	hotel	Privatisation	Await business plan
129	law database	Startup	Declined
130	rubbish collection	Startup	Declined
131	cold store/iceworks	Startup	Declined
132	bricks and tiles	Privatisation	Declined
133	palm oil	Expansion	Declined
134	jute bags	Privatisation	Declined
135	hotel	Start-up	Declined
136	gold necklaces	Start-up	Declined
137	internal cocoa marketing	Start-up	Declined
138	bus assembly	Start-up	Initial appraisal
139	pineapples	Restructuring	Initial appraisal
140	aluminium fittings	Restructuring	Initial appraisal
141	soft drink production	Privatisation	Initial appraisal
142	oil palm	Restructuring	Declined
143	cellular phones & pagers	Start-up	Initial appraisal
144	processed wood products	Expansion	Withdrawn

ENQUIRIES RECEIVED IN THE QUARTER

Ref	Business	Stage	Status at 31 March 1994
145	Crown Corks	Restructuring	Awaiting valuation
146	Spinning, weaving, printing	Privatisation	Withdrawn
147	Salt	startup	Declined
148	Tin cans	startup	Declined
149	Food cannery	startup	Declined
150	Soap	Start-up	Declined
151	Computer School	Expansion	Declined
152	Cocoa butter	Start-up	Declined
153	Textiles, handicrafts	Start-up	Declined
154	Quarry	Start-up	Declined
155	Hotel	Start-up	Contact Management
156	Boreholes, water equipment	Start-up	Due Diligence
157	Salt	Start-up	Declined
158	Hotel	Start-up	Declined
159	Hotel	Start-up	Declined
160	Aluminium pots & pans	Start-up	Declined
161	Filling station/garage	Start-up	Declined
162	Oil pipeline	Start-up	Declined
163	Mortgage Institution	Start-up	Declined
164	Clinic/Medical Centre	Expansion	Declined
165	Hotel	Expansion	Initial appraisal
166	Furniture manufacture	Restructuring	Await Feasibility Study
167	Refrigeration	Privatisation	Initial appraisal
168	Video Production equipment	Start-up	Initial appraisal

ENQUIRIES RECEIVED IN THE QUARTER

Ref	Business	Stage	Status at 30 June 1994
169	Bitumen	start-up	Initial appraisal
170	Bank	Start-up	Decline
171	Video editing suite	start-up	Declined
172	Bicycle tyres	Start-up	Decline
173	Cocoa processing	Start-up	Decline
174	Soft drinks	Acquisition/reh	Withdrawn
175	Oxygen	buyout	Withdrawn
176	Bank	start up	Withdrawn
177	Cardboard packaging	Start-up	Decline
178	Printed materials	Expansion	Declined
179	Wooden products	Start up	Decline
180	Hotel	Expansion	Withdrawn
181	Gold	Start-up	Decline
182	Plastics	Expansion	Declined
183	Hotel	Start-up	Decline
184	Plastic packaging	Expansion	Withdrawn
185	Herbal medicine	Start-up	Declined
186	Salt	Start-up	Decline
187	Cable conduit pipes	Expansion	Decline
188	Soft Drinks	Privatisation	Initial Appraisal
189	Rental appartments	Start-up	Meet sponsor
190	Modified Starch	Start-up	Decline
191	Tour Operator	Restructuring	Decline
192	Cold Storage facility	Start-up	Decline

ENQUIRIES RECEIVED IN THE QUARTER

Ref	Business	Stage	Status at 30 September 1994
196	Gold	Start-up	Withdrawn
197	Property development	Start up	Declined
198	Hotel	Rehabilitation	Declined
199	Hotel	Rehabilitation	Declined
200	Sawn lumber/ plywood	Rehabilitation	Withdrawn
201	Food Processing	Acquisition/rehab	Declined
202	Furniture	Restructuring	Withdrawn
203	Snail farming	Expansion	Withdrawn
204	Bus company	Expansion	Declined
205	Shipping	Start-up	Declined
206	Gari	Start-up	Withdrawn
207	Salt	Expansion	Withdrawn
208	Merchant Banking	Start-up	Initial Appraisal

ENQUIRIES RECEIVED IN THE QUARTER

Ref	Business	Stage	Status at 31 December 1994
209	Hotel	Start-up	Decline
210	Financial leases	start-up	Decline
211	Funeral home	Start-up	Further info awaited
212	TV station	Expansion	withdrawn
213	Edible oils	start-up	declined
214	Hotel	start-up	decline
215	Sawn Timber	Rehabilitation	Decline

224

Deal Flow Report to 31 March 1995 (continued)

Enquiries Received in the Quarter to 31 March 1995

Ref	Business	Stage	Status at 31 March 1995
217	Teak exporting	Start-up	Withdrawn
218	Aerial photographic services	Expansion	Decline
219	Hotel	Rehabilitation	Review FS
220	Rebuild of driveshafts	Start-up	Decline
221	Manufacture of mosquito coils	Start-up	Request updated FS
222	Raw cashew production	Start-up	Decline
223	TV Station	Start-up	Decline
224	Manufacture of neon signs	Start-up	Request more info
225	Clinic	Start-up	Decline
226	Aluminium Utensils	Share Purchase	Prepare IM
227	Tuna Canning	Start-up	Review full FS
228	Biscuit manufacture	Start-up	IA
229	Landrover reconditioning	Start-up	FS Requested
230	Catering facility	Acquisition	FS awaited
231	Fruit juice processing	Start-up	Review FS
232	Hotel	start-up	awaiting further info
233	shock absorber manufacture	start-up	review fs
234	Prawn farming	Start-up	Review FS

225

Deal Flow Report to 30 June 1995 (continued)

Enquiries Received in the Quarter to 30 June 1995

Ref.	Business	Stage	Status at 30 June 1995
235	Garments	start-up	decline
236	Restaurant	Acquisition	decline
237	Eye Clinic	Start-up	Review FS
238	Extra Neutral Alcohol	Start-up	decline
239	Commercial bank	Start-up	Due Diligence
240	Hotel	Start-up	Decline
241	Surgical Gloves	Start-up	decline
242	Alluvial Gold Mining	Start-up	Decline
243	Civil engineering	Buy-out	decline
244	Haulage	Buy-out	decline
245	Stone Quarry	Start-up	Decline
246	Steel fabrications	Restructuring	Review FS
247	Wood Processing	Start-up	Decline
248	LP gas	Start-up	decline
249	Transmission equipt	Start-up	Decline
250	Banking	Privatisation	Decline
251	Merchant Bank	Start-up	decline
252	Pharmaceuticals	Expansion	Meet sponsors
253	LPG Gas cylinder assembly	Start-up	Await full FS

Deal Flow Report to 31 December 1995 (continued)

Enquiries Received in the Quarter to 31 December 1995

Ref	Business	Stage	Status at 31 December 1995
268	Gold	expansion	decline
269	Brokerage	Start-up	IA
270	Plastics	Expansion	decline
271	plastics	expansion	decline
272	alcoholic beverages	expansion	ef
273	Dry cell batteries	buyout	IA
274	Distribution	start-up	declined
275	Plastic packaging	floatation	decline
276	VSAT communication	start-up	IA
277	Salt	Start-up	Request fs
278	Exotic vegetables	Expansion	IA
279	Leather products	Expansion	Review FS/visit premises

ATTACHMENT K

List of Interviewees

Members of GVCF Board of Directors:

Dr. Kwame Nyantekyi - Owusu, CED, Inter-Afrique Holdings Ltd.

Mr. John R. Downer, Country Manager, Commonwealth Development Corporation

Mr. B.K. Glymin, Jr., Head, Regional Operations Department, SSNIT

Mr. Paul Hammond, Controller of Advances, Barclays Bank of Ghana Ltd.

Mr. William M. Taylor, Deputy Managing Director, Ecobank Ghana

Mr. Simon Dornoo, CAL Merchant Bank Ltd.

Private Sector Participants:

Mr. Kwasi Abeasi, Director General, Private Enterprise Foundation

Mr. K.S. Yamoah, Manager Finance & Operations, Ghana Stock Exchange

Mrs. Magdalene Kaleem, Financial Institutions (Non-Banking) Dept., Bank of Ghana

Mr. Kwabena Darko, President, Darko Farms & Co., Ltd.

Ms. Leslie Flagg, Project Manager, Non-Traditional Exports, Techno-Serve

Mr. Ernest A. Mintah, Senior Investment Executive, Commonwealth Development Corporation

Mr. Tom Davenport, Investment Officer, Africa Project Development Facility

Mr. Henri E. Rabarijohn, Investment Officer, APDF

Mr. A. Appiah Menka, Executive Chairman, Appiah Menka Complex Ltd.

Portfolio Company Managers:

Mr. Kenneth Quartey, Managing Director, Sydals Ltd

Mr. George Prah, Managing Director, South Akim Manufacturing Ltd.

Mr. K. Kwarteng, Managing Director, Ghana Pioneer Aluminum Factory Ltd

Mr. Seth K. Dei, Managing Director, Leasafric Ghana

Mr. Horst W. Hoffman, General Manager, ABC Brewery Ltd

Mr. Daniel Dennis, Commercial Manager, ABC Brewery Ltd

Mr. E.A. Sowah, Managing Director, Paper Conversion Company Ltd

ATTACHMENT L

GVCF

**GHANA VENTURE
CAPITAL FUND LTD**

FIFTH FLOOR, TOWER BLOCK
SSNIT PENSION HOUSE
LIBERIA ROAD
P.O. BOX 2617 ACCRA, GHANA
TEL: (233-21) 666165 FAX: (233-21) 664055

VFMC

**VENTURE FUND
MANAGEMENT
COMPANY LTD**

Fund Managers

What is venture capital?

Venture capital is considered as high risk money for rapidly growing companies. By its very nature, venture capital is primarily invested in companies with experienced management, rapid growth potential and the ability to generate high levels of profitability. Venture capital is usually a long term investment which often takes five to seven years before it provides a significant return. Investments normally involve an equity position for the investor through either the direct purchase of ordinary shares or loans with conversion privileges.

Some key facts to consider when raising venture capital funds:

- You will be seeking funding which might not be readily available from traditional sources.
- You will be dealing with investors as opposed to bankers (investors want to be well informed and often take an active role in developing a business strategy, usually through a board seat or consulting arrangement).
- Investors will usually have ownership rights and can include the right to change management when performance threatens the value of the investment.
- Venture Capital Funds can be expensive in that, in addition to the return on interest income and other fees, venture capitalists expect substantial appreciation in the value of the target company's shares. This appreciation usually occurs through public offerings, mergers, acquisitions and or/ the buyback of the shares by the entrepreneurial team.

Some benefits of venture capital assistance:

- You will have a partner prepared to share in the risks of the business.

- Your new partner will assist you with your financial and strategic planning.
- The financial backing and related assistance will help enhance the value of your business and prepare it for an eventual listing on the stock exchange.

What is GVCF?

GHANA VENTURE CAPITAL FUND Ltd. (GVCF) is the first venture capital company to be established in this country. It has a limited 10 year life after which all investments in its portfolio will be liquidated. The Fund provides risk bearing finance to help Ghanaian businesses to grow, backed with advice and support from a locally based management team. GVCF was set up in July 1992 and started operations in January 1993.

GVCF has the following shareholders: Barclays Bank of Ghana Ltd., Commonwealth Development Corporation (CDC), CAL Merchant Bank, DEG Deutsche Investitions-und Entwicklungsgesellschaft, Ecobank (Ghana) Ltd., Inter-Afrique Holdings Ltd., Merchant Bank (Ghana) Ltd., Proparco S.A., Social Security and National Insurance Trust (SSNIT).

The company is capitalised at US\$5.8 million equivalent and provides long term venture capital to companies with clear potential for achieving above average rates of growth and profitability. The key objective is to use investors' money to make and realise investments in new and expanding companies so as to give a return commensurate with the risks inherent in equity investments over the 10 year life of the fund.

While high risk is an inherent aspect of venture fund financing, sound principles of risk management are rigorously applied in identifying high quality growing businesses to invest in.

GVCF's operating philosophy

GVCF seeks to invest in companies with strong management which have a proven track record and have developed a strategy for building a strong business. Simply put, it invests in people and places great emphasis on the individual entrepreneur or management team's depth of understanding of the business, related management experience and past successes.

Their experience and judgment coupled with focused effort will enhance the value of the company's shares and serve as a foundation for success. Although not always required, some personal investment capital would have to be contributed to the business venture.

While it does not seek to play an operational role in portfolio companies, GVCF is not considered a passive investor. It expects to be viewed as a co-investor and partner who shares a common goal. To build a successful business and make high returns.

GVCF makes medium term portfolio investments through a range of financial instruments that are broadly categorized as "equity related". These include ordinary shares, preferred shares, subordinated loans, or income notes. The most frequently utilized investment is ordinary shares combined with debt. This combines long term ownership rights with current income to GVCF. In exceptional cases, alongside equity type investments, local or foreign currency secured loans may be made.

The level of participation is normally between 10 to 40% stake in the investee company. The typical hurdle rate is a cedi return of at least 20% per annum net of inflation on the investment. (e.g. if the inflation rate averages 15% per annum, the minimum return required would be 38% per annum).

234

GVCF will usually hold an investment for between 5 to 7 years, making investments equivalent to US\$500,000 or less with a mixture between established companies and new companies and a spread across business sectors and groups of companies. No more than US\$750,000 will be invested in any one group and not more than 35% in any one sector.

The Fund will seek to realise its investment at the earliest practicable opportunity. Sponsor buyouts are the most likely means of achieving this end and where appropriate, and possible, put options will be negotiated with potential sponsors. The other option would be to seek a listing on the Ghana Stock Exchange.

GVCF will seek to avoid any restriction on its rights to transfer its shares in investee companies subject to reasonable consultation with other shareholders.

INVESTMENT FOCUS

GVCF invests in all stage of financing. It can provide assistance for the following:

Financing for startups: by providing part of the risk capital that a new business needs to get started. This includes ventures undertaken by both Ghanaian and foreign companies and joint ventures.

Expansions: by providing the increase in core capital needed for an expansion in the activity of a successful company with potential for an IPO.

Privatizations: within the context of government's privatization programme, GVCF can coinvest with other partners and back a proven and successful management team in acquiring any state owned enterprise slated for privatisation. It can also co-invest with the existing management in structured buyouts.

4

The fund can invest in all productive sectors of the economy.

GVCF is managed by **VENTURE FUND MANAGEMENT COMPANY Ltd. (VFMC)** a separate limited company.

VFMC's role

As corporate managers of GVCF, we are responsible under a Management Agreement for making, managing and realising investments on behalf of GVCF. Because GVCF shares in the risks and rewards of the businesses invested in, our success depends on the success of those businesses. We are therefore committed to helping them achieve growth and profitability.

VFMC analyses in detail each business plan before committing GVCF to a new investment. This process is valuable in identifying key risks and helping to develop plans for growth.

Inherent in our philosophy for successes is a hands-on approach to assisting portfolio companies in management and strategic decisions. We maintain a supportive role by providing analysis of financial strategies. We would normally be represented on the Board of Directors of any portfolio companies.

What kind of deals are we looking to finance?

Our primary interest lies in high growth companies and projects with the potential to achieve annual sales well above US\$500,000 equivalent. It is equally important that the target company be able to produce significant cashflow and profits. Our focus lies therefore with target investments which display the following characteristics:

- a. Personal financial commitment of key promoters
- b. Experienced management team with a proven

5



- track record
- c. Proven product and/or service
- d. Established market or clear market niche with clear growth prospects of the industry sector and project in question
- e. Good profit margins and return on investment
- f. Clear prospects for liquidating GVCF's investment at a significant multiple of the value of the original investment.
- g. Good internal accounting and financial controls as well as reporting procedures.

How do you approach us?

In the first instance you would need to submit a comprehensive business plan in the matter set out on the following page. Your business plan is the most important form of communication when soliciting for funds. As such its quality cannot be overstated. The document should be viewed as a written simulation of actually running the business. It must serve as a working document for management's execution. It should look into the future and based on defensive assumptions of the product, output, pricing, market conditions, etc., lay out the expectations for the company's financial performance. It will also serve as a communication vehicle for bankers and investors and should be set out and written such that readers with little knowledge of the company's products and services can readily see and understand the opportunity being presented. It should convince VFMC and other investors why the proposed investment will be a winner and excel in its industry.

Typical Business Plan Outline

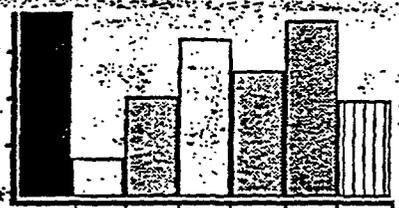
1. **Executive summary**
 - A. **Business description:**
 1. Name
 2. Location and ownership details
 3. Product
 4. Market and competition
 5. Management expertise, details on shareholding
 - B. Long range goals
 - C. Summary of financial needs and application of funds
2. **Market analysis**
 - A. Description of total market
 - B. Industry trends
 - C. Target markets
 - D. Competition
3. **Product or type of service**
 - A. Description of product line
 - B. Proprietary position; patents, copyrights and legal and technical considerations
 - C. Comparison to competitors' products
4. **Manufacturing process (where applicable)**
 - A. Raw material
 - B. Supply situation
 - C. Method of production
5. **Marketing information**
 - A. Overall marketing strategy
 - B. Pricing policy
 - C. Sales terms
 - D. Sale, distribution and service methods
6. **Management plan**
 - A. Form of business organisation
 - B. Board composition

236

- C. Organisational chart and responsibilities (key personnel)
- D. Resumes of key personnel
- E. Staffing plan/number of employees
- F. Facilities plan/planned capital improvements
- G. Operating plan

7. Financial data

- A. Financial history (where applicable)
- B. Five year financial projections (first year by months).
 - 1. Profit and loss accounts
 - 2. Cashflow statement
 - 3. Balance sheet
 - 4. Capex estimates
- C. Assumptions for projections
- D. Explanation for use and effect for funds.



Business

Venture Capital

By Esther Owusu & Ernest Agyapong

THE role of the private sector in a market-driven economy cannot be over-emphasised. Recognising this, the Government of Ghana has placed an emphasis on private sector investment in its economic initiatives, particularly the Economic Recovery Programme, and it has provided the basic structures and incentives for the realisation of this objective.

However, minimal gains have been made due to the inability of the sector to raise the necessary capital from both local and foreign sources.

Businesses which find themselves in this situation would be happy to know that there is an opportunity that is awaiting to be exploited — venture capital.

What is Venture Capital?

Although venture capital plays a large role in private sector investment in advanced economies, it is still a novelty in Ghana. In its simplest definition, venture capital is high risk money for rapidly growing companies. It is primarily invested in companies with experienced management, rapid growth potential and the ability to generate high levels of profits.

Venture capital is usually a long-term investment which often takes five to seven years before it provides a significant return for the venture capitalist. Investments normally involve an equity position for the venture capitalist through either the direct purchase of ordinary shares or loans with conversion privileges.

Ghana Venture Capital Fund Limited

In July 1992 the only venture capital fund in the country, the Ghana Venture Capital Fund Ltd (GVCF), was established to provide risk bearing finance to both local and foreign owned companies as well as joint ventures.

The fund is privately owned by local and foreign financial institutions including

Cash-strapped businesses would be happy to know that there is an opportunity waiting to be exploited.

Barclays Bank of Ghana Ltd, Commonwealth Development Corporation (CDC) and Social Security and National Insurance Trust (SSNIT).

The fund invests in all stages of financing covering start-ups, expansions and privatisations. Companies seeking access to the fund would be required to submit a comprehensive feasibility report or business plan.

Additionally, existing businesses are to provide statement giving a detailed account of their performance for the years they have operated.

Monitoring

GVCF does not involve itself in the day-to-day operations of portfolio companies, but achieve monitoring through the following conditions:

- Acquiring a seat on the board of directors of the company;
- Strengthening the role of the board to determine the overall operation of the company;
- Ensuring that well quali-

fied and competent personnel are employed to manage the business;

• Requesting periodic information on the company such as monthly account, quarterly reports and budget from management.

Exit route

After 10 years of participation, GVCF has three options of pulling out of a company it has invested in.

The first option is by selling its shares to existing shareholders if they are interested. Third parties are allowed to purchase the shares if the former does not work.

The other option is to seek listing on the Ghana Stock Exchange if the company meets the requirements of the exchange.

Benefit of the fund

Because GVCF buys shares rather than gives loans, it shares all risks with the owners of the company. This makes it different from other financiers who give only loans but do not share in the risks.

Another important thing

about the fund is that, it assists portfolio companies in developing their financial and strategic plans.

The financial backing and related assistance help enhance the value of beneficiary companies and prepare them for an eventual listing on the stock exchange.

Companies that have benefitted from the fund

For nearly four years of operations, GVCF has invested in a number of companies cutting across various sectors of the economy. Among them are ABC Brewery Company (ABC), Pioneer Aluminum Factory, South Akim Manufacturing Company Ltd, Allugan Company Ltd, Sydaf Company Ltd and Leasafic Company Ltd.

Other long term financiers

It is important to mention that there are other institutions which provide long term funding for investment. Social Security and National Insurance Trust (SSNIT) and Enterprise Fund (EF) are

two of such institutions.

For further information on venture capital, or to start your own business plan, you may contact any of the addresses below.

Venture Fund Management Company Ltd
 Fifth floor, Tower Block
 SSNIT Pension House
 Liberia Road
 P.O. Box 6115
 Accra, Ghana
 Tel: 233-21-276015
 Fax: 233-21-276055
 Enterprise Fund
 Room 100
 Ring Road, Accra
 P.M.B. Accra
 Tel: 233-21-276990
 Social Security and National Insurance Trust (SSNIT)
 Pension Board
 (Ministry of Finance)
 P.O. Box 6115
 Accra
 Tel: 233-21-276065

COMPANY NEWS

Dizengoff gets new managing director

MR Zion Ginat has been appointed the Managing Director of Dizengoff Ghana Ltd, a distributor of airconditioning equipment and agro-chemical products. He succeeds Mr Elli Streit, who spent four years working in the country. Mr Ginat, a marketing and sales professional, has held various positions in America and Europe.

In the traditional way, the Board of Directors and Management of Dizengoff organised a cocktail party at the Novotel, Accra to welcome Mr Ginat, while saying farewell to Mr Streit. It was attended by a large number of guests who were mostly esteemed customers, shareholders and friends of the company.

Giving a short address at the occasion, the Chairman of the Board, Mr E. K. Akyea-Djanson commended Mr Streit for his hard work in "turning the company round" in the difficult economic doldrums of the past years.



He was therefore hopeful and confident that the successor will do even better to sustain the growth and development of the company. The chairman then assured Mr Ginat of the full support and co-operation of members of the board and the entire workforce to enable him achieve optimum results.

Dizengoff in collaboration with its division, Motorola Communications, has operated in Ghana for well over 35 years. Mr Elli Streit (middle) and Mr Zion Ginat (left) engaged in a discussion with a guest at the cocktail party held at the Novotel in Accra.

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ATTACHMENT M

GVCF SHAREHOLDERS

INVESTOR	AMOUNT(in \$'s)
Commonwealth Development Corporation	\$2,000,000
Deutsche Investition-und Entwicklungsgesellschaft (DEG)	2,000,000
Proparco	500,000
Social Security National Investment Trust (SSNIT)	400,000
Barclays Bank of Ghana Ltd	250,000
Inter-Afrique Holdings Ltd	200,000
Eco Bank (Ghana) Ltd	200,000
Merchant Bank (Ghana) Ltd	150,000
CAL Merchant Bank	100,000
Total	\$5,800,000

240