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Non-Performing Assets (Loans, Investments) Recovery Law

Provisional National Defence Council

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**NON-PERFORMING ASSETS (LOANS,
INVESTMENTS) RECOVERY LAW, 1990**

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WHEREAS the Provisional National Defence Council recognises the need for a sound banking system in Ghana to support the ongoing Economic Recovery Programme and to sustain the economy in the long-term;

WHEREAS the P.N.D.C. further realises that the financial health of the banks in the country have been adversely affected by the declining quality of their credit and investment portfolios;

WHEREAS, as part of the Financial Sector Reform Programme, the P.N.D.C. is desirous of restoring the financial health of the banks in the country by, among other measures, the provision of funds to the banks;

AND WHEREAS the P.N.D.C. deems it necessary to provide for an effective and expeditious machinery for the recovery of the funds so expended;

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

PART I—ESTABLISHMENT OF TRUST, ITS OBJECTS AND FUNCTIONS

1. (1) There is hereby established a body to be known as the Non-Performing Assets Recovery Trust (hereafter in this Law referred to as "the Trust").

Establishment of the Trust.

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

(3) The Trust shall for the discharge of its functions under this Law have power to acquire, hold and dispose of any movable or immovable property or enter into any contract or transaction.

2. The objects of the Trust are—

(a) to hold for and on behalf of the State any non-performing asset of a bank which is transferred to the Trust under this Law;

Objects of the Trust.

(b) to take such action as may be necessary to recover all amounts outstanding in respect of such transferred non-performing asset; and

(c) to administer and manage the Non-Performing Assets Recovery Fund established under this Law.

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Transfer of
non-perform-
ing assets.

3. (1) Notwithstanding any law or agreement to the contrary, any bank in Ghana shall at the direction in writing of the Trust transfer to the Trust such of its non-performing assets—

(a) as are in existence at the commencement of this Law;
or

(b) as may exist as determined by the audited account of the bank on 31st day of December, 1989; provided that such loans and advances or equity investments were actually on the books of the bank on 30th day of June, 1987, even if not identified or determined at that time to be non-performing.

(2) The Secretary may upon the recommendation of the Board of Trustees, by legislative instrument extend the date of 31st day of December 1989 specified in subsection (1) of this section for a further period of one year.

Action by
Trust in
respect of
transferred
assets

4. The Trust shall in respect of any non-performing asset transferred by a bank under section 3 of this Law cause to be paid to the bank for the transferred asset from the Fund established under section 6 of this Law such sum as may be determined by the Trust—

(a) at such rate;

(b) in such form; and

(c) subject to such other terms and conditions as the Trust may determine.

Vesting
of trans-
ferred assets.

5. All assets, rights and obligations attached to a non-performing asset transferred by a bank under this Law which immediately before the date of the transfer, were held by the bank, shall vest in the Trust.

Establish-
ment of
Non-Per-
forming
Assets
Recovery
Fund.

6. There is hereby established a fund to be known as the "Non-Performing Assets Recovery Fund" into which shall be paid all monies provided by the Government or other sources to the Trust and proceeds from recoveries made on assets vested in the Trust, and out of which shall be paid such sums of money as may be required by the Trust under this Law.

Powers of
the Trust.

7. (1) The Trust shall exercise such powers and take such actions as it deems advantageous or necessary for or in connection with the achievement of its objects under this Law.

(2) Without prejudice to the generality of subsection (1) of this section the Trust may—

(a) sell at the best price realisable, enterprises or ventures the subject of any such transferred non-performing assets or the assets of such enterprises or ventures;

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- (b) take such actions as may be necessary for the recovery of all non-performing assets;
- (c) negotiate and reschedule payments of the transferred non-performing assets;
- (d) take any other action which is incidental to the objects of the Trust.

8. (1) The governing body of the Trust shall be a Board of Trustees (hereafter in this Law referred to as "the Board"). The Board of Trustees.

(2) The Board shall consist of the following members appointed by the P.N.D.C. on the recommendation of the Secretary—

- (a) a Chairman;
- (b) a representative of the Ministry of Finance and Economic Planning;
- (c) a representative of the Bank of Ghana;
- (d) the Chief Administrator of the Trust;
- (e) a chartered accountant from the private sector;
- (f) a lawyer knowledgeable in corporate law from the private sector; and
- (g) three other persons with sound knowledge or experience on matters pertaining to the objects of the Trust at least one of whom shall be from the private sector.

(3) There shall be a Vice-Chairman of the Board who shall be appointed from among the members specified in paragraphs (b) to (g) of subsection (2) by the Council.

(4) The members of the Board shall hold office for a period of two years but such membership may be renewed for such further periods as the Council may determine.

(5) A member of the Board, other than an ex-officio member, may resign his office by writing addressed to the Council and the Council may remove any member from office for inability to perform the functions of his office or for any sufficient cause.

(6) The members of the Board shall be paid such allowances as may be determined by the Secretary.

9. The Board of Trustees shall be responsible for the formulation of policies and the supervision of the management of the Trust and shall exercise all the powers conferred on the Trust under this Law. Functions of the Board.

10. (1) The Board shall meet for the dispatch of business at such times and places as the Board may decide but shall meet at least once in every month. Meetings of the Board.

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(2) At every meeting of the Board at which he is present, the Chairman shall preside and in his absence the Vice-Chairman shall preside.

(3) Decisions of the Board shall be determined by a simple majority of members present and voting and in the event of equality of votes the Chairman or the person presiding shall have a second or casting vote.

(4) The quorum at any meeting of the Board shall be six.

(5) The Board may at any time co-opt any person to act as an adviser at its meeting, but no person so co-opted shall be entitled to vote on any matter for decision before the Board.

(6) Any member of the Board who has any interest financial or otherwise, whether direct or indirect, in any undertaking the subject matter of any decision before the Board, shall disclose in writing to the Board the nature of his interest and shall not participate in any discussion or decision of the Board relating to the matter.

(7) Any member of the Board who fails to disclose his interest under subsection (6) of this section commits an offence and shall be removed from the Board, and on conviction be liable to a fine not exceeding ₦500,000 or to imprisonment for a term not exceeding two years.

(8) Except as otherwise provided in this section the Board shall regulate its own procedure.

Committees
of the Trust.

11. The Board may on such terms as it may determine appoint such committees as it may consider necessary to perform such functions or advise the Board on such matters as the Board may direct.

Chief
Administra-
tor.

12. (1) There shall be appointed by the P.N.D.C. on the recommendations of the Secretary a Chief Administrator of the Trust.

(2) The Chief Administrator shall be appointed on such terms and conditions as the Council may determine.

(3) The Chief Administrator shall, subject to such directions as may be given by the Board be responsible for the day-to-day administration of the Trust and shall be accountable to the Board.

Staff of
the Trust.

13. (1) The Trust may from time to time engage such employees, consultants and advisers as may be necessary for the proper and efficient performance of its functions on such terms and conditions as the Board may determine.

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(2) Public officers may be transferred or seconded to the Trust.

14. No act of a Trustee or an employee of the Trust shall where such act was done in good faith in the course of his employment, subject such Trustee, employee or any person acting under his direction, personally, to any action, liability or claim.

Protection of Trustees, employees of the Trust.

PART II—ESTABLISHMENT OF NON-PERFORMING ASSETS
RECOVERY TRIBUNAL

15. There is hereby established a tribunal to be known as the Non-Performing Assets Recovery Tribunal (hereafter referred to in this Law as “the Tribunal”).

Establishment of Tribunal.

16. The Tribunal shall consist of—

Composition of the Tribunal.

- (a) a Chairman who shall be a judge of the Superior Courts not below the rank of a Justice of the Court of Appeal or a person qualified to be appointed to such office; and
- (b) two other persons,

all of whom shall be appointed by the P.N.D.C. in consultation with the Chief Justice.

17. (1) The Tribunal shall have exclusive jurisdiction to hear and determine all matters arising under this Law or relating to any non-performing asset transferred to the Trust under this Law.

Jurisdiction and Powers of Tribunal.

(2) The Tribunal shall in the exercise of its jurisdiction under this Law have all the powers of the High Court of Justice and for that purpose the civil procedure rules applicable to civil action before the High Court shall apply to actions before the Tribunal.

18. (1) A judgment or order of the Tribunal on any matter before it shall subject to subsection (2) be final.

Judgment, etc. of Tribunal and execution of judgment.

(2) The Tribunal shall have power to review its own judgment or orders.

(3) Judgments and orders of the Tribunal shall be executed and enforced in the same manner as judgments and orders of the High Court.

(4) It shall not be lawful for any Court to entertain any action or proceedings whatsoever for the purpose of questioning any judgment, finding, ruling order or proceeding of the Tribunal; and for the removal of doubt, it shall not be lawful for any court to

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entertain any application for an order or writ in the nature of habeas corpus, certiorari, mandamus, prohibition, quo warranto, injunction or declaration in respect of a judgment, order, finding, ruling or proceeding of the Tribunal.

Procedure
of Tribunal.

19. (1) The Tribunal shall in exercise of its functions under this Law be guided by the rules of natural justice.

(2) Without prejudice to the general effect of subsection (2) of section 17 of this Law the Tribunal shall in the discharge of its functions under this Law have all the powers of the High Court of Justice in respect of—

- (a) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise;
- (b) compelling the production of documents; and
- (c) the issue of a commission or request to examine witnesses abroad.

(3) The Tribunal shall at any time be deemed to be duly constituted if the Chairman and one other member are present.

(4) Any decision shall be deemed to be a decision of the Tribunal if it is supported by a majority of the members.

(5) A witness before the Tribunal shall have the immunities and privileges as if he were a witness before the High Court.

Registrar
other staff
of Tribunal.

20. The Secretary shall in consultation with the Chief Justice appoint an officer to be designated as the Registrar for the Tribunal and shall provide to the Tribunal the services of such other officers as the Tribunal may reasonably require for carrying out its functions under this Law.

Expenses,
allowances,
etc.

21. The members of the Tribunal, the Registrar and staff of the Tribunal may be paid such remuneration and allowances as the Secretary may determine.

Obstruction
of Tribunal.

22. (1) Any person who—

- (a) when summoned to attend as a witness before the Tribunal, refuses to attend or fails without reasonable excuse to attend;
- (b) being in attendance as a witness refuses to take an oath or to make an affirmation required by the Tribunal;
- (c) makes any statement before the Tribunal which he knows to be false or which he has no reason to believe to be true;

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- (d) omits or suppresses any information required by the Tribunal in the discharge of its functions or relevant to the discharge of those functions; or
- (e) in any manner misleads, obstructs, insults or disturbs the Tribunal,

shall be guilty of an offence and liable on conviction to a fine not exceeding ₵500,000.00 or to imprisonment for a term not exceeding 12 months or to both.

PART III—FINANCIAL AND MISCELLANEOUS PROVISIONS

23. (1) The Trust shall keep books of account and proper records in relation thereto and the books of account and records of the Trust shall be kept in accordance with the International Accounting Standards. Accounts and audit.

(2) The books of account of the Trust shall be audited by auditors appointed by the Board at such times as the Board may determine but shall be audited at least at the end of each financial year.

(3) The audited accounts shall be submitted to the Board not later than three months after the end of the financial year to which they relate.

(4) It shall be the duty of the Board as soon as possible but in any case not later than one month upon receipt of the report of the auditors under this section to forward such report to the Bank of Ghana and the Secretary.

(5) A copy of the report shall be submitted by the Board to the Auditor-General.

(6) The Board shall pay in respect of the audits such fees as it may determine.

24. The Board shall not later than four months after the end of each financial year submit to the Secretary an annual report on the management of the Trust in respect of that financial year and the Secretary shall submit the report together with his observations thereon to the Council. Annual report.

25. The financial year of the Trust shall be the same as the financial year of the Government. Financial year of Trust.

26. The Trust shall be exempted from the payment of all taxes, rates and duties. Tax relief.

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- Regulations. 27. The Secretary may by legislative instrument make such regulations as may be necessary for the effective and full implementation of this Law.
- Interpretation. 28. In this Law unless the context otherwise requires—
- “bank” means any bank in existence in Ghana at the commencement of this Law;
- “Council” means the Provisional National Defence Council;
- “non-performing asset” means—
- (a) loans and advances including—
- (i) any advances in respect of which the principal or interest or scheduled instalment thereof has remained overdue for any period specified by the Bank of Ghana by notice or regulation then in existence;
 - (ii) any advance to a borrower who has subsequent to the granting of the advance gone into insolvency or whose industrial or commercial operation has remained unoperational for any period specified by the Bank of Ghana by notice or regulations;
 - (iii) any overdraft in respect of which interest is due and unpaid or the overdraft is outstanding after the expiry of the authorisation or is consistently at or exceeding the credit limit for such period as the Bank of Ghana may by notice or regulation specify, or in respect of which the credit limit is regularly increased by the bank; or
 - (iv) any advance, overdraft or guarantee for which the borrower is unable or unwilling to discharge his obligation to service the interest or principal repayment; or
- (b) investment in the nature of equity holdings, debentures or other commercial paper issued by a corporate body in Ghana where—
- (i) the body has suffered losses which in aggregate, exceeds its paid up capital, declared reserves and surpluses;

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- (ii) insolvency proceedings have been initiated against the body; or
- (iii) the body's commercial or industrial operations have remained unoperational for a period longer than a period specified in notices or regulations issued by the Bank of Ghana and the marketability or realizable value has been substantially impaired exposing the bank to risk of loss;

"P.N.D.C." means the Provisional National Defence Council;

"Secretary" means the P.N.D.C. Secretary responsible for Finance and Economic Planning.

29. This Law shall continue in force until the 31st day of December 1994 and shall then expire unless upon the recommendation of the Secretary, the Council by order in the *Gazette*, extends its duration for a further period not exceeding one year. Duration of Law.

Made this 26th day of February, 1990.

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

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