

Directors' Corporate Practices and Their Governance Implications in Ghana's Banking Sector: A Critical Appraisal of the Applicable Legal and Regulatory Framework

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ABSTRACT

When seven licensed banks collapsed in Ghana between 2017 and 2018, the public conversation quickly reached for the language of economic misfortune. Yet, the post-mortems assembled by the regulator and independent scholars told a far more uncomfortable story about the people who sat in the boardrooms. This article advances the argument that the Ghanaian banking failures were, at their core, failures of directorial conduct rather than failures of macroeconomic circumstance, and it interrogates the extent to which the legal and regulatory framework that governs the practices of bank directors is capable of preventing their recurrence. Drawing upon the Banks and Specialized Deposit-Taking Institutions Act, 2016 (Act 930), the Companies Act, 2019 (Act 992), the Bank of Ghana Corporate Governance Directive, 2018, and the constitutional and common-law foundations of fiduciary obligation, the analysis demonstrates that Ghana now possesses a regulatory architecture that is, on paper, broadly consistent with international best practice as articulated in the Basel Committee guidance and the principles championed by the Organization for Economic Co-operation and Development. The persistence of related-party lending, the breach of single-obligor limits, the capture of supposedly independent boards by dominant shareholders, and the systematic suppression of dissent within credit committees together suggest that the deeper problem lies not in the absence of rules but in the chronic weakness of enforcement and in a corporate culture that has treated directorial duties as ceremonial rather than substantive. The article concludes that meaningful reform requires the recalibration of personal liability, the strengthening of the supervisory capacity of the Bank of Ghana, and the cultivation of a professional ethic among directors that internalizes the fiduciary standard rather than merely tolerating its formal existence.

KEYWORDS: Corporate Governance, Directors' Fiduciary Duties, Banking Regulation, Bank of Ghana, Act 930, Related-Party Lending, Financial Stability.

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1. INTRODUCTION: LOCATING THE FAILURE IN THE BOARDROOM

Between August 2017 and August 2018, the Bank of Ghana withdrew the licences of seven banks that had been trading with the savings of Ghanaian households and the working balances of Ghanaian businesses, and it did so in two waves that were separated by almost exactly twelve months. The first wave carried away UT Bank Limited and Capital Bank Limited, whose remaining assets and liabilities were transferred to Ghana Commercial Bank in August 2017. The second wave, announced on 1 August 2018, swept up Unibank Ghana Limited, The Royal Bank Limited, The Beige Bank Limited, Sovereign Bank Limited, and The Construction Bank Ghana Limited, all five of which were placed in receivership under the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930) while their deposits were transferred to the newly incorporated Consolidated Bank Ghana Limited (Bank of Ghana, 2018b). Two further institutions, Premium Bank and Heritage Bank, lost their licences in January 2019, so that by the time the clean-up had run its course the count stood at nine. The fiscal arithmetic of the episode was severe, since the Government issued a bond of up to GH¢5.76 billion to close the gap between the liabilities assumed by Consolidated Bank and the good assets available to support them, and that figure represents money that was not spent on hospitals, roads, or teachers.

There is a familiar and comfortable way of narrating these events, and it treats the collapses as the natural consequence of a difficult macroeconomic season, of energy sector arrears that impaired the loan books of banks exposed to state-owned utilities, of a currency

Directors' Corporate Practices and Their Governance Implications in Ghana's Banking Sector: A Critical Appraisal of the Applicable Legal and Regulatory Framework

under pressure, and of a minimum capital requirement of GH¢400 million that arrived at an inconvenient moment. That narrative is not entirely false, because the operating environment of Ghanaian banks in the middle of the last decade was genuinely punishing, and no honest account of the period can pretend otherwise. What the narrative cannot explain, however, is why a bank should have advanced the equivalent of three quarters of its total assets to its own shareholders and their connected interests, why the initial capital of a newly licensed bank should have been assembled from money borrowed from other banks, or why deposits amounting to GH¢2.3 billion should have been kept off the returns submitted to the supervisor. Those are not the fingerprints of a difficult macroeconomic season. They are the fingerprints of people who sat around board tables and decided, sometimes actively and sometimes by the studied practice of asking no questions, that the institution existed to serve them rather than the depositors whose money they held.

My argument in this article is that the Ghanaian banking crisis was in substance a crisis of directorial conduct, and that the legal framework which now governs that conduct is respectable in its drafting yet fragile in its operation. Ghana has, since 2016, acquired a prudential statute of considerable sophistication in Act 930, it has replaced a company law of 1963 vintage with the Companies Act, 2019 (Act 992), and it has supplemented both with a Corporate Governance Directive issued by the central bank in 2018 whose provisions on board composition, tenure, separation of powers, and related party dealings would not look out of place in a jurisdiction with a much longer regulatory memory. The paper framework is sound. What has not been established with any comparable conviction is the proposition, which every director of a licensed bank ought to hold as a settled expectation, that a breach of duty will be identified, that it will be pursued, and that the person responsible will personally bear a consequence that is felt.

The article proceeds in ten further parts. Part 2 sets out the theoretical foundations for treating bank directors as a special case within the general law of fiduciary obligation, drawing on the agency literature and on the argument, associated most closely with Macey and O'Hara (2003), that the fiduciary duties of bank directors ought to run beyond shareholders to the depositors and to the stability of the system itself. Part 3 explains the method and the sources on which the analysis rests. Part 4 maps the applicable Ghanaian framework across its constitutional, statutory, and regulatory layers. Part 5 turns to the evidentiary record of the collapses and reconstructs, from the regulator's own published findings and the record of the subsequent prosecutions, what the directors of the failed banks actually did. Part 6 offers a diagnosis of why rules of apparent stringency failed to bind the conduct they were written to govern. Part 7 examines enforcement, which I regard as the weakest link in the entire chain, and it does so through the contrasting fates of the two most significant prosecutions arising from the clean-up. Part 8 measures the Ghanaian arrangements against the Basel and OECD benchmarks and against the individual accountability regimes developed in comparable jurisdictions. Part 9 sets out a programme of reform that is deliberately practical rather than aspirational. Part 10 confronts the strongest objections to that programme, including the risk that an aggressive liability regime will drive competent people away from bank boards at precisely the moment when Ghana needs them. Part 11 concludes.

2. WHY BANK DIRECTORS ARE A SPECIAL CASE

2.1 The Agency Problem and Its Limits

The modern discussion of directorial obligation begins with the separation of ownership from control that Berle and Means (1932) identified in the American corporation of the interwar years, and with the formalization of that insight in the language of agency costs by Jensen and Meckling (1976). On the standard account, the shareholder is a principal who has surrendered the management of property to an agent whose interests are imperfectly aligned with those of the principal, and the function of corporate law is to reduce the cost of that misalignment through a combination of fiduciary duties, monitoring structures, disclosure obligations, and market discipline. Ghanaian company law has absorbed this account thoroughly, and section 190 of Act 992 states the position in terms that would be intelligible to any common lawyer, since it provides that a director stands in a fiduciary relationship towards the company and shall observe the utmost good faith towards the company in a transaction with or on behalf of the company, and that a director shall at all times act in what the director believes to be the best interests of the company.

The difficulty with transplanting this account wholesale into banking is that the standard agency story assumes a dispersed body of shareholders whose interests, though imperfectly protected, are broadly congruent with the long-term health of the enterprise. Neither assumption survives contact with the Ghanaian indigenous bank of the period under study. Ownership in those institutions was not dispersed but concentrated, frequently in the hands of a founder whose personality had become indistinguishable from the institution itself, and the interests of that founder in extracting value through connected lending were sharply divergent from the interests of the enterprise in surviving. Where ownership is concentrated, the salient agency problem ceases to be the conflict between managers and shareholders and becomes instead the conflict between the controlling shareholder and everyone else, a conflict that the comparative literature on emerging markets has long identified as the dominant governance pathology of firms with concentrated control (Bokpin, 2013; Boachie, 2021). The Ghanaian evidence, examined in Part 5, fits that pattern with distressing precision.

2.2 The Depositor-Regarding Conception of Duty

Banks differ from other companies in a respect that the general law of directors' duties handles poorly. A manufacturing company that fails imposes losses on its shareholders, its creditors, and its employees, and those losses, though painful, are contained. A bank that fails imposes losses on depositors who did not price the risk they were bearing, on other banks through contagion in the interbank market, on the payment system, and on the fiscal position of the state that ultimately stands behind the deposit base. Levine (2004) put the point directly when he observed that the opacity of bank assets and the presence of a public safety net together weaken every conventional governance mechanism, since diffuse depositors have neither the information nor the incentive to monitor, and the very existence of protection dulls what incentive might otherwise exist.

Macey and O'Hara (2003) drew the normative conclusion that follows from this structural difference, and they argued that directors of banks should be understood to owe a broader duty of care and loyalty than directors of ordinary firms, a duty that extends to the depositors and to the stability of the financial system rather than terminating at the boundary of shareholder interest. Their argument has been developed by subsequent scholarship on the governance of financial institutions after the global financial crisis, notably by Mülbert (2010), by Hopt (2013), and by Laeven (2013), each of whom accepted that the shareholder-oriented model of governance is not merely inadequate for banks but positively dangerous, since a leveraged institution with a public backstop gives its shareholders an incentive to prefer risk that a well-designed governance regime ought to resist rather than accommodate. Kirkpatrick (2009), writing for the Organization for Economic Co-operation and Development in the immediate aftermath of the crisis, reached the same destination by an empirical route, concluding that the failures of 2007 and 2008 were to a significant degree failures of risk governance at board level rather than failures of the risk models themselves.

This literature matters for Ghana because it supplies the theoretical justification for a proposition that Act 930 implies without ever quite stating, namely that a bank director who satisfies the shareholders has not thereby discharged the whole of the obligation. When the founder of a bank is also its dominant shareholder and its principal borrower, a conception of duty that runs only to the company as a vehicle of shareholder interest becomes almost meaningless, because the person to whom the duty is owed and the person from whom the company requires protection are the same. What is needed is a conception of duty anchored elsewhere, and the depositor supplies that anchor.

2.3 A Communitarian Reading of Trusteeship

There is an additional resource available to Ghanaian scholarship that the Anglo-American literature does not possess, and it is worth stating because it changes the register in which the argument can be made. Gyekye (1997) developed an account of African moral thought in which the person is constituted in part by relationships of obligation to a wider community, and in which the holding of position is understood as a form of trusteeship exercised for the benefit of those whose welfare depends on it rather than as a private entitlement won through effort or lineage. Read into the banking context, that account produces an intuitive and culturally grounded version of the depositor-regarding duty. The man who holds the community's savings holds them as a trustee of a common good, and the question whether his conduct was formally authorized by the constitution of a company is, on this view, close to beside the point.

I do not suggest that communitarian ethics can substitute for enforceable legal obligation, because the record of the collapses shows what happens when norms are asked to do work that only institutions can do. What the communitarian reading offers is a vocabulary in which the fiduciary standard can be presented to Ghanaian directors as something other than an imported technicality, and that is not a small thing in a jurisdiction where compliance has too often been experienced as a foreign imposition to be managed rather than a domestic obligation to be honoured.

3. METHOD AND SOURCES

The analysis that follows is doctrinal in its core, comparative in its middle sections, and evaluative in its conclusions. It reads the primary legal materials, being the 1992 Constitution, Act 930, Act 992, the Bank of Ghana Act, 2002 (Act 612) as amended, the Corporate Governance Directive, 2018, and the Fit and Proper Persons Directive, 2019, against the record of directorial conduct disclosed in three categories of secondary material. The first category consists of the regulator's own published findings, principally the press release of 1 August 2018 in which the Bank of Ghana set out its reasons for revoking the licences of five banks, together with the reports of the receiver appointed under Act 930. The second category consists of the record of the criminal proceedings that followed, in particular the prosecution of the founder of Capital Bank and the prosecution and subsequent discontinuance of the case against the founder of Unibank and seven others. The third category consists of the scholarly and policy literature on bank governance, both the international literature and the smaller Ghanaian empirical literature represented by Bokpin (2013), Boachie (2021), and Ghartey (2020).

Two limitations should be acknowledged at the outset. The first is that much of what is known about the internal deliberations of the failed boards comes from the regulator and from prosecuting authorities, both of which are interested parties whose accounts

Directors' Corporate Practices and Their Governance Implications in Ghana's Banking Sector: A Critical Appraisal of the Applicable Legal and Regulatory Framework

have not, in the case of Unibank, been tested to judgment. I have therefore been careful to distinguish findings that were admitted in court, such as those underlying the conviction of the founder of Capital Bank, from allegations that were never adjudicated. The second limitation is that the confidential supervisory record remains closed, so that the internal correspondence between the Bank of Ghana and the failed institutions, which would tell us a great deal about the timeliness of supervisory intervention, is not available for scrutiny. The argument developed here about supervisory forbearance is accordingly an inference from the observable sequence of events rather than a finding drawn from the supervisory file.

4. THE APPLICABLE LEGAL AND REGULATORY FRAMEWORK

4.1 Constitutional and Institutional Foundations

The regulatory authority of the central bank rests on article 183 of the 1992 Constitution, which establishes the Bank of Ghana and confers on it the function of promoting and maintaining the stability of the currency and encouraging the development of the national economy, and on the Bank of Ghana Act, 2002 (Act 612) as amended, which secures the operational independence of the institution. That constitutional foundation acquired practical significance in *Association of Finance Houses v Bank of Ghana and Attorney-General* (2021), where the Supreme Court was asked to hold that the Corporate Governance Directive of December 2018 was a rule or regulation within the meaning of article 11(1)(c) of the Constitution and was therefore void for want of compliance with the laying and publication requirements of article 11(7). The Court dismissed the action unanimously on 28 July 2021, holding that directives issued under sections 56 and 92(1) of Act 930 are administrative instruments falling outside the ambit of article 11, and reasoning that subjecting the central bank's prudential directives to the parliamentary process prescribed for subsidiary legislation would compromise the independence which the Constitution secures. Whatever view one takes of the constitutional reasoning, the practical consequence was to confirm that the Bank of Ghana may set binding governance standards for licensed institutions by directive, and that confirmation is the legal foundation on which the entire supervisory edifice of the post-crisis period now stands.

4.2 The Companies Act, 2019 (Act 992)

Act 992 restates and expands the general law of directors' duties. Section 190 establishes the fiduciary relationship and the obligation of utmost good faith, and it requires a director to act in what the director believes to be in the best interests of the company, a formulation that retains the subjective element of the older law while operating within an increasingly objective statutory environment. Section 191 constrains the exercise of directorial powers, section 192 deals with conflicts of duty and interest, sections 193 to 196 govern consent, interested contracts, disclosure of interest, and the maintenance of an interests register, and section 197 imposes a duty on directors to act with the professional skill and diligence that may reasonably be expected of a person of comparable knowledge and experience. Section 198 restricts the use of company information, and section 199 attaches civil liability to a breach of sections 190 to 192, so that the director and any other person who knowingly participated in the breach may be required to compensate the company for its loss, to account for any profit made, and to submit to the rescission of the offending transaction. Sections 200 to 205 supply the procedural apparatus, including the derivative action.

Ghartey (2020) has argued persuasively that Act 992 marks a firmer legislative attitude towards reckless directorial conduct than its 1963 predecessor, and that it achieves this by supplementing the principles-based technique inherited from the older law with a larger complement of specific rules. That assessment is fair as a reading of the text. What the text cannot supply, and what Part 7 of this article examines, is the record of use, and the derivative action in particular remains close to a dead letter in Ghanaian practice for reasons that have as much to do with the cost and duration of civil litigation as with the drafting of the section.

4.3 The Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930)

Act 930 layers a prudential regime on top of the general company law, and the sections that matter most for present purposes cluster between sections 56 and 70. Section 56 requires licensed institutions to maintain sound corporate governance arrangements and supplies the vires for the central bank's governance directives. Section 57 imposes a duty on directors to report to the Bank of Ghana, a provision of real significance because it converts the director from a passive recipient of supervisory attention into an active channel of supervisory information. Section 58 provides for the disqualification of directors and key management personnel, section 59 requires disclosure of interest, and section 60 authorizes the intervention of the central bank in appointments, which in practice means that a person may not take a seat on the board of a Ghanaian bank without the supervisor's approval.

The exposure provisions follow. Section 61 prohibits an advance against the security of the institution's own shares. Section 62 establishes the single obligor limit, providing that a bank or specialized deposit-taking institution shall not take financial exposure in respect of a person or a group of connected persons amounting in aggregate to more than twenty-five per cent of its net own funds, or such lower percentage as the Bank of Ghana may prescribe. Section 63 applies the limits on a consolidated basis, and sections 64 and 65 restrict transactions with affiliates and the purchase or transfer of assets from affiliates and insiders, requiring in substance that any such dealing be conducted on arm's length terms in respect of creditworthiness, pricing, collateral, and every other material condition. Section 66 restricts inter-institutional placements. Sections 78 to 90 govern accounting, audit, and

Directors' Corporate Practices and Their Governance Implications in Ghana's Banking Sector: A Critical Appraisal of the Applicable Legal and Regulatory Framework

disclosure, and section 103 supplies remedial measures directed specifically at directors and key management personnel, while section 104 provides for prompt corrective action.

Read as a whole, the prudential architecture is intelligent, and it anticipates with some precision the very conduct that later destroyed the seven banks. A regime that caps connected exposure at a quarter of net own funds, that requires affiliate dealings to be conducted at arm's length, that forbids lending against the institution's own shares, and that empowers the supervisor to veto board appointments is not a regime that lacked the tools to prevent what happened. The failure lay elsewhere.

4.4 The Corporate Governance Directive, 2018

The Bank of Ghana issued the Banking Business Corporate Governance Directive in 2018 under sections 56 and 92(1) of Act 930, with transitional provisions requiring full compliance by 31 December 2018 in respect of business strategy, board qualification and composition, board size and structure, directors' independence, the office of board secretary, separation of powers, other engagements of directors, and board sub-committees (Bank of Ghana, 2018a). The Directive states its own purposes with unusual candour, since it declares that it exists to require regulated financial institutions to adopt sound corporate governance principles, to promote and maintain public trust in those institutions, and to minimize the possibility of failures that are usually rooted in poor corporate governance practices. That last formulation is a regulator's admission, published within months of the collapses, that the failures had been governance failures.

Four features of the Directive deserve emphasis. First, it separates the offices of board chair and managing director and provides that no individual shall hold unfettered powers of decision within a regulated financial institution, a provision aimed squarely at the founder-chief executive model that had dominated the indigenous banking sector. Second, it imposes tenure limits, capping the service of a managing director or chief executive officer at twelve years, divided into terms of not more than four years, and imposing shorter maxima on board chairs and non-executive directors, the intention being to interrupt the accumulation of personal authority that turns a board into a court. Third, it requires that the appointment of directors follow a formal and transparent procedure conforming to the Fit and Proper Persons Directive, and it requires the submission of comprehensive due diligence reports on proposed key management personnel in conjunction with section 60 of Act 930. Fourth, it prescribes a risk governance structure, including a board risk committee whose function is to provide independent review of the institution's risk profile and whose existence is intended to give the board an information channel that does not run through the chief executive.

4.5 The Supporting Statutory Environment

Several further instruments complete the framework. The Ghana Deposit Protection Act, 2016 (Act 931) establishes a scheme intended to protect small depositors and, by doing so, to reduce the political pressure for a full public bail-out when an institution fails. The Whistleblower Act, 2006 (Act 720) creates protections for disclosures of impropriety which, if they operated effectively within banks, would give a troubled internal auditor a route to the supervisor. The Anti-Money Laundering Act, 2020 (Act 1044) and the Economic and Organised Crime Office Act, 2010 (Act 804) supply the investigative and asset recovery machinery on which the post-crisis prosecutions depended. Article 88 of the Constitution vests in the Attorney-General the responsibility for all criminal prosecutions and the discretionary authority to discontinue them, a power whose exercise in July 2025 forms the subject of Part 7.

5. WHAT THE DIRECTORS ACTUALLY DID

5.1 The First Wave

The revocation of the licences of UT Bank and Capital Bank in August 2017 was explained by the central bank in terms of severe impairment of capital, and the receivership that followed was conducted by insolvency practitioners appointed under Act 930. The published accounts of both institutions had, until shortly before the end, presented a picture that bore little resemblance to the position discovered on examination, and the gap between the reported and the actual condition of the two banks is itself a governance finding, since the approval of financial statements is a board function and not a management function. Whatever else may be said about the directors of these institutions, they signed off on numbers that the supervisor found to be unsupportable.

5.2 Unibank and the Anatomy of Extraction

The most instructive case is Unibank, because the regulator's published reasons for revoking its licence describe a pattern rather than an incident. The Bank of Ghana recorded that shareholders and related parties of the bank had received loans and advances totalling GH¢1.6 billion without due process and in breach of the relevant provisions of Act 930, and that a further GH¢3.7 billion had been given to shareholders and related parties without passing through the normal credit delivery process at all, without being reported as part of the bank's loan portfolio, without security, and without generating any interest income for the bank. Taken together, the extraction amounted to GH¢5.3 billion, which the regulator calculated as seventy-five per cent of the total assets of the institution. Of total customer deposits of GH¢4.3 billion, an amount of GH¢2.3 billion had not been disclosed to the Bank of Ghana at all (Bank of Ghana, 2018b).

Directors' Corporate Practices and Their Governance Implications in Ghana's Banking Sector: A Critical Appraisal of the Applicable Legal and Regulatory Framework

It is worth pausing on what those figures mean in terms of board conduct, because the temptation is to read them as a description of theft and then to move on. Advances of GH¢1.6 billion granted without due process require, at minimum, a credit committee that approved them or a credit process that had been configured so that approval was not required. Advances of GH¢3.7 billion that never entered the loan portfolio require an accounting function that recorded them elsewhere and an audit committee that either did not detect the treatment or did not report it. Deposits of GH¢2.3 billion kept off the returns submitted to the supervisor require the periodic submission of returns which the board, through its audit committee, was obliged to satisfy itself were accurate. Each of these steps passed through a governance organ. The single obligor limit in section 62 caps exposure to a group of connected persons at twenty-five per cent of net own funds, and the reported connected exposure exceeded that ceiling by an order of magnitude. A board cannot breach a limit of that kind by inadvertence sustained over years.

5.3 Capital Bank, Sovereign Bank, and the Diversion of Liquidity Support

The Capital Bank matter produced the only conviction of a banking executive arising from the clean-up, and because the founder pleaded guilty, the underlying facts are established rather than alleged. In December 2022 William Ato Essien pleaded guilty to sixteen counts of stealing and money laundering, admitting the dissipation of more than GH¢90 million of liquidity support that the Bank of Ghana had extended to Capital Bank. The sentencing court found that he had exploited the bank to his own advantage without regard for its depositors, and that he had pursued the object of establishing a second bank, Sovereign Bank Limited, through subterfuge and deceit. What makes the finding significant for governance analysis is the direction of the flow. Public money advanced to stabilize a distressed institution was used to capitalize a new one controlled by the same person, which means that the emergency support mechanism of the central bank was converted into a source of promoter equity. That could not have occurred in an institution whose board understood the difference between the assets of the company and the ambitions of its founder.

5.4 Manufactured Capital

The regulator's findings in respect of Sovereign Bank, The Beige Bank, and The Construction Bank disclose a variant of the same disease. In each case the Bank of Ghana concluded, following investigations conducted during the official administration of Unibank, that the institution had obtained its banking licence on the strength of capital that was not what it appeared to be, whether because the seed capital had been funded with money borrowed from other banks or because funds lodged with an affiliate had been presented as capital of the applicant. Construction Bank, licensed in May 2017 and commencing operations in December 2017, was found to have funded its initial minimum paid-up capital with borrowings from other institutions, and the regulator recorded a commencement of business in December 2017 in violation of section 90(2) of Act 930 (Bank of Ghana, 2018b).

Manufactured capital is the purest possible expression of a ceremonial approach to directorial duty, because capital exists for one reason only, which is to absorb losses before depositors do. A director who certifies capital that has been borrowed has certified an accounting entry rather than a loss-absorbing buffer, and has therefore represented to the supervisor, to the depositing public, and to the other participants in the payment system that a protection exists which does not.

5.5 The Pattern

Five recurring practices emerge from the record. The first is related-party lending on a scale that converted the bank into a financing vehicle for its owners. The second is the concealment of that lending through accounting treatments that kept it outside the reported loan book. The third is the misstatement of the institution's position to the supervisor, whether by the non-disclosure of deposits or by the presentation of borrowed money as capital. The fourth is the disabling of the internal control functions, since a credit committee, an internal audit unit, and an audit committee that was operating as designed would have generated a written record of objection, and no such record has emerged. The fifth, which is the hardest to prove and the most important, is the suppression of dissent. Boards populated by people who owed their appointment to the founder, who served at his pleasure, and who understood the institution as his personal achievement did not produce the awkward minute, the recorded abstention, or the letter to the supervisor that section 57 of Act 930 contemplates.

6. DIAGNOSIS: WHY RULES OF APPARENT STRINGENCY FAILED TO BIND

6.1 Concentrated Ownership and Founder Dominance

The indigenous banks that failed were, with few exceptions, the creations of individuals whose capital, reputation, and political relationships had brought them into existence. Concentrated ownership of that kind is not inherently pathological, and in a capital-scarce economy it may be the only realistic route to the establishment of a domestically owned bank. What makes it dangerous is the combination of concentration with the absence of any counterweight, and Ghanaian practice in the relevant period supplied no counterweight at all. There was no institutional shareholder with the standing to object, no active market for corporate control, no meaningful bondholder constituency, and no analyst community with access to the internal numbers. In that configuration, the only remaining check on the controlling shareholder was the board, and the board was his creature.

6.2 The Illusion of Independence

Directors' Corporate Practices and Their Governance Implications in Ghana's Banking Sector: A Critical Appraisal of the Applicable Legal and Regulatory Framework

Independence in Ghanaian banking practice has too often meant the absence of a formal employment relationship rather than the presence of an actual capacity to disagree. A director who is nominated by the founder, whose fees are material to his household income, whose professional practice depends on referrals within a small commercial community, and whose social standing is bound up with the appointment is not independent in any sense that governance theory recognizes, however faithfully his curriculum vitae satisfies the criteria in the Directive. The Corporate Governance Directive addresses the formal indicia of independence with some care. It does not, and probably cannot by itself, address the sociology.

6.3 The Information Architecture of the Board

A board that receives its information exclusively through the chief executive is not monitoring the chief executive but ratifying him. This is not a Ghanaian problem in origin, and the English courts confronted a version of it in *Re Barings plc (No 5)* (1999), where the delegation of responsibility was held not to absolve directors of the obligation to supervise the discharge of the delegated function. It is, however, a Ghanaian problem in its severity, because the failed institutions typically lacked the independent internal audit capacity, the direct reporting line from the chief risk officer to the board risk committee, and the practice of executive sessions without management present that would give non-executive directors an independent view of the institution. The Directive now requires a risk governance structure of the appropriate shape. Whether the structure carries real information depends on matters that no directive can compel, including whether the chief risk officer believes that reporting an inconvenient exposure will end his career.

6.4 The Assurance Chain

External audit occupies an uncomfortable position in this account. Financial statements that did not disclose GH¢3.7 billion of related-party extraction, or that presented borrowed funds as paid-up capital, received audit opinions. The question of auditor responsibility lies outside the scope of this article, but the governance point does not, because the board's audit committee is the organ through which the company engages with its auditors and it is the organ that is expected to interrogate the audit rather than receive it. Sections 78 to 90 of Act 930 build an accounting and audit architecture of real ambition. That architecture assumes an audit committee willing to ask the second question.

6.5 Supervisory Forbearance and Capacity

The regulator's own conduct forms part of the diagnosis and cannot be excluded from it merely because the regulator wrote the eventual report. Institutions whose condition was found on examination in early 2018 to be beyond rehabilitation had been trading for years, taking deposits, and submitting returns. Unibank received substantial liquidity support before its collapse, and Capital Bank received the liquidity support that its founder was subsequently convicted of dissipating. The provision of emergency liquidity to an institution whose governance is compromised converts the central bank into an unwitting funder of extraction, and the sequence in the Capital Bank matter demonstrates the point with unusual clarity. Whether the delay reflected inadequate examination capacity, an institutional preference for negotiated remediation over confrontation, or pressure of a less respectable kind, the operational lesson is the same. Detection lagged behind conduct by a period long enough for the losses to become unrecoverable.

6.6 The Ceremonial Conception of Duty

Underneath the structural explanations lies a cultural one. Board membership in Ghana has carried significant social prestige, and the observable behaviours associated with the role, being attendance, deliberation of a general kind, the approval of minutes, and the collection of fees, are entirely compatible with a complete failure to perform the substantive function. Where a role has prestige that is detached from performance, the role tends to be filled by people who value the prestige. The Corporate Governance Directive attempts to intervene at this level through its provisions on the competencies of directors, requiring that board members possess individually and collectively appropriate experience, competencies, and personal qualities including professionalism and integrity, and through the tenure limits that prevent the sedimentation of authority. These are useful measures. They will not by themselves convert a ceremonial understanding of the office into a substantive one, because that conversion depends on directors coming to believe that the duty is real, and directors will come to believe that the duty is real when they observe what happens to directors who breach it.

6.7 The Asymmetry of Consequence

Which brings the diagnosis to its central point. For the controlling shareholder-director of a Ghanaian bank in the period under study, the expected value of extraction was overwhelmingly positive. The upside was immediate, large, and personal. The downside was remote in time, uncertain in its incidence, largely borne by depositors and by the state, and, as Part 7 shows, negotiable even when it materialized. No system of rules can bind conduct when the arithmetic of consequence points this decisively in one direction.

7. ENFORCEMENT: THE WEAKEST LINK

7.1 The Criminal Route and the Price of Wrongdoing

Two prosecutions define the enforcement record of the clean-up, and they resolved in opposite directions.

Directors' Corporate Practices and Their Governance Implications in Ghana's Banking Sector: A Critical Appraisal of the Applicable Legal and Regulatory Framework

In the first, William Ato Essien pleaded guilty in December 2022 and initially avoided a custodial sentence by entering into an agreement with the Attorney-General under section 35 of the Courts Act, 1993 (Act 459), a provision that permits a person charged with an offence causing financial loss to the state to make restitution and thereby avoid imprisonment. He paid GH¢30 million and undertook to pay the balance of GH¢60 million in three instalments during 2023. Having failed to meet those instalments, he was sentenced by the High Court in October 2023 to fifteen years' imprisonment with hard labour, and the court also ordered, pursuant to Act 930, that he was disqualified from appointment as a director of any bank or financial institution. He thereby became the first banking executive to serve a custodial sentence arising from the clean-up. In May 2025, the Court of Appeal granted him bail pending the determination of his appeal.

In the second, the founder of Unibank and seven others were charged in February 2020 with sixty-eight counts including fraudulent breach of trust, money laundering, dishonestly receiving, and falsification of accounts. The case against one accused, a former second deputy governor of the Bank of Ghana, was withdrawn in January 2025. On 22 July 2025, the Attorney-General entered a *nolle prosequi* in *The Republic v Kwabena Duffuor and 7 Others*, discontinuing the entire prosecution. The stated basis was that the accused had met a recovery threshold of sixty per cent of the alleged losses, the Attorney-General explaining subsequently that the accused had proposed in May 2025 to pay GH¢2 billion against revised obligations of GH¢3.3 billion, through a combination of asset transfers of GH¢800 million directly to the bank in receivership and cooperation in recovering a further GH¢1.2 billion from third-party beneficiaries. The Attorney-General was careful to state that discontinuance implied neither vindication nor an absence of wrongdoing, and that a *nolle prosequi* discharges rather than acquits, leaving open the possibility of future proceedings.

I want to be fair to the reasoning behind that decision, because it is stronger than its critics usually allow. Criminal prosecutions of complex financial wrongdoing in Ghana take years, consume prosecutorial resources that are severely limited, and frequently end in acquittal on evidential grounds that have nothing to do with the merits. A negotiated recovery of GH¢2 billion for the benefit of a bank in receivership is a real benefit to real creditors, and a prosecutor who declines that recovery in order to pursue a conviction that may never arrive is not obviously serving the public interest.

The difficulty is what the practice communicates to the next generation of bank directors. If the consequence of extracting several billion cedis from a bank is the eventual return of a majority proportion of it, then the framework has been converted from a prohibition into a price, and the price carries a substantial discount for delay and negotiation. When the two matters are read together, the message becomes sharper still, since the executive who lacked the resources to satisfy a settlement went to prison while the settlement that was satisfied produced a discharge. Whatever the intention, the operative distinction in Ghanaian enforcement practice as it currently stands is not between greater and lesser culpability but between greater and lesser capacity to pay. A regime that distinguishes among wrongdoers on that basis will not produce the deterrent effect that the framework requires, and it invites precisely the calculation, familiar from the literature on corporate criminal settlements, in which wrongdoing is planned with the settlement already in contemplation.

7.2 The Civil Route

The civil enforcement record is thinner still. Section 199 of Act 992 supplies a compensatory remedy against a director who breaches sections 190 to 192, together with an account of profits and a right of rescission, and section 200 permits proceedings by the company or by a member. In a failed bank, the company is controlled by a receiver appointed under Act 930, so the practical question is whether receivers pursue directors personally, and the answer in Ghana has generally been that they pursue asset recovery from the estate and from third-party beneficiaries in preference to personal claims against non-executive directors whose insurance arrangements are uncertain and whose personal wealth is modest relative to the loss. The civil proceedings brought in respect of Unibank encountered procedural difficulties concerning the appointment of the receiver, which illustrates a general truth about complex financial litigation in the Ghanaian courts, namely that preliminary points consume years.

The derivative action under section 201 is of limited use in exactly the situation where it is most needed. Where the wrongdoing director is also the controlling shareholder, the members who might bring the action are the wrongdoers, and where the company has failed, the residual shareholders have nothing left to recover and therefore no incentive to litigate. The persons with the strongest interest in the enforcement of directors' duties in a failed bank are the depositors, and the depositors have no standing.

7.3 The Administrative Route

The administrative route is the most promising and the least used. Section 58 of Act 930 provides for disqualification, section 60 permits the central bank to intervene in appointments, and section 103 supplies remedial measures directed at directors and key management personnel. The Corporate Governance Directive contemplates the consequences for a person associated with the management of an institution whose licence has been revoked. These powers permit the supervisor to act on the balance of probabilities, at speed, without the evidential burden of a criminal trial, and with the sanction that a delinquent director fears most in reputational terms, which is exclusion from the industry.

What Ghana lacks is the visible and systematic use of these powers, together with the public register that would give them their deterrent force. A director who has been quietly told that his appointment will not be approved at another institution has been

Directors' Corporate Practices and Their Governance Implications in Ghana's Banking Sector: A Critical Appraisal of the Applicable Legal and Regulatory Framework

sanctioned in private, and private sanctions do not teach. Publication of disqualification decisions, with reasons, is the single cheapest reform available to the Bank of Ghana, and it requires no legislative amendment.

8. COMPARATIVE AND INTERNATIONAL BENCHMARKS

The Basel Committee on Banking Supervision (2015) sets out thirteen principles for the corporate governance of banks, and the Ghanaian Directive of 2018 tracks them closely in respect of board responsibilities, board qualifications and composition, board structure and practices, the roles of senior management, the risk management function, risk communication, compliance, internal audit, compensation, disclosure, and the role of supervisors. The G20 and OECD Principles of Corporate Governance (OECD, 2023) supply a complementary framework whose emphasis on the treatment of related-party transactions and on the rights of stakeholders speaks directly to the Ghanaian pathology. Against these benchmarks, the Ghanaian framework performs respectably in design and poorly in the dimension that Basel identifies as Principle 13, the role of supervisors, which requires supervisors to evaluate governance, to interact regularly with boards and senior management, and to require improvement and remedial action.

Two comparative models are instructive for the reform programme that follows. The first is the individual accountability regime developed in the United Kingdom, under which senior managers within authorized firms are allocated specified responsibilities through a documented statement, are personally accountable for the discharge of those responsibilities, and may be subject to enforcement where they fail to take reasonable steps to prevent a regulatory breach within their area. The virtue of the model is that it converts the diffuse and collective responsibility of a board into a mapped and individual responsibility that can be enforced without proving dishonesty. The second is the oversight duty developed in Delaware through *In re Caremark International Inc. Derivative Litigation* (1996) and confirmed in *Stone v. Ritter* (2006), under which directors may be liable where they have utterly failed to implement any reporting or information system, or having implemented one, have consciously failed to monitor its operation. The Delaware formulation is demanding, and deliberately so, but it identifies the precise failure that the Ghanaian record discloses, which is not a series of bad commercial judgments but the conscious disabling of the mechanisms by which a board learns what its institution is doing.

Within the region, Nigeria has restructured its own framework following the enactment of the Banks and Other Financial Institutions Act 2020, and the direction of travel across African banking supervisors has been towards more prescriptive governance standards, greater use of fit and proper assessment, and increased attention to related-party exposure. The Ghanaian framework is not an outlier in its content. It is closer to being an outlier in the gap between its content and its application.

9. A PROGRAMME FOR MAKING DIRECTORIAL DUTY SUBSTANTIVE

9.1 Recalibrate Personal Liability

The first reform is to make the personal financial consequences of a breach of the exposure and affiliate provisions of Act 930 both certain and severe. I propose an amendment to Act 930 providing that where a licensed institution incurs loss in consequence of a financial exposure taken in contravention of sections 62 to 65, every director who voted in favour of the exposure, and every director who was present and did not cause his dissent to be recorded, shall be personally liable to the institution for the loss, subject to a defence that the director took reasonable steps in the circumstances to prevent the contravention or, having become aware of it, reported it promptly to the Bank of Ghana under section 57. This is not an invention. It is the structure of liability that company law has long applied to unlawful distributions, and it is appropriate here because a connected-party exposure in excess of the statutory limit is, in economic substance, a distribution to the controlling shareholder disguised as a loan.

The provision should be accompanied by a requirement that the minutes of any credit committee or board meeting approving an exposure to a connected person record the vote of each member individually. The value of a recorded individual vote lies less in the litigation it supports than in the moment it creates in the room.

9.2 Introduce a Ghanaian Senior Responsibility Regime

The second reform is the introduction, by directive under section 56 of Act 930, of a responsibility mapping requirement for banks and financial holding companies. Each institution would be required to file with the Bank of Ghana a statement allocating specified responsibilities, including credit approval, risk management, financial reporting, regulatory reporting, and compliance, to named individuals, and to update that statement whenever the allocation changes. Where a regulatory breach occurs within an allocated area, the supervisor would be entitled to proceed against the named individual unless that person demonstrates that reasonable steps were taken to prevent it.

The advantage of this design for Ghana is that it circumvents the evidential problem that has bedevilled the criminal prosecutions. Proving dishonesty beyond reasonable doubt in a complex financial matter is genuinely difficult. Proving that a named individual held a mapped responsibility and that a breach occurred within it is not difficult at all, and the burden then shifts to the person best placed to explain what was done.

9.3 Make Disqualification the Ordinary Sanction

Directors' Corporate Practices and Their Governance Implications in Ghana's Banking Sector: A Critical Appraisal of the Applicable Legal and Regulatory Framework

The third reform requires no legislation. The Bank of Ghana should establish and publish a register of persons disqualified under section 58 of Act 930 from serving as directors or key management personnel of regulated institutions, recording the period of disqualification and a short statement of reasons, subject to appropriate procedural fairness and a right of appeal. Disqualification should become the ordinary regulatory response to a proven governance breach rather than the exceptional consequence of a criminal conviction. A director who understands that a single serious lapse will end his career in the industry, publicly, has a materially different incentive structure from one who understands that the worst realistic outcome is a quiet departure and a directorship elsewhere.

9.4 Discipline the Settlement Practice

The fourth reform addresses the enforcement asymmetry identified in Part 7. Where the Attorney-General exercises the constitutional power to discontinue a prosecution arising from the failure of a financial institution, or where an agreement is reached under section 35 of the Courts Act, the terms should as a matter of settled policy include the disqualification of the accused from holding any position in a regulated financial institution, the provision of full cooperation in the recovery of assets from third parties, and the publication of the reasons for the decision in a form that permits public evaluation. I would go further and propose that the Attorney-General report annually to Parliament on discontinuances in financial sector cases, including the amounts recovered and the terms agreed. The purpose is not to fetter a constitutional discretion, which would be improper, but to ensure that its exercise is visible, and visibility is the discipline that best distinguishes a settlement made in the public interest from one that merely converts a prohibition into a price.

9.5 Rebuild Board Independence in Substance

The fifth reform is a cluster of measures directed at the sociology of the Ghanaian bank board. Independent non-executive directors of banks should be appointed from a pool assessed and approved by the Bank of Ghana under section 60, with the supervisor able to require the appointment of an additional independent director where the ownership structure of an institution is concentrated. Every board should be required to hold at least one session per quarter without executive directors present, and to file confirmation that the session occurred. The chief risk officer, the head of internal audit, and the board secretary should each have a documented right of direct access to the board risk committee, and to the Bank of Ghana, together with the protection of the Whistleblower Act, 2006 (Act 720), and their removal should require the prior notification of the supervisor. A dissenting director should be entitled, as of right, to have the dissent recorded in the minutes in his own words, and the practice of amending minutes to remove such records should be made a specific regulatory breach attributable to the board secretary and the chair.

9.6 Strengthen Supervisory Capacity and the Information Base

The sixth reform concerns the supervisor. Related-party exposure cannot be monitored without a reliable map of who is related to whom, and Ghana now possesses the necessary raw material in the beneficial ownership disclosure requirements introduced under the Companies Act, 2019. The Bank of Ghana should link its prudential returns to the beneficial ownership register so that connected exposures are computed by the supervisor from ownership data rather than accepted from the reporting institution. Thematic examinations directed specifically at insider lending, conducted across the sector on a common methodology, should be a standing feature of the supervisory calendar. Governance should be separately rated within the supervisory assessment of each institution, and the rating, or at least its broad band, should be disclosed. None of this is exotic, and all of it is expensive, which is why the resourcing of the Banking Supervision Department is itself a governance question of the first order.

9.7 Codify the Depositor-Regarding Duty

The seventh reform is symbolic in form and substantive in effect. Act 930 should be amended to provide expressly that a director of a licensed institution, in performing the duties imposed by sections 190 to 197 of the Companies Act, 2019, shall have regard to the interests of depositors and to the stability of the financial system, and that compliance with a direction of the controlling shareholder is not a defence to a breach of duty. The provision would give statutory expression to the depositor-regarding conception of duty developed by Macey and O'Hara (2003), and it would resolve the analytical difficulty identified in Part 2, which is that a duty owed to a company controlled by the wrongdoer protects nobody.

9.8 Build the Professional Formation of Directors

The eighth reform is the slowest and, in my judgment, the one most likely to determine whether any of the others succeed. Ghana should require that every person appointed to the board of a licensed financial institution complete a certified programme in bank governance covering the statutory duties, the prudential framework, credit and risk fundamentals, and the ethics of fiduciary office, with periodic continuing education thereafter, administered through a professional body and audited by the supervisor. The purpose is not to produce technicians. It is to produce directors who experience the fiduciary standard as a professional identity rather than as an external constraint, in the way that a physician experiences the obligation to a patient. Gyekye's (1997) account of position as

Directors' Corporate Practices and Their Governance Implications in Ghana's Banking Sector: A Critical Appraisal of the Applicable Legal and Regulatory Framework

trusteeship for a community supplies a culturally intelligible foundation for that formation, and Ghanaian professional education is fully capable of building on it.

10. OBJECTIONS AND LIMITS

The programme set out above invites four serious objections, and each deserves an answer rather than a dismissal.

The first objection is over-deterrence. A regime of personal liability for connected exposures, mapped individual responsibility, and routine disqualification may deter competent people from accepting appointment to bank boards, leaving those boards to be filled by the incurious and the unemployable. The concern is real, and the answer is calibration rather than retreat. The liability I propose attaches to contraventions of specific statutory limits rather than to commercial judgments that turn out badly, and it carries a reasonable-steps defence. A director who reads the credit papers, asks whether the exposure is connected, and records a dissent when the answer is unsatisfactory is at no risk whatever. That is precisely the behaviour the reform is designed to produce.

The second objection is that an aggressive liability regime will make boards risk-averse in a market that needs credit to flow, particularly to the small and medium enterprises that the Ghanaian economy depends upon. I accept the general proposition that governance rules can suppress useful risk-taking. I do not accept its application here, because the exposures that destroyed the seven banks were not risky lending to unfamiliar borrowers in productive sectors. They were unsecured, unpriced, unrecorded advances to the owners of the banks themselves. Suppressing that category of transaction releases capital for lending rather than restricting it. The third objection is that stringent governance requirements disadvantage indigenous banks relative to foreign-owned institutions with deep pools of capital and imported compliance infrastructure, and that this outcome is inconsistent with the development of a domestically owned financial sector. This is the most politically potent objection and the one that most requires a direct answer. The indigenous banking sector was not damaged by the Corporate Governance Directive. It was damaged by the conduct of a group of indigenous bankers whose behaviour cost the Ghanaian taxpayer billions of cedis and cost the reputation of domestic banking a great deal more. The strongest argument available to the case for indigenous banking is a governance record that permits a Ghanaian depositor to choose a Ghanaian bank without anxiety.

The fourth objection concerns the enforcement institutions themselves. A regime that concentrates discretionary power in the supervisor and the prosecutor assumes that both will exercise it impartially, and the history of financial sector enforcement in Ghana, in which prosecutions have tended to follow changes of government and to be discontinued after further changes of government, does not sustain that assumption easily. This is why the reforms proposed in Parts 9.3 and 9.4 emphasize publication and reporting rather than the expansion of discretion. Where a power must be discretionary, the corrective is not to remove the discretion but to make its exercise legible, so that a decision taken for improper reasons is harder to disguise as a decision taken in the public interest.

11. CONCLUSION

Ghana did not lose seven banks because its law was silent. Section 62 of Act 930 capped connected exposure at twenty-five per cent of net own funds while a bank advanced seventy-five per cent of its total assets to its owners. Sections 64 and 65 required affiliate dealings at arm's length while advances were made without security, without interest, and without entering the loan book at all. Section 190 of the Companies Act stated the fiduciary obligation in the plainest terms available to the English language while directors watched the institutions in their charge being emptied. The rules were present throughout, and they were not merely present but well drafted, and they were substantially aligned with the guidance of the Basel Committee and the principles of the OECD.

What was absent was consequence. A framework of obligation becomes real to those it governs at the moment when they observe someone bearing the cost of breaching it, and that moment has arrived only once in Ghana, in a courtroom in October 2023, in circumstances that turned as much on a defendant's inability to complete a payment schedule as on the gravity of what he had done. Until the ordinary and predictable outcome of a serious governance breach in a Ghanaian bank is that the responsible directors are publicly disqualified, personally liable for the loss they caused, and subject to proceedings that are pursued to their conclusion, the fiduciary duty stated in section 190 will continue to be understood by too many of the people who owe it as a form of words to be recited at the point of appointment and forgotten thereafter.

The recommendations advanced here are deliberately modest in their legislative ambition, because Ghana's problem has never been a shortage of legislation. Publish the disqualifications. Map the responsibilities. Attach personal liability to the breach of exposure limits with a defence for the director who dissented. Require the supervisor to compute connected exposure from beneficial ownership data rather than from the returns of the institution being examined. Make the reasons for discontinuing a financial sector prosecution public and reportable to Parliament. Codify the duty to depositors. Educate the people who take the seats. None of that is difficult to draft, and all of it depends on a prior decision that the country has not yet unambiguously made, which is that a seat on the board of a Ghanaian bank is an office of trust rather than a reward.

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Directors' Corporate Practices and Their Governance Implications in Ghana's Banking Sector: A Critical Appraisal of the Applicable Legal and Regulatory Framework

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