



# WRIT OF SUMMONS

(Order 2 rule 3(1))

WRIT ISSUED FROM 2:57-31-18 20018 SUIT No.

CmlBDC/0588/2018

## IN THE HIGH COURT OF JUSTICE COMMERCIAL DIVISION

BETWEEN 1. BELSTAR CAPITAL LTD  
11 FLOOR  
WORLD TRADE CENTRE  
ACCRA

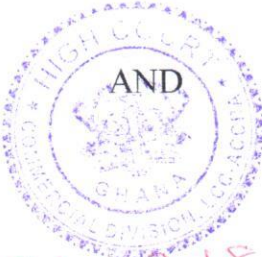
2. STARMOUNT DEVELOPMENT LTD  
11 FLOOR  
WORLD TRADE CENTRE  
ACCRA

Plaintiff \*

1. BANK OF GHANA  
NO. 1 THORPE ROAD  
NEAR HIGH STREET ACCRA

2. CENTRAL SECURITIES DEPOSITORY (GH) LTD  
4<sup>TH</sup> FLOOR CEDI HOUSE, RIDGE, ACCRA

Defendants \*



(Plaintiffs will direct service)

EAL 31-9-18  
To 2:57

AN ACTION having been commenced against you by the issue of this writ by the above-named Plaintiff. 1. BELSTAR CAPITAL LTD 2. STARMOUNT DEVELOPMENT LTD

YOU ARE HEREBY COMMANDED that within EIGHT DAYS after service of this writ on you inclusive of the day of service you do cause an appearance to be entered for you. 1. BANK OF GHANA 2. CENTRAL SECURITIES DEPOSITORY (GH) LTD

AND TAKE NOTICE that in default of your so doing, judgment may be given in your absence without further notice to you. 1. BANK OF GHANA 2. CENTRAL SECURITIES DEPOSITORY

(GH) LTD

Dated this 31st day of July 2018

**SOPHIA A.B. AKUFFO (MS)**

Chief Justice of Ghana

NB: This writ is to be served within twelve calendar months from the date of issue unless, it is renewed within six calendar months from the date of that renewal.

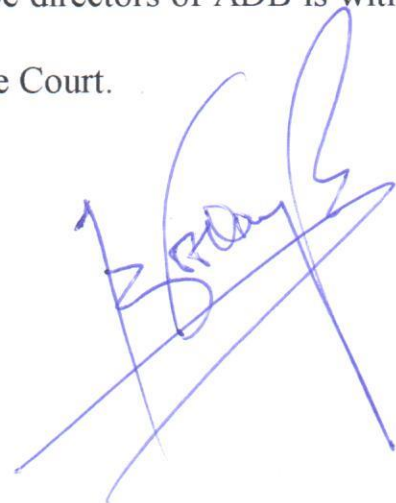
The defendant may appear hereto by filing a notice of appearance either personally or by a lawyer at Form 5 at the Registry of the Court of issue of the writ at a defendant appearing personally may, if he desire give notice of appearance by post.

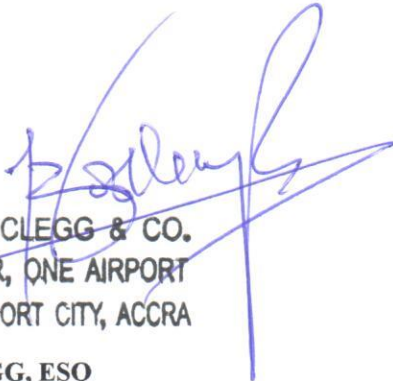
\*State name, place of residence or business address of plaintiff if known (not P.O. Box number).  
\*\*State name, place of residence or business address of defendant (not P.O. Box number).

## STATEMENT OF CLAIM

The Plaintiff's claim is for: jointly and severally against the Defendants:

- i) An order of injunction restraining the Defendants from unlawful relations with the business of the Plaintiffs.
- ii) An order of perpetual injunction restraining the 1<sup>st</sup> Defendant from unlawful interference with contractual relations between the 1st Plaintiff and SIC-FSL.
- iii) An order of injunction restraining the 2<sup>nd</sup> Defendant from freezing the shares of the Plaintiffs in ADB.
- iv) An order of injunction restraining the Defendants from conspiracy against the business of the Plaintiffs.
- v) Damages, including punitive damages, for the Defendants' unlawful interference with the business of the Plaintiffs.
- vi) A declaration that the Order of the 1<sup>st</sup> Defendant annulling the acquisition by the Plaintiffs, SIC-FSL and EDC Limited of all shares held by them in ADB and all transactions undertaken in respect of these shares was made without any lawful basis and is null and void.
- vii) A declaration that the Order of the 1<sup>st</sup> Defendant for all shares acquired by the Plaintiffs, SIC-FSL and EDC Limited in ADB which were previously held by the Financial Investment Trust (FIT) be restored to FIT, was made without any lawful basis and is null and void.
- viii) A declaration that the 1<sup>st</sup> Defendant's finding that the Plaintiffs are unfit and improper persons to continue to hold shares acquired directly or indirectly in ADB is without any lawful basis and is null and void.
- ix) A declaration that the 1<sup>st</sup> Defendant's Order prohibiting the Plaintiffs, SIC-FSL and EDC Limited from exercising the rights attached to their shares in ADB including voting rights, rights issue and the payment of any dividends in respect of these shares, was made without any lawful basis and is null and void.
- x) A declaration that the Order of the 1<sup>st</sup> Defendant directed at the directors appointed by the Plaintiffs to immediately cease to be directors of ADB is without any lawful basis and is null and void.
- xi) Any other Order deemed fit by this Honourable Court.
- xii) Costs including lawyers' costs.





NII ARDAY CLEGG & CO.  
27, 8th FLOOR, ONE AIRPORT  
SQUARE, AIRPORT CITY, ACCRA

This writ was issued by **ROBERT CLEGG, ESQ**

whose address for service is **ONE AIRPORT SQUARE, ACCRA**

Agent for **PLAINTIFFS**

Address Number and date of lawyer's current licence: **GAR/15924/18 TIN: P000012639X**

Lawyer for the plaintiff **ROBERT CLEGG, ESQ** who resides at **ACCRA**

**Indorsement to be made within 3 days after service**

This writ was served by me at

on the defendant

on the day..... of

endorsed the..... day of

Signed.....

Address.....

NOTE: If the plaintiff's claim is for a liquidated demand only, further proceedings will be stayed if within the time limited for appearance the defendant pays the amount claimed to the plaintiff, his lawyer or his agent or into court as provided for in Order 2 rule 3(2).

31-07-18  
2:57  
H  
Register  
COMMERCIAL DIVISION OF THE  
SOUTH AFRICAN DEPARTMENT OF JUSTICE

**IN THE SUPERIOR COURT OF JUDICATURE  
IN THE HIGH COURT OF JUSTICE  
(COMMERCIAL DIVISION)  
ACCRA – AD 2018**

**SUIT NO.**

- 1. BELSTAR CAPITAL LIMITED - PLAINTIFFS**  
11<sup>TH</sup> FLOOR  
WORLD TRADE CENTRE  
ACCRA
- 2. STARMOUNT DEVELOPMENT  
COMPANY LIMITED**  
11<sup>TH</sup> FLOOR  
WORLD TRADE CENTRE  
ACCRA

**VRS**

- 1. BANK OF GHANA - DEFENDANTS**  
1 THORPE ROAD  
HIGH STREET  
ACCRA
- 2. CENTRAL SECURITIES DEPOSITORY (GH) LTD**  
4<sup>TH</sup> FLOOR  
CEDI HOUSE  
ACCRA

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**STATEMENT OF CLAIM**

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1. The 1<sup>st</sup> Plaintiff is a limited liability company incorporated under the laws of Ghana.

2. The 2<sup>nd</sup> Plaintiff is a limited liability company incorporated under the laws of Ghana.
3. The 1<sup>st</sup> Defendant is the Central Bank of Ghana which is required to exercise regulatory and supervisory authority over banks and specialized deposit-taking institutions in the country.
4. The 2<sup>nd</sup> Defendant is a limited liability company which maintains the platform for records of securities issued in Ghana, including securities listed on the Ghana Stock Exchange. 1<sup>st</sup> Defendant holds seventy percent of the shares of 2<sup>nd</sup> Defendant while the Ghana Stock Exchange holds the remaining 30%.
5. 2<sup>nd</sup> Defendant is the Registrar of the shares of the Agricultural Development Bank (ADB) which is a limited liability company listed on the Ghana Stock Exchange (GSE).
6. The listing of the ADB followed an Initial Public Offering (IPO) of the Bank which was to have taken place between December 2015 and February 2016, but was deferred and re-opened in November 2016.
7. The said IPO was conducted under the authority of the Securities and Exchange Commission of Ghana (SEC) established by the Securities Industry Act, 2016 Act 929 which provides for the functioning of the Commission, including, among other things, how any issues arising from dealings in the shares of a listed company are to be determined.
8. Prior to the IPO, ADB was a private company with the Government of Ghana and the 1<sup>st</sup> Defendant as the two shareholders.
9. Upon becoming a public company, ADB came to have about 400 shareholders, including the Plaintiffs.
10. All the relevant details of the IPO, including the issuer of the shares, the number of shares to be issued, the price of the shares, the persons qualified to acquire the shares, the anchor investors, the share

- allotment policy, terms of payment for the shares, were set out in the Offer Prospectus which was filed with, and approved by, the SEC.
11. The shareholders of ADB, which included the 1<sup>st</sup> Defendant, passed a shareholders' resolution and approved the Offer Prospectus for the IPO.
  12. The Board of Directors of ADB, which included Directors representing the 1<sup>st</sup> Defendant, also approved the Offer Prospectus for the IPO.
  13. The Offer Prospectus made full disclosure of the intention of the Plaintiffs to acquire 10% or more of the shares of ADB during the IPO.
  14. ADB, as the issuer of the shares in the IPO, on or about the 24<sup>th</sup> of November 2016, requested the 1<sup>st</sup> Defendant to give approval for the acquisition of 10% or more of the ADB shares by the Plaintiffs and two other entities, namely the SIC Financial Services Limited ("SIC-FSL") and Social Security and National Insurance Trust (SSNIT) and by letter dated 6<sup>th</sup> December 2016 the approval was granted by the 1<sup>st</sup> Defendant to the request.
  15. In granting the said approval no upper limit was placed on the level of shareholding above 10% that the Plaintiffs or the other two investors in respect of whom approval was sought to hold 10% or more of the shares in ADB.
  16. Having met all conditions precedent, including payment of the required consideration,, the Plaintiffs were allotted 24% and 11% respectively in the shares of ADB.
  17. The shares allotted to the Plaintiffs were approved by the SEC.
  18. In the ADB IPO, there were new ordinary shares of 75, 471,698 on offer in addition to the 1<sup>st</sup> Defendant's sale of its stake in ADB and all

these were combined to form a common pool of shares representing the total shares on offer to the general public.

19. This common pool of shares on offer could no longer be distinguished by their history of ownership or creation. They simply became ADB shares on offer to the general public in the IPO.

20. The GoG did not make any new investment. For that reason, its shareholding became diluted. From the previous 51%, the GoG now held 32.3% of the shares in ADB.

21. ADB also applied to the Ghana Stock Exchange to enable its shares to be traded publicly on the floor of the house. The application was successful.

22. Through it all, ADB sought and received all necessary approvals from, its shareholders, including the Government of Ghana, as well as its Board of Directors which included representatives of the Defendant, the SEC, the GSE and the Defendant.

23. The SEC declared the IPO as successful and, accordingly, the shareholding of ADB resulting from the IPO was recorded by the 2<sup>nd</sup> Defendant and the Plaintiffs were recorded as holders of the shares of the ADB shares allotted them in the records of the 2<sup>nd</sup> Defendant.

24. The Plaintiffs and the other anchor investors received the share allotments that they had applied for.

25. In June 2017, the Regulations of ADB were changed at an Extraordinary General Meeting (EGM) to reflect the changes in the shareholding structure of ADB.
26. As part of the changes, the Government of Ghana was to have a maximum of 3 seats on the Board. The other seats on the Board were to be filled by shareholders with at least 10% of the total shareholding.
27. The Board was duly constituted as follows: 3 representatives of the Government of Ghana including the Managing Director, 3 representative of the 1<sup>st</sup> Plaintiff, 2 independent directors nominated by the Plaintiffs and one representative of the 2<sup>nd</sup> Plaintiff.
28. While ADB had made a loss in full year 2015 of GHS78 million, and a loss of 70 million in full year 2016 it made a profit of GHS26 million in full year 2017 following the IPO, reflecting the impact of the new capital infusion and the new shareholders and Board of Directors.
29. On or about the 11<sup>th</sup> of September 2017, the 1<sup>st</sup> Defendant announced an upward revision of the minimum capital requirements for universal banks which are to be met by 31<sup>st</sup> December 2018.
30. ADB considered strategies to meet this requirement including raising capital through a rights issue.
31. In line with legal requirements, the Directors of ADB sought to convene an Annual General Meeting to pass various resolutions, which included a resolution that would authorise its Directors to raise



further capital to meet the 1<sup>st</sup> Defendant's minimum capital requirement.

32. On the 16<sup>th</sup> of July, 2018, two days before the scheduled AGM, the Defendant issued a statement purporting to annul the shares that the Plaintiffs acquired in the ADB IPO as well as those held by SIC-FSL and EDC Investments Limited.
33. The 1<sup>st</sup> Defendant, in thus purporting to make orders in respect of the shares in ADB acquired by the Plaintiffs in the IPO unlawfully usurped the powers of the SEC.
34. The Defendant did not give the Plaintiffs a hearing before proceeding to issue the said statement containing the purported annulment.
35. The purported orders of the 1<sup>st</sup> Defendant were arbitrary and capricious and inconsistent with the lawful processes provided for in the Securities Industry Act, 2016, Act 929.
36. The 1<sup>st</sup> Defendant's purported orders unlawfully interfere with contractual relations between the 1<sup>st</sup> Plaintiff and SIC-FSL.
37. In issuing the purported orders, 1<sup>st</sup> Defendant unlawfully interfered with the business of the Plaintiffs.
38. The order purporting to restore to Financial Investment Trust (FIT), the vehicle through which the 1<sup>st</sup> Defendant previously held the shares in ADB that it had prior to the IPO, amounted to 1<sup>st</sup> Defendant effectively and unlawfully advancing its interests as a former

shareholder of ADB prior to the IPO under the guise of its regulatory powers.

39. In seeking to restore to itself shares in respect of which it had been paid by the shareholders who acquired shares in the IPO, 1<sup>st</sup> Defendant was acting unconscionably and in breach of the laws governing the Securities Industry in Ghana.

40. The purported orders of the 1<sup>st</sup> Defendant were made on false premises, including the claim that “the liquidity funds obtained by uniBank were improperly and unlawfully on-lent to Belstar and Starmount to acquire shares (including shares held by Financial Investment Trust on behalf of the Bank of Ghana) in ADB in its IPO.”

41. Other false premises that formed the basis of the purported orders of the 1<sup>st</sup> Defendant were claims that agreements entered into by Plaintiffs with SIC-FSL and EDC Investments Limited “in addition to the direct acquisitions by Belstar and Starmount resulted in a direct and indirect holding by these companies of over 50% of the shares of ADB without the knowledge and approval of the Bank of Ghana and in breach of section 49 of the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930).”

42. To the knowledge of the Defendants, there was a commercial paper agreement between 1<sup>st</sup> Plaintiff and SIC-FSL whereby 1<sup>st</sup> Plaintiff advanced SIC-FSL an amount of GHC 61, 194, 653.30 to purchase ADB Bank shares during the IPO. SIC-FSL pledged the shares it acquired (10% of the shareholding in ADB) as security for this advance. SIC-FSL executed pledge forms as part of the security arrangements for the advance by 1<sup>st</sup> Plaintiff and, upon breach of the commercial paper agreement, SIC-FSL sought to transfer its shareholding to 1<sup>st</sup> Plaintiff.

43. By letter dated 28<sup>th</sup> July 2017 to the Head of Banking Supervision of the 1<sup>st</sup> Defendant, 1<sup>st</sup> Plaintiff sought approval for the acquisition of the shares of SIC-FSL as a consequence of the breach of the commercial paper agreement.
44. In pledging its shares to 1<sup>st</sup> Plaintiff SIC-FSL ceded all rights, including voting rights at general meetings, future proceeds and entitlements attached to the said shares, including dividends, to 1<sup>st</sup> Plaintiff and notified 2<sup>nd</sup> Defendant of this in a letter dated August 30<sup>th</sup>, 2017.
45. The 1<sup>st</sup> Defendant's purported orders prohibiting exercise of any of the voting rights or any rights issue in respect of these shares pledged to 1<sup>st</sup> Plaintiff by SIC-FSL and the prohibition of dividend payments in respect of those shares unlawfully interfered with contractual relations between the 1<sup>st</sup> Plaintiff and SIC-FSL.
46. In seeking to justify its purported orders, 1<sup>st</sup> Defendant also made vague and unparticularized claims about the Plaintiffs having "participated in a series of other questionable and unsafe and unsound related party transactions involving uniBank Ghana Limited to the detriment of Ghana's financial system and for their financial gain and benefit", which have no basis in fact but are simply designed to damage the business of the Plaintiffs.
47. 1<sup>st</sup> Defendant essentially constituted itself unlawfully into complainant, prosecutor and judge in relation to the matters it made its pronouncements upon, including pronouncements of criminality which defamed the Plaintiffs and Directors appointed by Plaintiffs to the Board of ADB and unlawfully denied them their constitutional right to be presumed innocent until proven guilty by a properly constituted judicial body. 1<sup>st</sup> Defendant was thus usurping the functions of the Judiciary.

48. The purported order by 1<sup>st</sup> Defendant that directors appointed by Plaintiffs immediately cease to be directors of ADB was also an unlawful interference with the business of Plaintiffs.
49. The purported orders of the 1<sup>st</sup> Defendant were issued in concert with the Minister of Finance to advance a plan announced by the Minister of Finance to merge ADB with the National Investment Bank (NIB) in the light of the reality that the shareholding of the Government of Ghana as it currently stands does not enable control over the affairs of ADB.
50. On or about 9<sup>th</sup> June 2017 the Minister of Finance, contrary to all corporate governance norms, without reference to the Board of Directors of ADB, and based on an erroneous and unlawful claim that the Board was not in place, instructed the disbursement by the Managing Director of ADB of credit facilities in favour of a company, MacDan Shipping Company Limited. It is such exercise of ministerial control over the affairs of ADB which the purported orders of 1<sup>st</sup> Defendant are seeking to facilitate.
51. The purported orders of 1<sup>st</sup> Defendant were issued maliciously to damage lawful business interests of the Plaintiffs and to facilitate ministerial control of ADB.

Particulars of malice: 1<sup>st</sup> Defendant is fully aware of the circumstances of the acquisition of shares by Plaintiffs in the ADB IPO and is aware that lawful processes were followed in the IPO and is further aware that the Securities Exchange Commission is the lawful body in which there should be adjudication of any contesting of the lawfulness of the processes of the ADB IPO and the outcomes thereof but is determined to disregard due process in its bid to damage

the lawful business interests of the Plaintiffs and facilitate ministerial control of ADB.

52. The purported annulment of the shares of the Plaintiffs and the other two companies and the orders preventing Directors appointed by Plaintiffs from performing their lawful responsibilities would leave the Board of ADB without a quorum for meetings to conduct the business of ADB, putting at risk the entire investment of shareholders such as the Plaintiffs and other members of the public who bought shares in the ADB IPO.

53. This state of affairs would particularly deny ADB the opportunity to work towards meeting the new minimum capital requirements of the 1<sup>st</sup> Defendant.

54. The purported annulment also denies ADB and the Plaintiffs the right and opportunity to administer the business of the bank as a limited liability company listed on the Ghana Stock Exchange (GSE) in accordance with law, a situation which 1<sup>st</sup> Defendant is deliberately creating to justify ministerial control of ADB which 1<sup>st</sup> Defendant, as an independent regulatory body, should rather not countenance.

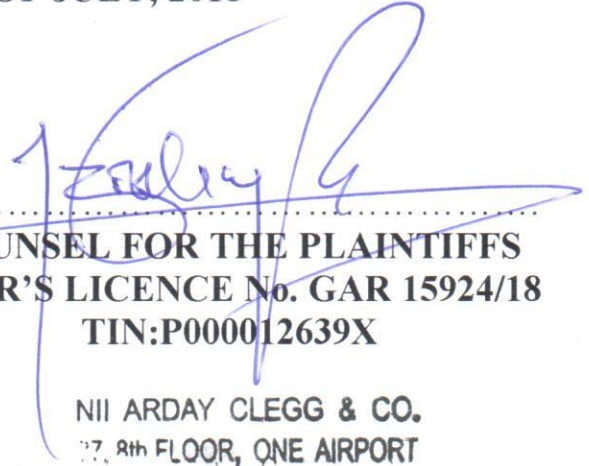
55. The purported orders of the 1<sup>st</sup> Defendant amount to unlawful expropriation of the assets of the Plaintiffs.

56. Following the announcement of the orders of the 1<sup>st</sup> Defendant, 2<sup>nd</sup> Defendant has purported to freeze the shares of the Plaintiffs in its Register of ADB shareholdings.

WHEREFORE the Plaintiffs pray this Honourable Court for the following reliefs:

- i) An order of injunction restraining the Defendants from unlawful relations with the business of the Plaintiffs.
- ii) An order of injunction restraining the 1<sup>st</sup> Defendant from unlawful interference with contractual relations between the 1<sup>st</sup> Plaintiff and SIC-FSL.
- iii) An order of injunction restraining the 2<sup>nd</sup> Defendant from freezing the shares of the Plaintiffs in ADB.
- iv) An order of injunction restraining the Defendants from conspiracy against the business of the Plaintiffs.
- v) Damages, including punitive damages, for the Defendants' unlawful interference with the business of the Plaintiffs.
- vi) A declaration that the Order of the Defendant annulling the acquisition by the Plaintiffs, SIC-FSL and EDC Limited of all shares held by them in ADB and all transactions undertaken in respect of these shares was made without any lawful basis and is null and void.
- vii) A declaration that the Order of the Defendant for all shares acquired by the Plaintiffs, SIC-FSL and EDC Limited in ADB which were previously held by the Financial Investment Trust (FIT) be restored to FIT, was made without any lawful basis and is null and void.
- viii) A declaration that the Defendant's finding that the Plaintiffs are unfit and improper persons to continue to hold shares acquired directly or indirectly in ADB is without any lawful basis and is null and void.
- ix) A declaration that the Defendant's Order prohibiting the Plaintiffs, SIC-FSL and EDC Limited from exercising the rights attached to their shares in ADB including voting rights, rights issue and the payment of any dividends in respect of these shares, was made without any lawful basis and is null and void.
- x) A declaration that the Order of the Defendant directed at the directors appointed by the Plaintiffs to immediately cease to be directors of ADB is without any lawful basis and is null and void.
- xi) Any other Order deemed fit by this Honourable Court.
- xii) Costs including lawyers' costs.

**DATED IN ACCRA THIS 31<sup>ST</sup> DAY OF JULY, 2018**



**COUNSEL FOR THE PLAINTIFFS  
SOLICITOR'S LICENCE No. GAR 15924/18  
TIN:P000012639X**

**NII ARDAY CLEGG & CO.  
27, 8th FLOOR, ONE AIRPORT  
SQUARE, AIRPORT CITY, ACCRA**

**THE REGISTRAR  
THE HIGH COURT  
(COMMERCIAL DIVISION)  
ACCRA**

**AND FOR SERVICE ON THE ABOVE-NAMED DEFENDANT**