



BANK OF GHANA

**EXPLANATORY NOTES ON THE REVISED CORPORATE
GOVERNANCE DIRECTIVE ISSUED IN DECEMBER 2018**

*For Banks, Savings and Loans Companies, Finance Houses and
Financial Holding Companies*

DECEMBER 2018

Introduction

Pursuant to Section 56 and 92(1) of the Banks and Specialised Deposit-Taking Institutions Act, 2016, (Act 930), the Bank of Ghana (BoG) issued the Banking Business Corporate Governance Directive in March 2018 after extensive consultation with the banking industry (herein called “the industry”). To operationalise the Directive, transitional provisions were subsequently issued to the industry by the BoG in July 2018 for full compliance with the Directive by 31st December 2018.

Following concerns raised by the industry on some provisions of the Directive and its transitional provisions, it became necessary for the Bank of Ghana to issue revised transitional provisions in September 2018 as an exposure draft to solicit comments and contributions from the industry and the general public. The BoG received useful feedback, comments, and contributions, from the industry and the general public, most of which related also to the Corporate Governance Directive (CGD) issued in March 2018.

The BoG has since carefully considered the CGD and Transitional provisions in the light of feedback, comments, and contributions received during the recent public consultation process. This has culminated in a revised CGD dated December 2018 which addresses key issues identified in the CGD issued in March 2018, and also incorporates the revised transitional provisions.

This paper explains the significant revisions reflected in the updated version of the CGD issued on 27th December 2018.

Notes explaining revisions reflected in the December 2018 CGD

Cover Page

The title page of the Directive has been changed from “The Banking Business Corporate Governance Directive – 2018” to “Corporate Governance Directive – 2018”

This is to properly align the scope and application of the Directive to cover banks and some selected deposit-taking institutions, and to ensure consistency with Act 930 which replaces the concept of “Banking Business” with “Deposit-Taking Business”.

To promote clarity in the scope of application of the Directive, the phrase “For banks, savings and loans companies, finance houses, and financial holding companies regulated under the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930) is used.

Section 1: Title

- (1) The Directive was originally cited as the “Banks and Specialised Deposit-Taking Institutions Corporate Governance Directive, 2018”. Based on a Bank of Ghana policy decision to limit the scope of the Directive’s application to banks, savings and loans companies, finance houses and financial holding companies until further notice, the title of the Directive has been revised to “Corporate Governance Directive – 2018”.

The statement to the effect that the revised Directive supersedes the March 2018 version of the Corporate Governance Directive is to draw the attention of readers to the version of the Directive that is in force and this has been incorporated under section 2 of the December 2018 version of the Corporate Governance Directive.

Section 2: Application

- (2) The authority of the Bank of Ghana to issue the Corporate Governance Directive in March 2018 was referenced to the specific section of Act 930 to support the general powers conferred on the Bank of Ghana to issue Directives under section 92 of Act 930. In addition to the general power of the Bank of Ghana to issue Directives under section 92 of Act 930 to give full effect to the provisions of the Act, it also has the power under section 56 of the same Act to prescribe rules regarding any matter of corporate governance of a bank, specialised deposit-taking institution or financial holding company that the

Bank of Ghana considers necessary or appropriate to ensure prudent operations.

For the avoidance of doubt, and to further provide clarity on the authority of BoG to issue the Directive, the revised Directive clearly states that it is issued under the powers conferred by sections 56 and 92(1) of the Banks & Specialised Deposit Taking Institutions Act, 2016 (Act 930).

Section 5: Interpretation

- (3) A new clause is inserted in the section to provide the definition of "Board" a term that was widely used in the Directive but not provided in Act 930.
- (4) A new clause is inserted in the section to provide the definition of "Cross Directorship" a term that was used in the Directive but not provided in Act 930.
- (5) The definition of "Microfinance institution" is deleted from this section on the premise that the scope and application of the Directive was limited to Banks, Savings and Loans Companies, Finance Houses and Financial Holding Companies.
- (6) A new clause was inserted in the section to provide the definition of "Senior Management" a term that was widely used in the Directive but not provided in Act 930.
- (7) The definition of "Duty of Care" is revised in line with the definition as provided by the Companies Act, 1963 (Act 179).
- (8) The definition of "Duty of Loyalty" is revised for consistency with the Companies Act, 1963 (Act 179).
- (9) The definition of "Regulated Financial Institutions" is revised to provide clarity on the scope of the application of the Directive which now excludes leasing companies, mortgage finance companies, rural and community banks, as well as microfinance institutions.
- (10) The definition of a "related party" is inserted in the section to provide clarity as Act 930 was silent on its definition.

Section 18: Objectives

- (12) The section is re-arranged with the inclusion of an enhanced objective which is to; “promote the interest of depositors and other stakeholders by enhancing corporate performance and accountability of the regulated financial institutions”. This is to bring to the fore, the essence of sound corporate governance practices.

Sections 20 and 21: Disclosure of Interest by Directors

- (13) A new provision from Act 930 to ensure that disclosure of interest by Directors remains a continuous process as envisaged under Act 930 per section 59 (2) (b), is introduced. That is; “A director or key management personnel of a regulated financial institution shall declare to the board of directors of that regulated financial institution any material change in his business interest or holding of an office when it occurs”.

Additionally, section 21 has been split into two (2) paragraphs to render the section easier to understand.

Section 25: Annual Certification

- (14) The section is revised to more clearly distinguish between the duty imposed on a regulated financial institution¹ to certify its compliance with the provisions of the Directive on the one hand, and the duty of directors of such institutions to obtain certification for training in corporate governance.

Further, the period within which an institution is required to certify its compliance with the provisions of the Directive has been revised to ensure that a regulated financial institution's certification to the Bank of Ghana coincides with the end date for the publication of annual report. Consequently, the period of 120 days after the end of year prescribed as the certification period for an institution has been amended to within 90 days from the beginning of the year.

The requirement that directors of regulated financial institutions acquire annual certification for training in corporate governance has also been revised to ensure that such certification occurs within the year in which it relates. The section was further revised such that, such training and certification for directors may now be obtained from the National Banking College or any other institution recognized by the Bank of Ghana. This will allow the Bank of Ghana the discretion to recognise other reputable organizations as able to offer Directors' training and certification programmes in corporate governance for purposes of the Directive.

Section 27: Duty of Care and Loyalty

- (15) The definitions of “Duty of Care” and “Duty of Loyalty” per the Directive have been revised to promote consistency with the Companies Act, 1963 (Act 179).

Section 30: Succession Planning

- (16) The section is amended to promote clarity in its interpretation and to better align it with relevant provisions of Act 930.

Section 33: Separation of Powers

- (17) The section is amended to ensure completeness of the statement by substituting the word Chair with Board Chair. This is to bring further clarity to the section.

Section 34: Independent Director

- (18) In response to a number of comments that reflected uncertainty about the definition of an “independent director”, the qualifying criteria for an independent Director was amended to;
- (a) exclude a director on the Board of an institutional shareholder with significant equity interest in a regulated financial institution. Consequently directors who serve on the Boards of parent companies of regulated financial institutions will not be counted among the number of independent directors of such subsidiaries.
 - (b) clarify that persons appointed by Government as directors of State-owned banks do not lack independent director status only by virtue of their appointment by Government. The criteria by which the Bank of Ghana will determine whether directors of State-owned banks are independent or not, has now been provided in the Directive. Essentially, while Government may appoint any individuals to the Boards of State-owned banks if they are considered fit and proper by the Bank of Ghana, such persons will be deemed independent only if they are not employees of the relevant regulated financial institution, officials of Government or civil or public servants, or otherwise not closely affiliated with Government or any political party, and appear capable of exercising independent judgment in their role as directors of the relevant regulated financial institution.

Section 37 and 39: Board qualification and Composition

- (19) Section 37 is amended to provide a better rendition by the inclusion of ‘regulated financial institution and its subsidiaries’. The composition of

Independent Directors on the Board of a regulated financial institution under section 39 was increased from at least twenty percent (20%) to at least thirty percent (30%) to further enhance the independence and objectivity of the Boards of the regulated financial institutions.

Section 41: Board Size and Structure

- (20) The section prescribed the minimum and maximum number of Directors that should constitute the Board of a regulated financial institution. As there are basically three (3) categories of Directors advocated in the Directive, namely the Executive, Non-Executive and Independent Directors. There was the need to clarify the category of Directors that must constitute the majority of the Board members. In this case, the Non-Executive Directors must be the majority and ordinarily resident in Ghana.

Section 43: Board Size and Structure

- (21) The section is deleted to allow for a Director of a financial holding company to be appointed as a Director of the subsidiary bank or specialized deposit-taking institution (SDI). This is to ensure that group (parent) knowledge, culture, norms and practices are shared across subsidiaries. While this implies that directors who serve on the Boards of parent companies of regulated financial institutions are no longer prohibited from serving on the Boards of their subsidiary regulated financial institutions in Ghana, such individuals will not be counted among the number of independent directors of such subsidiaries.

Section 45: Directors Appointments and Tenure

- (22) This section is deleted to ensure that the tenure of Executive Directors are not in any way capped to a fixed term since Executive Directors are mostly ex-officio and have contracts of service (employment) with the regulated financial institution.

Section 58: Board Meetings

- (23) The section is revised to include a list of related party exposures and classification as mandatory Management information to be provided to the Board of a regulated financial institution for discussions at Board meetings. This is to provide detailed information to the Board on the exposures to related parties for the collective oversight by the Board.

Section 65: Board Sub-Committees

- (24) This revision is made to restrict the chairperson of the Board of a regulated financial institution from being a member of the risk and audit sub-committees.

Section 66: Board Sub-Committees

- (25) The section is amended to avoid the repetitive use of the word 'committee' in order to provide clarity to that section of the Directive. The phrase "of the committee" was deleted from the section.

Section 67: Audit Committee

- (26) The section is revised to relax the initial requirement for all the Board Audit committee to be comprised of only independent directors, to a new requirement that the membership of committee shall be made up of solely non-executive directors of which independent directors are the majority. The chairperson should be an independent director. The requirement should help reduce the burden on institutions seeking to find independent directors only to fill such committees.

Section 70: Board Risk Committee

- (27) The section is revised to realign the reporting lines of the Chief Risk Officer (CRO) to ensure that there is a direct reporting line of the CRO to the MD/CEO with access to the Board or the Board Risk Committee.

The Chief Risk Officer (CRO) and the Chief Internal Auditor are now required to report directly to the MD/CEO and Audit Sub-Committee of the Board respectively, for consistency with Bank of Ghana's Risk-Based Supervisory framework.

Section 77: Chief Risk Officer (CRO)

- (28) The section is revised to align the reporting line of the CRO with the requirement of the risk-based supervisory framework which requires the second line of defense oversight functions to report to the MD/CEO

The CRO has an independent oversight function and serves as head of the risk management function which is a second line of defense within in the risk management framework. To enhance the authority of the CRO, he has no reporting lines to any other senior management member (other than the MD/CEO) and has access to the Board and the Risk Committee of the Board.

Section 79: Internal Auditor

- (29) To further ensure that internal auditors are held to a high professional and ethical standard, the requirements have been enhanced for the internal auditor of regulated financial institutions to be a member of a relevant recognized professional body. The name has been changed to Chief Internal Auditor in line with relevant provisions of Act 930.

Section 87: Cooling-off

- (30) The cooling-off provision for directors of regulated financial institutions has been deleted from the Directive. In the opinion of the Bank of Ghana, the earlier restriction on former directors of regulated financial institutions from serving on the Boards of other regulated institutions following their exit was onerous and affect the availability of experienced individuals who could serve as directors of other regulated institutions.

Sections 79 to 83: Transitional Provisions

- (31) Transitional provisions for compliance with the Directives have now been provided for in the Directive. These reflect revisions to the earlier transitional provisions to the CGD that were issued separately by BoG in September 2018. Unless otherwise specified in the Directive, regulated financial institutions have until 31st March, 2019 to ensure full compliance with the provisions of the Directive.

Term limits on key appointments imposed by the Directive have been maintained, in keeping with best practices in good corporate governance. To however ensure smooth transition and succession for regulated financial institutions, the period for compliance with term limits has been extended. Furthermore, specific terms imposed by contract or appointments by regulated financial institutions will not be interfered with by the Bank of Ghana. Existing appointments without fixed terms that have exceeded the limits imposed by the Directive have been given up to a period of one (1) year for expiry.

In particular, regulated financial institutions have been given until 31st January 2019 to submit succession plans for chief executive officers/managing directors, non-executive directors and chairpersons who had no specific term limits imposed on their appointments by the relevant regulated financial institution and have exceeded the term limits imposed by the Directive. New appointments to fill such roles are to be made by relevant regulated institutions by 31st December 2019.

Furthermore, where the existing Board Chairperson of a regulated financial institution is not an independent Director as of the date of coming into force of this directive, the institution shall take steps to appoint an independent Chairperson by 31st December, 2019.

Appendix 1: Risk Governance Structure

Section 1

- (32) The composition of the risk governance structure of a regulated financial institution was amended to exclude the Board Credit Committee, since the Board Risk Committee has the mandate to deal with all matters relating to the risk exposures of the regulated financial institution. The Board credit committee is however an optional sub-committee and hence not a mandatory committee.

Empirically, the Head of Legal in most of the regulated financial institutions doubles as the company's secretary hence the risk governance structure was amended so as to cover Company secretary or Head of legal with responsibility for legal and reputational risks of the regulated financial institution.

Section G35: Chief Risk Officer

- (33) The amendment to the term Chief Auditor was to ensure consistency with Act 930 which uses the term *Chief Internal Auditor*.

Section G36: Chief Risk Officer

- (34) The amendment was to ensure that the reporting lines of the CRO in the main body of the Directive is consistent with that prescribed in the governance structure per appendix 1 of the Directive

DECEMBER 27, 2018