



**BANK OF GHANA**

# ***Mergers and Acquisition Directive***

***For Banks, Specialized Deposit-Taking Institutions and Financial Holding Companies***

**Banking Supervision Department**

**July 2018**

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## PART I - PRELIMINARY

### Title

1. These Directives may be cited as Mergers and Acquisitions 2018.

### Application

2. These Directives shall apply to all Regulated Financial Institutions.

### Interpretation

3. In these Directives, unless the context otherwise requires, words used have the same meaning as that assigned to them in the applicable law or as follows –

- a) **“acquisition”** means the purchase of an institution licensed or regulated under Act 930 by another person which makes the purchaser a significant shareholder in that institution and it includes take-overs;
- b) **“Act 930”** means Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930)
- c) **Regulated Financial Institutions**, “refers to banks, savings & loans, finance houses, leasing, mortgage companies and financial holding companies licensed or regulated under the Banks & Specialised Deposit Taking Institutions Act 2016 (Act 930)
- d) **“control”** means a relationship where a person or a group of persons acting in concert, directly or indirectly:
  - (i) owns 25 percent of the voting shares of a person;
  - (ii) (ii) has the power to appoint or remove the majority of the board of directors of the person; or
  - (iii) has the ability to exert a significant influence on the management or policies of a juridical person or;
  - (iv) has the ability to direct the activities of the person so as to affect the financial returns on any investment made with the person
- e) **“merger”** means the fusion of two or more Regulated financial institutions licensed or regulated under Act 930;
- f) **“person”** includes an individual, a company, a partnership, an association, and any other group of persons acting in concert, whether incorporated or not; and

- g) **“significant shareholder”** means a shareholder who has a direct or indirect holding in a bank: (a) which represents 5% or more of the capital or the voting right

## **Objectives**

4. The objectives of these Directives are -

- a) To help ensure that the interests of the regulated financial institutions, depositors and other stakeholders as well as the stability of the financial system will not otherwise be threatened by a change in significant shareholding or control in such institutions.;
- b) To prescribe criteria, including fit and proper tests, for approving requests for proposed mergers and acquisitions of regulated financial institutions;
- c) To set minimum conditions that must be fulfilled by merging or acquiring regulated financial institutions during the due diligence process;
- d) To provide guidance on the processes and procedures for evaluating applications for merger and acquisition and the required documents or agreements to be submitted; and
- e) To prescribe post-merger or post-acquisition requirements.

## **PART II - RELEVANT LEGAL REQUIREMENTS**

### **Sale of business, mergers, amalgamations and reconstructions**

5.1 Under Section 52 (1) of Act 930

A person shall not enter into an agreement or arrangement

- (a) for the sale, disposal or transfer of the whole or a part of the business of a regulated financial institution or financial holding company;
- (b) for the amalgamation or merger of a bank, specialised deposit-taking institution or financial holding company with any other bank, specialised deposit-taking institution or financial holding company or any other institution; or
- (c) for the reconstruction of a bank, specialised deposit-taking institution or financial holding company unless the parties to the agreement or arrangement have submitted an

application on the proposed agreement or arrangement and all other relevant information and documents for the approval of the Bank of Ghana.

- 5.2 A regulated financial institution may engage in a preliminary discussion for a merger or acquisition but shall not commit to the final agreement without prior approval from the Bank of Ghana.
- 5.3 Under Section 52 (1) of Act 930, The Bank of Ghana shall communicate its decision on an application under subsection (1) within six months from the date of receipt of complete information

### **Disapproval of transfer of shares**

6. Section 50 of Act 930 provides that –

The Bank of Ghana may disapprove a proposed transfer of shares in the interest of sound and prudent management of a regulated financial institution and the functioning and stability of the overall financial system by preventing

- (d) the acquisition of shares by a person who, in the opinion of the Bank of Ghana, would *not* be a fit and proper person or who may exercise influence to the detriment of that regulated financial institution,
- (a) the sale or disposal of shares by a promoter, director or a person who has a controlling interest which may be detrimental to that regulated financial institution, or
- (b) a transaction in any other situation in which the Bank of Ghana has reason to believe that the transaction may be detrimental to that regulated financial institution.

### **Transfer of shares affecting significant shareholdings**

7. Under section 49 (2) of Act 930-

Despite any other enactment, a person shall not without the prior approval in writing of the Bank of Ghana

- (a) directly or indirectly, alone or in concert with one or more other persons, acquire shares in a regulated financial institution or financial holding company which together with any existing direct or indirect holdings of that person, constitute a significant shareholding;
- (b) directly or indirectly, alone or in concert with one or more other persons, increase the ownership interest of that person in a bank, specialised deposit-taking institutions or financial holding company if the aggregate ownership interest of that person after the

increase would exceed one of the following supervisory thresholds of five, ten, twenty, thirty, fifty or seven five percent of equity;

- (c) directly or indirectly, alone or in concert with one or more other persons sell or dispose of shares in the bank, specialised deposit-taking institution or financial holding company to any other person if as a result of the transaction, the shareholding will fall below one of the supervisory thresholds or cease to be significant in the case of a person who has a significant shareholding in a bank, specialised deposit-taking institution or financial holding company;
- (d) or enter into an agreement or arrangement which will result in a change in the control of a financial holding company.

### **PART III - SPECIFIC REQUIREMENTS**

#### **Register of shares**

- 8. Regulated financial institution shall maintain a register of the current shareholders including all ultimate beneficiary owners of all of its shares, showing the shareholders names, addresses, nationality, number of shares held, percentage of shares held in total, class and type of shares held and the group to which the shareholders belong.
- 9. Regulated financial institution shall provide the Bank of Ghana with a shareholder's list as set out in the Appendix 1a as at the end of June and December of each year and not later than thirty (30) days after the reference date in line with Section 49(1) of Act 930.
- 10. Where the list of shareholders includes corporates, a list of beneficial and ultimate beneficial ownership, this must be attached as Appendix 1(b)

#### **Approval by the Bank of Ghana**

- 11. Regulated financial institutions shall seek a prior approval from the Bank of Ghana before an alteration to its ownership structure that amounts to change in control by submitting an Application Form set out in Appendix 2 together with supporting documents and other requirements specified in the Form.
- 12. The parties to a merger or acquisition arrangement
  - (a) which will result in a change in the control of a Regulated financial institutions,
  - (b) for the sale, disposal or transfer of the of the business of a regulated financial institutions
  - (c) for the amalgamation or merger of a Regulated financial institutions with any other regulated financial institution,

shall seek approval by the Bank of Ghana by submitting an Application Form set out in Appendix 2 together with documents and other requirements specified in the Form.

13. The parties to a proposed merger or acquisition which will result in a change of control of a holding company of a regulated financial institution shall seek the prior approval by the Bank of Ghana by submitting an Application Form set out in Appendix 3 together with documents and other requirements specified in the Form.

#### **General criteria for approval**

14. The Bank of Ghana has to be satisfied that the proposed application -
- a) shall be for the benefit of financial system stability and public interest as a whole;
  - b) shall not be detrimental to the interest of depositors;
  - c) shall ensure that only fit and proper persons as prescribed by the fit and proper Directive shall own and manage a regulated financial institution or financial holding company;
  - d) shall facilitate effective supervision of the Regulated financial institutions and its parents including affiliates and parties; and
  - e) where the institution(s) involved is/are listed on the Ghana Stock Exchange, all regulatory requirements under the Ghana Stock Exchange (GSE) Rules and under the Securities Industries Act, 2016 (Act 929) and related legislation;
  - f) shall be in compliance with all applicable regulatory requirements and other prudential norms of the Bank of Ghana.
15. The submission of any untrue or misleading information by the regulated financial institutions or parties to the merger or acquisition arrangement shall render that person as not “fit and proper” and shall constitute sufficient ground for rejection of the application.

#### **Specific criteria for approval**

16. The Bank of Ghana shall consider the following factors that are relevant in evaluating an application –
- a) Copy of proposed share sale and purchase agreement

- b) Minimum and ongoing capital of the combined institution should meet the existing minimum paid up capital prescribed for that category regulated financial institutions;
- c) Certified valuation reports on the assets and liabilities of institutions involved.
- d) The consideration for merger or acquisition shall be on cash basis or share for share exchange or combination of both. Deferred consideration in settlement of transaction obligations are not permitted.
- e) Any payment or assumption of liabilities, including contingent liabilities as revealed by the financial due diligence report on the outgoing target regulated shall be honoured by combined institution;
- f) Any potential claims on the combined entity not revealed by the financial due diligence report shall be honoured by the combined entity
- g) The profitability and long-term viability of the combined institution
- h) Plan for reorganization of the branches of the combined institution is credible and takes into consideration the banking needs of the communities served by the target institution;
- i) The plan for IT system restructuring and integration shall enable fast and effective integration of information systems;
- j) The organization's cultural integration plan
- k) Plan for staff rationalization must include strategies for staff downsizing if any;
- l) The shareholdings of the combined institution shall not pose ownership concentration risk. Ownership structure poses concentration risk when:
  - a. Individuals own more than 30%
  - b. unlisted companies/corporates own more than 50%
  - c. related parties own more than 60%of the issued shares of the regulated financial institutions;
- m) The changes proposed to be made in the organization, risk management and business of the combined entity shall strengthen corporate governance practices, promote safe and sound operations and allow effective consolidated supervision where applicable;



- n) In case of an acquiring party incorporated outside Ghana, the applicant is a branch or related company of a foreign bank of established international reputation and that the home supervisor has no objection to the arrangement;
- o) Reconstituted significant shareholders, directors or key management personnel of the combined entity shall satisfy the fit and proper test as prescribed under the fit and proper directive;
- p) Change of name of the combined entity should be properly disclosed in the application to Bank of Ghana for approval;
- q) The rebranding plan for the combined entity;
- r) Plan for upgrading branches, agencies or mobilisations centers to a full bank branch, agency or mobilisation center status if the transaction involves a bank acquiring an SDI;
- s) Copy of the report that reflects the legal, technical, economic and financial viability of the merger or acquisition arrangement, including compliance with the existing paid up capital and administrative and organizational structure of the emerging financial institution;
- t) Financial statements of each individual institution involved (including the external auditor's opinion);
- u) Draft Regulations of the combined entity;
- v) In case of capital injection, a description of the origin of the funds;
- w) The parties involved in a merger or acquisition shall jointly appoint a certified valuer of good standing and a copy made available at the time of application;
- x) Shareholders' approval and board resolution from all parties involved in the transaction.
- y) Copies of financial and legal due diligence reports;
- z) Disclosure of procedures for arriving at purchase Goodwill if any;

### **General procedures for approval**

17. Upon receipt of the Application Form together with any due diligence reports and other supporting documents the Bank Supervision Department of the Bank of Ghana shall, within ten (10) working days, send the applicants a formal letter of acknowledgement/letter of deficiency, as the case may be.

18. A letter of deficiency shall outline deficiencies in the Application specifying a deadline for rectification of the deficiencies and no further action shall be taken by the Bank of Ghana unless the deficiencies are rectified within the period prescribed.

#### **Decision on application**

19. The Bank of Ghana shall, within six (6) months after receipt of a complete application communicate its decision to the applicants.
20. The Bank of Ghana shall inform the applicant in writing, of its decision to grant or refuse to grant the application.
21. A notice communicating the decision not to grant an application *may* state the grounds upon which the decision was based.

#### **Post-merger, acquisition or control requirements**

22. Within six (6) months following the merger or acquisition, the Banking Supervision Department of Bank of Ghana shall conduct an on-site examination of the combined entity and submit a report to the Management of the Bank of Ghana.

### **PART IV – REMEDIAL MEASURES AND SANCTIONS**

#### **Penalties for non-compliance**

23. Section 55(1) of Act 930 provides as follows –

Where the Bank of Ghana has proof that a person has contravened section 49 or 52, the Bank of Ghana may by order

- (a) annul the transfer, merger, amalgamation or reconstruction;
  - (b) prohibit the exercise of voting rights in respect of the shares;
  - (c) prohibit the payment of dividend in respect of the shares; or
  - (d) prohibit the issue of ‘bonus shares’ or ‘rights issue’ in respect of the shares.
- (2) An order under subsection 1 of Section 55 of Act 930.
- (a) shall be in writing; and

(b) is binding on the parties to the share transfer and the regulated financial institutions concerned.

## APPENDICES

### Appendix 1a: SHAREHOLDERS' LIST

As at end (June and December)

Name of Financial Institution.....

Due 30 days from reference date

Shareholder's name (beneficial holder)	Class/type of shares	No. of shares held**	Nominal Value	Amount of Shareholding**	% of total shareholding***
*Note: Disclose and list related shareholders together					
					100%
Total shareholdings					

\*\* - include direct or indirect shareholdings

\*\*\* - owners of publicly held shares aggregating less than 5% of total shareholdings need not be disclosed separately

Name.....Signature.....Position.....

Date: .....

EXPOSURE DRAFT

**Appendix 1b: SHAREHOLDERS’ LIST WITH ULTIMATE BENEFICIAL OWNERSHIP**

As at end (June and December)

Name of Financial Institution.....

Due 30 days from reference date

Shareholder’s name (beneficial holder)	Class/type of shares	No. of shares held**	Nominal Value	Amount of Shareholding**	% of total shareholding***
*Note: Disclose and list related shareholders together					
					100%
Total shareholdings					

Use this where the list of shareholders includes corporates, a list of beneficial and ultimate beneficial ownership

**Appendix 2: APPLICATION FOR CHANGE IN CONTROL, AMALGAMATION OR MERGER OF/OR INVOLVING A FINANCIAL INSTITUTION**

*(To be submitted in duplicate)*

**THE DIRECTOR  
BANKING SUPERVISION DEPARTMENT  
BANK OF GHANA**

24. We, the undersigned, a natural person/the duly authorized representative of ..... (Hereinafter referred to as the applicants), hereby apply under the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930) for Bank of Ghana’s approval for the amalgamation or merger involving or change in control of a financial institution licensed under Act 930.

Name of the Acquiror:

Name of the Acquiree:

We also attach updated Personality Notes Form (natural persons) and Corporate Information Sheet (corporations) of directors, key management personnel and significant shareholders of the acquiring/surviving financial institution.

**Certification and Undertaking**

We, the undersigned,.....hereby certify that all the information contained in and accompanying this application is complete and accurate to the best of our knowledge and belief.

We undertake to forthwith notify the Bank of Ghana of any material change(s) in the particulars of this application.

Sworn at..... this..... day of..... 20.....

.....  
*Signature of Applicant (Acquiror)*

.....  
*Signature of Applicant (Acquiree)*

The applicants understand the contents of this Declaration.  
Before me,

.....

**Appendix 3: APPLICATION FOR CHANGE IN CONTROL OF A FINANCIAL HOLDING COMPANY**

*(To be submitted in duplicate)*

**THE DIRECTOR  
BANKING SUPERVISION DEPARTMENT  
BANK OF GHANA**

1. I, the undersigned, a natural person/the duly authorized representative of ..... (hereinafter referred to as the applicant), hereby apply under Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930) for Bank of Ghana’s approval for a change in control of the holding company of .....a financial institution licensed under Act 930

Name of the new controlling shareholder: .....

- 2. Brief description of the Sale Agreement:
- 3. New shareholding structure of the holding company:
- 4. Updated group structure showing all related companies and % holdings:
- 5. Updated Corporate Information Sheet for the holding company.
- 6. Proposed changes in the business profile or organizational set-up of the subsidiary financial institution in Ghana.