



BANK OF GHANA

# *VOLUNTARY WINDING-UP DIRECTIVE*

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*For Banks and Specialised Deposit-Taking Institutions*

JANUARY 2021

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## **PART I – PRELIMINARY**

### **Introduction**

The Bank of Ghana (BOG) is responsible for the licensing, regulation and supervision of banks and specialised deposit-taking institutions (SDIs) in Ghana pursuant to the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930). Further, the Bank of Ghana is mandated to promote the safety and soundness of banks and SDIs, promote the stability of the financial system, and to protect the interests of depositors.

Banks and SDIs are required to adhere to the Bank of Ghana’s licensing, regulatory and supervisory requirements. This Directive is issued pursuant to section 92(1) of Act 930, and sets out requirements and procedures for the voluntary winding-up of banks and SDIs.

The provisions of this Directive shall be read in conjunction with the relevant provisions of Act 930 and the Companies Act, 2019 (Act 992).

### **Title**

1. This Directive shall be cited as the “Voluntary Winding-Up Directive for Banks and Specialised Deposit-Taking Institutions, 2021”.

### **Application**

2. This Directive shall apply to all banks and SDIs.

### **Interpretation**

3. In this Directive, unless the context otherwise requires, words used shall have the same meaning as that assigned to them in the applicable law or as follows:
  - i. “**Act 930**” means Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930).
  - ii. “**Act 992**” means Companies Act 2019, (Act 992).
  - iii. “**Liquidator**” means a person appointed to wind up a body corporate.
  - iv. “**SDI**” means Specialised Deposit-Taking Institution.
  - v. “**Voluntary Winding-Up**” means suspension or cessation of activities of a bank/SDI by its directors (as approved by its shareholders) with the objective of cashing its assets, collecting its receivables, settling claims and other debt obligations as well as distributing reserves to shareholders. This definition shall be synonymous to Private Liquidation as defined in Act 992.

### **Objectives**

4. The objectives of this Directive are to:
  - i. Set out the conditions and procedures for the voluntary winding-up and subsequent surrendering of the operating licence of a bank or SDI to the Bank of Ghana.

- ii. Provide for the effective oversight by the Bank of Ghana over private liquidations of banks and SDIs to ensure an orderly exit of solvent banks and SDIs from the banking sector.
- iii. Ensure that the voluntary winding-up of the operations of a bank or SDI does not prejudice the interests of depositors, creditors, and other stakeholders, or pose risks for the stability of the banking system.

## **PART II - VOLUNTARY WINDING-UP REQUIREMENTS**

Generally, the voluntary winding-up process of a company involves the settling of the company's liabilities via the disposition of assets as governed by **Act 992**. However, in the case of banks and SDIs, the process of voluntary winding-up shall in addition, be governed by Act 930. In accordance with Act 930, the Bank of Ghana shall monitor the process and ensure that the winding-up is conducted in the best interest of depositors and other creditors.

### **A. Conditions for Voluntary Winding-Up**

A bank or SDI seeking to voluntarily wind up its affairs must satisfy the under-listed conditions:

- i. The directors of the bank or SDI shall depose to an Affidavit of Solvency making a Declaration of Solvency that the directors of the bank or SDI have made a full enquiry into the affairs of the bank or SDI and having done so have formed the opinion that the said bank or SDI is solvent and will be able to pay its debts and liabilities in full within a period not exceeding twelve (12) months from the commencement of the winding-up. The Declaration must contain a statement of the institution's assets and liabilities at the latest practicable date before the making of the Affidavit or Declaration.
- ii. The Declaration of Solvency shall be made by a majority of the directors at a meeting of the directors. Any director who deposes to an Affidavit or makes a Declaration without having reasonable grounds for the statement that the bank or SDI in question will be able to meet its debts and obligations in full within 12 months, shall be liable, on summary conviction, to a fine of not less than three hundred and twenty-five penalty units and not more than seven hundred and fifty penalty units, or a term of imprisonment not exceeding one (1) year or both the fine and term of imprisonment.
- iii. The institution shall have sufficient liquid assets to meet fees, costs and expenses of the private liquidation.
- iv. The shareholders shall pass a special resolution to wind up the affairs of the bank or SDI.
- v. The special resolution by shareholders for voluntary winding-up shall include the authorisation for the appointment as liquidator of a person named in the resolution.



The resolution shall not be valid for the purpose unless the person named has previously consented in writing to the appointment.

- vi. A bank or SDI shall not wind up voluntarily unless the Bank of Ghana has granted approval in writing, having satisfied all the requirements under this directive as well as any other relevant condition(s) that the Bank of Ghana may deem necessary in the interest of depositors, other creditors, and the stability of the financial system.
- vii. In considering an application for voluntary winding-up, the Bank of Ghana shall, in accordance with section 139 of Act 930, satisfy itself that the bank or SDI will be able to meet its obligations during the period of its voluntary winding-up.
- viii. Where at any stage of the voluntary winding-up, the Bank of Ghana considers that, that bank or SDI is or may not be able to meet its obligations to depositors or creditors in full, the Bank of Ghana shall immediately appoint a receiver to wind up the affairs of that bank or SDI pursuant to sections 123 to 139 of Act 930.

## **B. Procedure for Voluntary Winding-Up**

- i. A bank or SDI seeking to voluntarily wind up its operations must apply to the Bank of Ghana for approval to initiate the process.
- ii. The applicant bank or SDI seeking approval for voluntary winding-up shall submit to the Bank of Ghana a detailed plan with timelines to support the intended action.
- iii. The voluntary winding-up process is deemed to commence immediately after the Bank of Ghana has granted approval in writing to initiate the process on the basis that the applicant bank or SDI will be capable of meeting its obligations in respect of depositors and creditors as the obligations accrue.
- iv. The directors' Declaration of Solvency required under section A above, must be made within five (5) weeks immediately preceding the date of application for the approval of the voluntary winding-up by the Bank of Ghana and shall be delivered to the Registrar of Companies for registration immediately after the applicant has obtained approval from the Bank of Ghana to voluntarily wind up.
- v. The bank or SDI shall from the date on which the Bank of Ghana grants approval for its voluntary winding-up, cease to carry on its business except so far as may be required for the beneficial winding-up thereof, but the corporate state and powers of the company shall continue until it is dissolved.
- vi. The final financial year of the bank or SDI shall be deemed to end immediately prior to the date of the commencement of the winding-up and that bank or SDI shall prepare and publish its accounts accordingly.
- vii. The bank or SDI shall specify a liquidator in the special resolution of shareholders required under section (A) above, to voluntarily wind up the institution and the liquidator shall consent to his appointment in writing.
- viii. The powers of the Board of the Directors shall cease and vest in the liquidator on appointment of the liquidator. Except to the extent provided under section 282 of Act 992, the liquidator stands in a fiduciary relationship to the institution and accordingly all the fiduciary duties of directors apply to such liquidator.
- ix. The liquidator's powers shall be in accordance with the provisions of Act 992.

### **C. Documentation Required**

A bank or SDI seeking to voluntarily wind up its operations shall provide the following information and documentation to the Bank of Ghana:

- i. A Shareholders' special resolution authorising the board of directors to voluntarily wind up the operations of the bank or SDI, indicating the reasons for the intended action.
- ii. A detailed plan, including relevant timeframes of the completion of the winding-up in an orderly manner.
- iii. Confirmation from the directors that the bank or SDI has ceased to carry on any deposit-taking business except in so far as may be required for the orderly winding-up of the institution.
- iv. A certified balance sheet, as at the date of the commencement of the winding-up (private liquidation) of the bank or SDI, submitted by the liquidator reflecting all existing assets and liabilities of the institution.
- v. A listing of all unresolved, unsatisfied or un-discharged complaints or legal actions against the bank or SDI; and
- vi. A copy of the affidavit or declaration by the board of directors to the effect that they have made a full enquiry into the affairs of the institution and in their opinion, the institution will be able to pay its debts and other liabilities in full within a period not exceeding twelve (12) months from commencement of the winding-up and containing a statement of the applicant's assets and liabilities.

### **D. Application for Winding-Up**

A Bank or SDI seeking to voluntarily wind up, shall:

- i. Apply to the Governor of the Bank of Ghana in writing, seeking approval to voluntarily wind up;
- ii. Include the documentation required under section C above, in the application;
- iii. Upon receipt of the application, Bank of Ghana shall:
  - a. within ten (10) working days acknowledge in writing the receipt of the application; and
  - b. within six (6) months of the receipt of complete information communicate its decision in writing to the bank or SDI.

### **E. Public Notification**

In line with Act 992, where a special resolution by the shareholders is passed for private liquidation, the bank or SDI shall within fourteen (14) days after obtaining approval from the Bank of Ghana, file a copy of the resolution with the Registrar of Companies and the Registrar of Companies shall publish the resolution in the *Companies Bulletin* in accordance with section 276 of Act 992.

## **F. Surrender of Licence**

The operating licence of the bank or SDI shall be surrendered to the Bank of Ghana within seven (7) working days from the date of obtaining BOG's approval to voluntarily wind up.

## **G. Appointment of Liquidator**

A bank or SDI undergoing private liquidation is required to appoint a liquidator for the voluntary winding-up of the institution and shall notify the Bank of Ghana of same. In relation to the appointment of liquidators, the bank or SDI should provide the following information to the Bank of Ghana:

- i. The special resolution appointing the liquidator;
- ii. The liquidator's consent letter;
- iii. The mailing address, telephone number(s) and other contact information (such as an e-mail address) of the liquidator(s); and
- iv. A detailed profile and Curriculum Vitae of the liquidator(s).

## **H. Requirements for the Liquidator**

Once a private liquidation has commenced, the liquidator shall:

- i. Within ten (10) working days of commencement of private liquidation, submit to the Bank of Ghana, a report of the financial condition of the bank or SDI as at the date of the commencement of the private liquidation;
- ii. Submit to the Bank of Ghana, on a monthly basis until the private liquidation is complete, an inventory of assets and liabilities which itemizes the assets and liabilities according to their different risk profiles and classifies non-performing loans;
- iii. Open a private liquidation account; and
- iv. On completion of the liquidation, submit to the Bank of Ghana certification that all liabilities have been settled and any remaining assets appropriately distributed.

## **I. Disqualification of Liquidator**

- i. The following persons are not eligible to be appointed or to act as liquidators of a bank or SDI;
  - a) an infant;
  - b) a person found by a court of competent jurisdiction to be a person of unsound mind;
  - c) a body corporate;
  - d) a person convicted, whether in Ghana or elsewhere, of an offence involving fraud or dishonesty, or of an offence in connection with the promotion, formation or management of a body corporate; and
  - e) an undischarged bankrupt or any other person subject to insolvency proceedings under the Corporate Insolvency and Restructuring Act, 2020 (Act 1015).

- ii. Despite the above, a person convicted of an offence under paragraph (d) of the above subsection is eligible to be appointed as a liquidator or to act as a liquidator if ten (10) years or more have passed since the end of the sentence.
- iii. A director of a bank or SDI shall not be eligible for appointment as a liquidator of that institution.
- iv. No bank or SDI shall appoint a person as liquidator who has provided services to the institution within the last two (2) years preceding the date of initiation of the private liquidation.

**J. Remuneration of liquidator**

For the purposes of private liquidation, the bank or SDI shall, in a general meeting, determine the remuneration to be paid to a liquidator appointed for the purpose of voluntary winding-up.

**K. Liquidator's Accounts**

If the voluntary winding-up process exceeds six (6) months from the commencement date, within one (1) month after the expiration of the six (6) months from the date of the appointment and within one (1) month of the end of each subsequent six (6) months, the liquidator is required to file with the Bank of Ghana and the Registrar of Companies, liquidator's Statement of Receipts and Payments and Statement of the Position in the winding-up which shall be affirmed by a statutory declaration.

**L. Duration of Winding-Up Process**

The process of liquidating a bank or SDI through a voluntary winding-up shall not exceed a period of twelve (12) months unless otherwise approved for a longer period by the Bank of Ghana.

**M. Completion of Winding-Up**

- i. The Bank of Ghana shall certify that the winding-up of the bank or SDI is complete upon receipt of the certification from the liquidator, as required in H(iv) above.
- ii. Following the certification by the Bank of Ghana:
  - a) the liquidator shall prepare and submit the final accounts to the members (shareholders) as well as convene a general meeting to lay before the bank or SDI the accounts and provide explanations of the accounts; and
  - b) the Registrar shall then strike the name of the bank or SDI off the register and publish the record of the strike-off in the Companies Bulletin.