

BANK OF GHANA



EXPLANATORY NOTES ON THE REVISED MERGERS AND ACQUISITIONS DIRECTIVE

FOR BANKS AND SPECIALISED DEPOSIT-TAKING INSTITUTIONS

Prepared by the Bank of Ghana

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PUBLIC

INTRODUCTION

Pursuant to Sections 54(4) and 92(1) of the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930), the Bank of Ghana (BOG) issued the Mergers and Acquisitions Directive in August 2021 following consultation with the banking industry (herein called “the industry”) as well as our development partners, mainly technical assistance missions from the IMF/AFRITAC West 2.

The Mergers and Acquisitions Directive is aimed at operationalising relevant sections of Act 930 pertaining to mergers and acquisitions by providing guidance on the processes and procedures for evaluating applications for mergers and acquisitions and the required information, documents or agreements to be submitted to the Bank of Ghana in the application process. Also, this Directive has been set out to ensure that the merger or acquisition does not adversely affect competition and the stability of the financial system.

The Bank of Ghana has since carefully considered the Mergers and Acquisitions Directive in the light of feedback, comments and contributions received during the public consultation process. This has culminated in a revised Mergers and Acquisitions Directive dated August 2021 which addresses material issues identified in the Exposure Draft of the Mergers and Acquisitions Directive.

This document therefore explains the significant revisions reflected in the final version of the Directive titled Mergers and Acquisitions Directive, 2021.

NOTES EXPLAINING REVISIONS REFLECTED IN THE 2021 MERGERS AND ACQUISITIONS DIRECTIVE

Part I – Section 1: Title

The Directive, originally cited as the Mergers and Acquisitions 2018 is now cited as the Mergers and Acquisitions Directive, 2021, to properly reflect the year of issue to support referencing.

Part I – Section 2: Application

This section has been broadened from the exposure draft version. References have been made to specific sections of Act 930 as well as the Companies Act, 2019 (Act 992) as there are specific requirements under both Act 930 and Act 992 that needed to be satisfied by the Regulated Financial Institutions (RFIs).

Part I – Section 3: Exemption

This section, which was not part of the exposure draft, is included to emphasise that the point that there are some provisions of the Directive that may not apply to mergers or acquisitions emanating from a Resolution Action by the Bank of Ghana under the powers conferred on same under Act 930.

Part I – Section 4: Interpretation

The definitions of “Acquirer”, “Combined Entity”, “Parties”, “Supervisory Thresholds”, and “Target Institution” is included in the section for clarity and consistency with Act 930.

Part I – Section 5: Objectives

The scope of the objectives of the Directive is expanded to reflect the operationalisation of the relevant provisions of Act 930 pertaining to mergers and acquisitions.

Part II – Section 6: Relevant Legal Provisions

Sections 53 and 54 of Act 930 is included to the section on relevant legal provisions as these sections outline the general areas under which the Bank of Ghana shall consider granting an approval for an application for a merger or acquisition.

Part III – Section 9: General Criteria for Merger/ Acquisition Approval

The sections under Part III of the Directive, Specific Requirements, is significantly amended, largely to provide clarity to the necessary requirements of the Bank of Ghana as well as to be in line with Bank of Ghana's licensing requirements.

Section 9 of the Directive is repositioned above the section on “Approval by the Bank of Ghana” for orderly presentation and flow of the contents of the Directive. Also, an additional criterion is included to ensure a wider scope to the general conditions under which approval could be considered.

Part III – Sections 10 - 27: Approval by the Bank of Ghana

These sections of the Directive are revised to provide comprehensive description and requirements for the three (3) stage approach to the application procedure. In line with licensing requirements, there are three (3) stages to the application procedure with two (2) of the stages designed for approval of application for a merger or acquisition. These are the provisional approval and the final approval whilst the other stage is the pre-merger/ acquisition consent, where a no-objection may be granted by the Bank of Ghana in order for the Parties to commence the merger or acquisition discussions or talks.

The specific requirements for approval is classified under the three (3) stages to the application procedure and have been expanded to be more comprehensive in order to ensure that the Bank of Ghana adequately assess the proposed merger or acquisition.

Part III – Sections 28 - 31: Decision on Application

These sections of the Directive are revised to align with the three stages of the application procedure.

There is therefore specific timelines within which the Bank of Ghana shall communicate its decision at every stage of the application procedure.

Part III – Section 32: Post-Merger/ Acquisition Requirements

This section is revised to include minimum requirements that the applicants are to satisfy following the granting of the Final Approval by the Bank of Ghana.

Part IV – Section 33 – 35: Remedial Measures and Sanctions

These sections are revised to include the sanctions under Sections 92 (8) and (9) of Act 930 that are sanctions for contravening a Directive issued under Section 92 of Act 930.

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