



RESOLUTION POLICY STATEMENT

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ABSTRACT

This document describes the framework available to the Bank of Ghana to resolve failing/failed Banks and Specialised Deposit Taking Institutions. .

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1. INTRODUCTION

The need for a financial system to have an effective resolution framework is key in ensuring the orderly and timely resolution of failing or failed financial institutions. An effective resolution framework provides the resolution authority with the necessary legal powers and capacity to implement these resolution strategies without risk to financial stability and to the broader economy.

This policy statement therefore seeks to outline the authority and mandate of the Bank of Ghana as the resolution authority for banks and specialised deposit-taking institutions in Ghana.

AUTHORITY OF THE BANK OF GHANA

The Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930) makes the Bank of Ghana (BoG) the resolution authority in Ghana for all Regulated Financial Institutions (RFIs). The Bank of Ghana Act 2002, Act 612 as amended further makes the Bank of Ghana operationally independent to take decisions including the resolution of failed RFIs without any interference. In furtherance of this, the Bank of Ghana has established an independent **Resolution Office** to ensure the execution of this mandate.

Resolution occurs at the point where the Bank of Ghana determines that an institution is 'failing or likely to fail' and there is no other supervisory or private sector intervention that could restore it to viability within a short timeframe.

The assessment of 'failing or likely to fail' is done by the supervisory departments in close consultation with the Resolution Office of the Bank.

SCOPE

The Bank of Ghana's resolution framework covers Banks and Specialised Deposit-Taking Institutions here in referred to as Regulated Financial Institutions (RFI). The RFIs are listed below:

- a) Banks
- b) Savings and Loans Companies
- c) Finance Houses
- d) Deposit Taking Microfinance Institutions
- e) Rural and Community Banks
- f) Any other regulated institutions as may be determined by the Bank of Ghana

2. THE RESOLUTION PROCESS

In line with Sections 16, 107 and 123 of Act 930, the Bank of Ghana is required to put a failed or failing RFI through the resolution process. The resolution process may either start with the appointment of a Receiver or an Official Administrator before subsequently appointing a Receiver depending on the outcome of the Official Administration.

2.1. Appointment of Official Administrator (OA)

The Bank of Ghana may appoint an Official Administrator (OA) for an RFI where among others:

- a) The Bank of Ghana determines that an RFI has violated any provision of Act 930 or Regulations, directives, or orders issued under Act 930, or has engaged in any unsafe and unsound practices, in such a manner as to weaken the RFI's condition, seriously jeopardize depositors' interests, or dissipate the RFI's assets;
- b) The RFI's capital adequacy ratio falls below 50 percent of the minimum required pursuant to section 29 of Act 930 or its unimpaired paid-up capital falls below 50 percent of the minimum required under section 28 of Act 930.
- c) The Bank of Ghana has reasonable cause to believe that an RFI or its directors, key management personnel, or significant shareholders have engaged or is engaging in illegal activities in such a manner to jeopardize depositors' interests;

2.1.1 Powers of the Official Administrator

- a) All powers, functions and responsibilities of the RFI's shareholders, directors, and key management personnel shall be vested in the Official Administrator, unless the Official Administrator requests the shareholders or directors or key management personnel to carry out any activity provided under Act 930.
- b) The Official Administrator shall have exclusive powers to manage and operate a failing RFI in accordance with the instructions, directives and guidelines of the Bank of Ghana.
- c) The Official Administrator may take any action necessary or appropriate to carry on the business of the RFI, preserve the assets of the RFI as well as implement a plan of action approved by the Bank of Ghana.

2.1.2 Official Administrator's Report

- a) Not later than 30 days after the appointment, the Official Administrator must prepare and deliver to the Bank of Ghana an inventory of assets and liabilities of the RFI.
- b) Not later than 90 days after the appointment, the Official Administrator shall prepare and deliver to the Bank of Ghana a report on the financial condition and future prospects of an RFI subject to Official Administration. The Official Administrator shall include in the report an assessment of the amount of assets likely to be realized in a liquidation of the RFI.

- c) The Official Administrator's report shall also propose a plan of action which, as appropriate, shall recommend returning the RFI to compliance with Act 930 by carrying out a plan of corrective actions that may include a capital increase; or, if the RFI cannot be rehabilitated, any other course of action designed to minimize disruption to depositors and preserve the stability of the financial system.

2.1.3 Resolution tools available to the Official Administrator

On the basis of the Official Administrator's report and with the approval of the Bank of Ghana, the Official Administrator may pursue the following activities:

- a) Request capital injection from existing shareholders.
- b) Undertake forced mergers, sales and other restructurings.
- c) Facilitate recapitalization by new equity investors.
- d) Undertake mandatory restructuring of liabilities.
- e) Return institution to shareholders (existing or new).

An RFI may remain in official administration for a period of six months in the first instance; and for two consecutive periods of 3 months each.

2.2. Appointment of a Receiver

The Bank of Ghana may revoke the licence of an RFI and appoint a Receiver where among others:

- a. The Bank of Ghana determines that the RFI is insolvent or is likely to become insolvent within the next sixty (60) days. Insolvent means the inability of an RFI to pay its obligations as they fall due or the circumstances where the value of the liabilities exceeds the value of assets.
- b. An applicant provided false, misleading or inaccurate information in applying for a licence.
- c. An RFI fails to commence business within one (1) year from the date a banking licence was issued to an applicant.
- d. An RFI fails to comply with conditions stated in a banking licence issued.
- e. An RFI carries out business in a manner that is detrimental to the interest of depositors.
- f. An RFI engages in unsafe or unsound banking practices.
- g. An RFI persistently contravenes Act 930, regulations, directives or orders made under Act 930.

2.2.1. Powers of the Receiver

The Receiver shall be the sole legal representative of a failed RFI and shall succeed the rights and powers of the shareholders, the directors and the key management personnel of the failed RFI.

2.2.2. Resolution Tools Available to the Receiver

The Receiver may upon the prior written approval of the Bank of Ghana and according to its guidelines, pursue the following resolution options:

- a. Dispose of assets and liabilities of an RFI through a Purchase and Assumption (P&A) transaction;
- b. Organise a restructuring of the assets and liabilities of an RFI;
- c. Continue the operations of the RFI through a bridge RFI (A “bridge institution” is an institution established by the Government or the Bank of Ghana for a temporary period for the purpose of resolving an RFI in distress); or
- d. The merger of a failed RFI with a solvent RFI or sell substantially all the assets of a failed RFI to a solvent RFI.

2.2.3. Priority of Payment of Claims

In exercising the rights and powers under Act 930, the Receiver shall maximise the proceeds from the sale of assets and also take any action necessary for the efficient liquidation of the RFI.

Thirty days from the date of appointment, the Receiver may make payments to depositors or to other creditors of such amounts that in the opinion of the Receiver may appropriately be used for that purpose subject to the priority of payment as indicated below:

- a. Secured claims.
- b. Necessary and reasonable expenses by the receiver and the Bank of Ghana including professional fees.
- c. Payment made by the institution responsible for deposit protection in respect of insured deposits.
- d. Credit extended by the Bank of Ghana to the RFI prior to the appointment of the Receiver.
- e. Statutory amount owed to the Government of Ghana.
- f. Wages and salaries earned by employees not later than 180 days before the appointment of the Receiver.
- g. Credits extended after the appointment of the Receiver.
- h. Deposits not covered by the deposit protection scheme.
- i. Other compensation to staff.
- j. Unsecured creditors.
- k. Subordinated debt.
- l. Allowable claims that were not filed within the time specified by the Receiver for filing.

m. Shareholders.

Where the amount available for payment of any class of claim above is not sufficient to provide payment in full, the claim of that class shall be reduced in equal proportions.

2.2.4. Termination of Receivership

After the distribution of the proceeds of the sale of assets of an RFI, the Receiver shall submit a report to the Bank of Ghana indicating the statement of “income and expense” and “sources and uses of funds” during the receivership. Where the Bank of Ghana approves the report, the receivership is terminated.

3 LEGAL REMEDIES

Act 930 requires persons who are aggrieved and seeks redress of the Bank of Ghana’s decision in respect of the appointment of an Official Administrator or a Receiver to resort to arbitration under the rules of the Alternative Dispute Resolution Centre established under the Alternative Dispute Resolution Act, 2010 (Act 798).

In reaching a decision, the arbitration panel may examine whether the defendant acted unlawfully or in an arbitrary or capricious manner having regard to

- a. The peculiar facts
- b. The provision of Act 930
- c. A directive of the Bank of Ghana, or
- d. Any other enactment.

4 RESOLUTION FINANCING

The Bank of Ghana is required by Act 930 to work closely with the Ghana Deposit Protection Corporation (GDPC) to ensure payment of the insured deposits in line with the Ghana Deposit Protection Act, 2016 (Act 931) as amended.

Notwithstanding the above, the primary source of funds for the payment of depositors and other creditors of resolved RFIs, as well as the fees and commissions of the Receiver are expected to be borne out of the proceeds from the recoveries that are made from the sale of assets of the RFI. Where these resources are **temporarily** insufficient, the Bank of Ghana may put in place a flexible approach for the provision of liquidity in order to support the resolution strategy and receivership operations. Any such funds advanced will be reimbursed from the proceeds from recovery.

5 CROSS-BORDER COOPERATION

Act 930 requires only body corporates incorporated in Ghana to be issued with a licence as an RFI. To this end, all the foreign owned RFIs are fully incorporated in Ghana and branches of foreign RFIs are not allowed in Ghana. It is important to note that the resolution framework in Ghana does not discriminate between a domestic controlled RFIs and foreign controlled RFIs.

The Bank of Ghana therefore has the power as the resolution authority to resolve any failed subsidiary of a foreign RFI without any restrictions. The resolution of a failed parent RFI should not necessarily lead to the resolution of its solvent subsidiary located in Ghana as the subsidiary in Ghana is fully incorporated in Ghana.

The Bank of Ghana also has in place a memorandum of understanding with home supervisors of all the foreign subsidiaries located in Ghana with respect to information sharing even during the period that such RFIs are failing.

6 RESOLUTION PLANNING

The Bank of Ghana has a statutory responsibility to draw up resolution plans and to assess resolvability for all RFIs. This part explains how the Bank of Ghana approaches resolution planning:

6.1. RESOLUTION STRATEGIES AND PLANS

The Bank of Ghana's resolution plan is intended to facilitate the effective use of the existing resolution framework to protect critical functions of RFIs, with the aim of making the resolution of any RFI feasible without severe disruption and without exposing taxpayers to loss. It also serves as a guide for achieving an orderly resolution, in the event that recovery measures are not feasible or have proven ineffective.

The resolution plan shall generally include a resolution strategy and an operational plan for implementation taking into consideration:

- I. an RFIs financial and economic functions for which continuity is critical;
- II. suitable resolution options to preserve the RFI's functions or wind them down in an orderly manner;
- III. data requirements on the RFIs business operations, structures, and critical functions;
- IV. potential barriers to effective resolution and actions to mitigate those barriers;
- V. actions to protect insured depositors and other creditors; and
- VI. clear options or principles for the exit from the resolution process.

The Bank of Ghana ensures that the resolution plan for a foreign subsidiary is consistent with the home supervisor's where necessary.

6.2. RESOLVABILITY ASSESSMENTS

The Bank of Ghana may undertake resolvability assessments annually for RFIs that have a potential of causing disruption to the financial system, to evaluate the feasibility of resolution strategies and their credibility in light of the likely impact of the RFIs failure on the financial system and the overall economy. Such an RFI will be deemed "resolvable" if it is feasible and credible for the Bank of Ghana to resolve that RFI in a way that protects systemically important functions without severe systemic disruption and without exposing taxpayers to significant losses.

7. CONCLUSION

In view of the critical role that financial institutions play in the economy, the Bank of Ghana is committed to ensuring that licensed RFIs remain strong, solvent and liquid to support the economic growth of Ghana. However, it is important that weak or problem RFIs that have the potential to create financial instability are properly handled in a timely and orderly manner to ensure the safety and soundness of the financial system.