



BANK OF GHANA

DIRECTIVE FOR VOLUNTARY WINDING UP
OF
REGULATED FINANCIAL INSTITUTIONS

Banking Supervision Department

SEPTEMBER 2018

PART I - PRELIMINARY

Background

In accordance with Section 92 (1d) of the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930), the Bank of Ghana has from today 5th September 2018 issued this exposure draft on the directive for voluntary winding up of banks, specialised deposit taking institutions and institutions licensed under other enactments for industry and public comments. The provisions of this directive is to operationalise Section 139 of Act 930 on voluntary winding up. Comments should be sent to Banking Supervision Department, or email bsd@bog.gov.gh latest by Friday 21 September 2018.

Title

1. This directive may be cited as “Directive for Voluntary Winding up of Banks and Specialised Deposit taking Institutions – 2018”.

Application

2. This Directive shall apply to all Regulated Financial Institutions.

Interpretation

3. In this Directive, unless the context otherwise requires, words used have the same meaning as that assigned to them in the applicable law or as follows –
 - a) “**Act 930**” means Banks and Specialized Deposit-Taking Institutions Act, 2016 (Act 930)
 - b) “**Regulated Financial Institution**” “refers to banks, specialised deposit-taking institution and other financial institutions licensed or regulated under Act 930 and other enactments
 - c) “**Directive**” means Directive as adopted by the Banking Supervision Department of the Bank of Ghana for the voluntary winding up of a regulated financial institution
 - d) “**Act 179**” means Companies Act 1963, (Act 179)
 - e) “**SDI**” means Specialised Deposit Taking Institution

- f) **“Voluntary winding up”** Suspension or cessation of activities of a bank/SDI with the objective of cashing its assets, collecting its receivables, settling claims and other debt obligations as well as distributing reserves to shareholders

Objectives

4. The objectives of this Directive are -
- a) To provide an overview of the procedures for voluntary winding up and subsequent revocation of operating licence of a bank or SDI.
 - b) To ensure that there is an orderly exit of a bank or SDI seeking to voluntarily wind up its operations/activities.
 - c) To ensure that the voluntary winding up of operations of a regulated financial institution does not threaten the stability of the banking system.

Introduction

The Bank of Ghana (BOG) is responsible for the licensing, regulation and supervision of banks and SDIs operating in and from Ghana pursuant to Act 930 and the Bank of Ghana Act, 2002 (Act 612). Additionally, Act 930 confers on the Bank of Ghana, the overall supervisory and regulatory authority in all matters relating to deposit-taking business. To this end, the BOG is responsible for promoting the safety and soundness of banks/SDIs as well as ensuring the soundness and stability of the financial system and the protection of depositors through regulation and supervision of financial institutions.

The regulated financial institutions are expected to adhere to the BOG’s licensing, prudential and regulatory requirements and ongoing supervisory programmes, including periodic onsite examinations. The Directive sets out matters that are peculiar to a regulated financial institutions’ voluntary winding up and the suggested procedures and duties involved. To this end, Act 930 and Act 179 prescribes the requirements for the revocation of bank/SDI licence and the liquidation of companies respectively.

PART II - RELEVANT LEGAL REQUIREMENTS

Relevant Legislation

Per the dictates of Section 139 of Act 930, a bank or SDI shall not wind up voluntary unless the Bank of Ghana has certified in writing that the bank or SDI would be capable on its voluntary winding up, of meeting the obligations it has in respect of the depositors and creditors as the obligations accrue.

Where the BOG, at any stage of the voluntary winding up, considers that, that bank or SDI which is winding up is unable to meet its obligations to depositors or creditors in full, the BOG shall appoint a receiver to wind up the affairs of that bank or SDI following which the dictates of sections 123 to 139 of Act 930 shall apply.

The winding up process involves the settling of the bank or SDIs liabilities via the disposition of assets and is governed by the Companies Act, 1963 (Act 179). However, in the case of banks and SDIs, the process shall be governed by Act 930 and the BOG shall monitor the process and ensure that the winding up is conducted in the best interest of depositors and other creditors.

Conditions for Voluntary winding up

A regulated financial institution seeking to voluntarily wind up must satisfy the underlisted conditions:

- a. The voluntary winding up of a regulated financial institution can only be initiated when the institution is *solvent*
- b. Has sufficient *liquid assets* to meet fees, costs and expenses of the liquidation.
- c. The directors of the institution shall declare that the bank or SDI is solvent and pass a *special resolution* to wind up the affairs of the company.
- d. The directors of the institution shall call a board meeting at which a majority of the board (75%) must make an *affidavit or declaration* to the effect that they have made a full enquiry into the affairs of the company and in their opinion the institution 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.

Procedure for Voluntary winding up

- A regulated financial institution seeking to voluntarily wind up its operations must apply to the Bank of Ghana for approval to initiate the process
- The voluntary winding up is deemed to commence immediately after BOG has certified in writing that the institution would be capable on its voluntary winding up. (i.e. BOG approval)
- Within 14 days of obtaining approval from the Bank of Ghana to commence the process of voluntary winding up, a copy of the special resolution supporting the action shall be sent to the Registrar of Companies (Registrar General Department) to publish same in a Gazette.
- The directors' affidavit (declaration) must be made within 5 weeks immediately preceding the date of obtaining BOG approval for the winding up of the institution and the delivery to the Registrar of companies. The affidavit must contain a statement of the institution's assets and liabilities at the latest practicable date before the making of the affidavit.
- Any director who makes an affidavit without having reasonable grounds for the opinion that the institution will be able to meet its debts and other obligations in full within twelve (12) months shall be liable to imprisonment for a term not exceeding one (1) year or to a fine not exceeding the Ghana cedi equivalent of five hundred pounds or to both.
- If the institution is wound up following the affidavit but its debts and liabilities are not paid in full within the stipulated period, it will be presumed, until the contrary is shown, that the director(s) did not have reasonable grounds for his opinion and the Bank of Ghana shall appoint a Receiver to wind up the affairs of the bank or SDI. The cost of the receivership shall be borne by the regulated financial institution under receivership.
- The institution shall from the commencement of the 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.
- The final financial year of the institution shall be deemed to end immediately prior to the date of the commencement of the winding up and the institution shall prepare and publish its accounts accordingly.
- A liquidator shall be named in the special resolution of the board and the liquidator should have consented in writing prior to his appointment.

- The powers of the board shall cease and vest in the liquidator on his appointment. The liquidator stands in a fiduciary relationship to the institution and accordingly all the fiduciary duties of directors apply to him.
- The liquidator's powers shall be in accordance with the provisions of the Companies Act, 1963 (Act 179).
- The applicant bank or SDI seeking approval for voluntary winding up shall submit a detailed plan with timelines to support the intended action to the Bank of Ghana.

Surrender of licence

Subsequent to BOG's approval for a regulated financial institution to voluntarily wind up, a licence revocation-order shall immediately be made by the Bank of Ghana and the operating licence of the institution shall be submitted to the Bank of Ghana within seven (7) working days from the date of the order.

Documentation Required

Regulated financial institutions seeking to voluntarily wind up their operations should provide the following information and documentation to the Bank of Ghana:

- (a) Shareholders' resolution/approval authorising the board to voluntarily wind up the operations of the institution, indicating the reasons for the intended action.
- (b) A copy of the Board of Directors Resolution sanctioning the voluntary winding up/voluntary liquidation of the regulated financial institution;
- (c) A detailed plan, including relevant timeframes for the completion of the winding up in an orderly manner;
- (d) Confirmation from the directors that the bank or SDI has ceased to carry on any banking business except in so far as may be required for the orderly winding up of the institution;
- (e) A certified balance sheet, as at the date of the commencement of the winding up (liquidation) of the bank or SDI, submitted by the liquidator reflecting all existing assets and liabilities of the institution; and

- (f) A listing of all unresolved, unsatisfied or un-discharged complaints or legal actions against the bank or SDI.
- (g) A copy of the affidavit or declaration by the board 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.

Public Notification

Under the Companies Act, 1963, notice of any resolution passed for the winding up of an institution should be published in the Gazette. A copy of the resolution shall be made available to the Bank of Ghana.

Appointment of Liquidator

A regulated financial institutions undergoing voluntary liquidation is required to appoint an official 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 regulated financial institution should provide the following information to the Bank of Ghana: -

- (a) The relevant Board Resolution appointing the liquidator,
- (b) The mailing address, telephone number(s) and other contact information (such as an e-mail address) of the liquidator(s)
- (c) A detailed profile and experience of the liquidator(s)
- (d) No bank or SDI shall appoint as liquidator who has provided services to the institution within the last two (2) years.

Requirements for the Liquidator

Once voluntary liquidation has commenced, the liquidator shall:-

- (a) Submit to the Bank of Ghana, a report of the financial condition of the regulated financial institution as at the date of the commencement of the voluntary liquidation;

- (b) Submit to the Bank of Ghana, on monthly, reports of assets and liabilities, until the liquidation is complete; and
- (c) On completion of the voluntary liquidation, submit to the Bank of Ghana certification that all liabilities have been settled and any remaining assets appropriately distributed.

Liquidator's Accounts

If the winding up process exceeds six (6) months from the commencement date within one (1) month after the expiration of 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 Receiver, liquidator's Statement of Receipts and Payments and Statement of the Position in the Winding Up which shall be affirmed by a statutory declaration.

Duration of Winding up Process

The process of liquidating a bank or SDI through a voluntary wind-up shall not exceed a period of twelve (12) months.

Termination of Winding up

The events culminating in termination of a bank or SDIs voluntary winding up include the following:

- a. The payment of final dividend to the creditors
- b. The distribution of surplus, if any, to the shareholders (members)
- c. The liquidator completes the winding up of the institution

The winding up is completed when the institution is dissolved, or a stay of proceedings in the winding up is granted by Court.

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