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INCREASED MINIMUM CAPITAL REQUIREMENTS FOR BANKS:

A PRECURSOR TO SALES, MERGERS AND OTHER COMBINATIONS

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The Bank of Ghana has responsibility for the supervision and regulation of all deposit-taking business in Ghana. This supervisory mandate is derived from the Bank of Ghana Act, 2002 (Act 612) and the new Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930)[1].

As part of the Bank of Ghana's regulatory and supervisory functions, it is empowered to prescribe the minimum paid-up capital for banks and specialised deposit-taking institutions ("SDIs"). In terms of section 28 of Act 930, Act 930 confers on the Bank of Ghana the duty to prescribe for banks and SDIs, a minimum paid-up capital unimpaired by losses, including accumulated losses or adjustments to be maintained in Ghana.

The explanatory memorandum to the Banks and Specialised Deposit-Taking Institutions Bill, 2015 (which was passed into law) indicates that among others, the policy rationale behind Act 930 is to "scale up the financial markets particularly banking to effectively mobilise financial resources from domestic and international markets to finance the accelerated growth process".

To this end, and in compliance with its mandate

under Act 930, the Bank of Ghana issued Public Notice No. BG/GOV/SEC/2017/19 ("Public Notice") on 11 September 2017 thereby revising the minimum paid-up capital for existing banks and new entrants. Banks are now required to hold a minimum paid-up capital of GHS400,000,000.00 (Four Hundred Million Ghana Cedis) by 31 December, 2018, up from the previous minimum paid-up capital of GHS120,000,000.00 (One Hundred and Twenty Million Ghana Cedis). The minimum paid-up for SDIs on the other hand is capped at GHS15,000,000.00 (Fifteen Million Ghana Cedis) for savings and loans companies and finance houses.

Failure to comply with the minimum paid-up capital requirements by the deadline of 31 December 2018 may give rise to penalties and has additional consequences for both a bank and its directors.[2]

In terms of the Public Notice, the Bank of Ghana has more than tripled the minimum paid-up capital for banks.

The Public Notice sets down the mode to be employed in raising the minimum paid-up capital as follows:

a) fresh capital injection;

b) capitalization of income surplus; or

c) a combination of fresh capital injection and capitalization of income surplus.

Banks will not be allowed to capitalise revaluation reserves, reserves on financial instruments through other comprehensive income, statutory reserves, credit risk reserves and unaudited profit.

It is anticipated that this directive will likely result in banks entering into combinations, for example, mergers with other banks, raising capital through initial public offerings ("IPOs") or private placements, or by converting from a bank to a SDI.

With respect to the ability of the banks to meet the new capital requirements, the main challenge may come in the form of time as the deadline for all the banks to raise additional capital is 31 December 2018.

It has already been noted that due to the capital requirements, some banks may need to merge in order to ensure survival. However, not all banks may have the leverage they need to obtain optimal value. Due to time constraints, banks may not be able to hold out or 'shop around' for the best fit (e.g. with respect to core values, objectives and strategy), and may end up being forced into a combination that only meets the objective of raising capital.

In the case of raising capital through an IPO, banks will have just a little over a year to raise the funds and mobilising an IPO (including ensuring compliance with, inter alia stock exchange requirements) and may accordingly not be feasible for all approaches.

Banks may also consider private placements as a means of raising the required capital. However, given the amplified scope of the central bank's regulatory powers with respect to the ownership and control of banks, the banks must find investors that meet the Bank of Ghana's approval before the deadline.

As an alternative, the Bank of Ghana has indicated that banks could consider capitalising their income surplus by the 31 December 2018 deadline. This would require a transfer from income surplus to stated capital, a transaction which may have tax implications as such transfer would be treated as dividends which normally attract a withholding tax.

We anticipate a raft of activity in the banking sector in Ghana in the coming months. Although affected banks will likely have to surmount various challenges, the Bank of Ghana will be hoping that the vision of the legislation will be actualised, which is, according to the explanatory memorandum, "to make the financial sector of the country the preferred source of finance for domestic companies...and to enhance competitiveness of the country's financial institutions".

[1] Act 930 repealed the Banking Act, 2004 (Act 673) and the Banking (Amendment) Act, 2007 (Act 738) and confers on the Bank of Ghana wider regulatory and supervisory powers than it had under the previous Banking Act.

[2] Section 33 of the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930)

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