

GUIDELINE ON ACQUISITIONS, MERGERS, AMALGAMATIONS, TRANSFERS OF ASSETS AND LIABILITIES CBK/PG/12

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PART I: PRELIMINARY

- 1.1. **Title** - Guideline on acquisitions, mergers, amalgamations, and transfer of assets and liabilities.
- 1.2. **Authorisation** - This Guideline is issued under section 33(4) of the Banking Act, which empowers the Central Bank of Kenya (Central Bank) to issue Guidelines to be adhered to by institutions in order to maintain a stable and efficient banking and financial system
- 1.3. **Application** - All institutions licensed under the Banking Act (Cap.488) and non operating holding companies.
- 1.4. **Definitions** - Terms used within this guideline are as defined in the Banking Act, as further defined below, or as reasonably implied by contextual usage.
 - 1.4.1 **Acquisition** – The purchase by one institution licensed under the Banking Act of another, for cash, an exchange of shares, or a combination of both. The process is also referred to as a **takeover** where the acquisition results in a shareholding exceeding 50 percent of the acquired institution.
 - 1.4.2 **Amalgamation** – The union or fusion of two institutions licensed under the Banking Act.
 - 1.4.3 **Amalgamating or merging institutions** – The institutions contemplating effecting an amalgamation or merger.
 - 1.4.4 **Merger** – The fusion of two or more institutions licensed under the Banking Act.
 - 1.4.5 **Partial transfer of assets and liabilities** – The transfer of certain assets and certain liabilities as specified in the merger / amalgamation agreement or Business Assets Transfer Agreement, of the transferor institution to the receiving institution.
 - 1.4.6 **Receiving institution** – The institution to which assets and liabilities are transferred through a transaction effected under this Guideline.
 - 1.4.7 **Resulting institution** - The institution resulting from a merger or an amalgamation effected under this Guideline.
 - 1.4.8 **Transfer of assets and liabilities** – The transfer of all the assets and liabilities of the transferor institution to the receiving institution.

- 1.4.9 **Transferor institution** - the institution which transfers its assets and liabilities to a receiving institution.

PART II: STATEMENT OF POLICY

- 2.1. **Purpose** - This Guideline has been prepared pursuant to section 9 and section 13(4) of the Banking Act to assist institutions intending to undertake an acquisition, merge or amalgamate, transfer assets and liabilities and/or facilitate transfer of significant shareholding.
- 2.2. **Scope** – This guideline shall be applicable to all institutions licensed to conduct business in Kenya under the Banking Act. It specifies application procedures and sets out the minimum conditions that should be fulfilled by merging or amalgamating institutions or institutions involved in an acquisition. It also stipulates the forms to accompany applications for transfer of significant shareholding.
- 2.3. **Responsibility** – It shall be the responsibility of the shareholders and directors of the institutions intending to acquire, merge, amalgamate and/or transfer of assets and liabilities to ensure that the provisions of these guidelines are adhered to by the institutions.

PART III: SPECIFIC REQUIREMENTS

3.1. Application Procedures

- 3.1.1 All institutions intending to acquire, merge/amalgamate or transfer assets and liabilities should write to the Director, Bank Supervision Department, Central Bank of Kenya, P.O. Box 60000 - 00200 Nairobi, providing advance notification at least 30 days prior to the proposed acquisition, merger or transfer. This notification must be accompanied with the required information specified in Section 3.1.3 below.
- 3.1.2 Merging or amalgamating institutions should first submit three names which they seek the approval from the Central Bank in in case of change of name. They should then ascertain with the Registrar of Companies that the selected names are available and is appropriately reserved for their use.
- 3.1.3 Acquiring, merging or amalgamating institutions should submit a due diligence report signed by directors of the institutions involved. The report should at a minimum contain the following:
- (a) An extract of minutes of the general meeting of the shareholders of each of the institutions involved passing the resolutions to acquire, merge or amalgamate and the terms and conditions of the relevant agreement. Also attach a copy of the

resolution of the board of directors of all the participating companies approving the proposed merger or amalgamation.

- (b) Latest audited accounts for all the institutions involved in the acquisition merger/amalgamation. A copy of consolidated accounts of the institution's duly certified by an independent firm of auditors as at the date of application for approval. The certified accounts should meet CBK minimum disclosure requirements.
- (c) Memorandum and Articles of Association of merging/amalgamating institutions or institutions involved in an acquisition.
- (d) A statement of the nature and objectives of the acquisition, merger/amalgamation.
- (e) A copy of the proposed agreement for the acquisition, merger /amalgamation and any supplemental agreements forming part of the transaction.
- (f) Financial projections for the first three years of operation after acquisition, merger/ amalgamation together with respective assumptions.
- (g) Proposed details of the method of valuation and the name of the valuer.
- (h) Proposed organisation structure of the resulting institution.
- (i) Proposed details of senior management (A) - as per form CBK/IF 12-1.
- (j) Proposed shareholding structure (B) - as per form CBK/IF 12-2.
- (k) Proposed board of directors (C) - as per form CBK/IF 12-3.
- (l) Particulars of Directors Loans* (D) - as per form CBK/IF 12-4.
- (m) Proposed branch network (E) - as per form CBK/IF 12-5.
- (n) Proposed staff rationalization program. This should take into account the following:
 - i. The management structure of the resulting institution will need to be agreed upon, properly structured and where necessary job descriptions amended.
 - ii. In respect of unionized staff, the provisions of the trade union agreement, collective agreements or other staff association arrangements if any, will need to be complied with to the extent required by Kenyan law. This may require advance negotiations with the union.

- iii. In respect of non-unionized staff the accumulated leave and other benefits will need to be computed and possibly transferred to the resulting institution.
 - iv. An appraisal of the staff requirements will need to be done. Recruitment of additional staff in specialized areas will need to be considered.
 - v. Staff pension scheme/provident fund schemes will need to be in compliance with the relevant laws and guidelines.
 - vi. Any expatriate staff on work permits will require the transfer of their work permits to the new entity.
 - vii. Contracts of employment will need to be transferred to the new entity or fresh ones drawn out. Staff being transferred will be expected to consent in writing to the transfer of their employment to the new entity. The contracts of employment in the new entity should not be on less favourable terms than their existing terms of employment.
 - viii. Redundancy packages for employees will need to be drawn for employees who decline any contract of employment by the new entity. The packages should not prejudice their or affect their statutory rights in respect of termination.
 - ix. Salary scales, benefits and remuneration structure will need to be carefully reviewed and harmonized to avoid any inconsistencies.
 - x. Staff training programs will need to be reviewed and consolidated.
 - xi. New personnel policies will need to be agreed upon.
- (o) Anticipated tax implications of the merger.
 - (p) Operational contingencies.
 - (q) Business strategy to be adopted.
 - (r) ICT strategy and system software to be adopted.
 - (s) Legal due diligence covering all areas of any legal concerns that may face the resulting institution. This should include current litigations and any anticipated litigation
 - (t) Financial due diligence on acquiring, amalgamating and merging institutions.

- (u) Marketing and communications plan.
 - (v) Data migration plan in compliance with the Data Protection Act.
 - (w) Evidence of cyber security risk assessment before integration of ICT systems.
 - (x) Review of corporate governance structures, board composition, and independence.
 - (y) Strategy for alignment of human resources to the culture of the resulting institution.
- 3.1.4 Institutions intending to acquire or merge will have to furnish the CBK with a letter of no objection/approval from the Competition Authority of Kenya, the East African Community Competition Authority, and the COMESA Competition and Consumer Commission, as applicable.
- 3.1.5 Institutions intending to acquire or merge will have to obtain letters of no objection in cases where the merging or acquiring institutions are listed.

3.2. Approval Procedures and Assessment Criteria

The Central Bank shall not approve the acquisition, merger, amalgamation or transfer unless satisfied that:

- 3.2.1 The acquisition, merger or amalgamation shall be in public interest.
- 3.2.2 The business the applicant proposes to conduct is that of an institution under the Banking Act.
- 3.2.3 The acquisition, merger or amalgamation are going concerns and will be viable.
- 3.2.4 The corporate affiliation or new group structure does not expose the institution to undue risk, risk concentrations or hinder effective supervision.
- 3.2.5 That the institution has from the outset adequate financial, managerial and organizational resources to handle the acquisition/merger.
- 3.2.6 The reputation of the proposed acquirer, mainly its integrity and professional competence.
- 3.2.7 The financial soundness of the proposed acquirer.

- 3.2.8 The acquisition, merger or amalgamation involves institutions licensed under the Banking Act.
- 3.2.9 Every person proposed as a director or an officer in the new organisation complies with “Fit and Proper” criteria in accordance with the Banking Act.
- 3.2.10 In case of a transfer of assets and liabilities referred to, such transfer is to another institution or person approved by the Central Bank for the purpose of the transfer.
- 3.2.11 The resulting institution, or in the case of such transfer of assets and liabilities, the bank or person taking over such assets and liabilities, shall have the same rights and be subject to the same obligations as those applicable prior to the merger/amalgamation or transfer.
- 3.2.12 All agreements, appointments, transactions and documents entered into, made, drawn up or executed with, by, or in favour of any of merged/amalgamated institutions and in force immediately prior to the merger/amalgamation or transfer shall remain in force and effect and shall be construed for all purposes as if they had been entered into, made, drawn up or executed with or in favour of the resulting institution.
- 3.2.13 The resulting institution shall be in compliance with the Banking Act, Central Bank of Kenya Act, and any Guidelines issued there under and/or other applicable statutory requirements.
- 3.2.14 Source of funding by the acquirer or merging institution has been disclosed.
- 3.2.15 The beneficial owners, including the ultimate beneficial owner, of the acquiring, amalgamating merging institutions have been disclosed.
- 3.2.16 Directors who are beneficial owners by virtue of being natural persons who ultimately control the resulting institution have been certified as Fit and Proper pursuant to the Banking Act.
- 3.2.17 Complex, opaque and layered group structures due to the acquisition, amalgamation or merger.
- 3.2.18 Control functions relating to corporate governance, audit, and internal control, amongst others, remain robust in the new entity.
- 3.2.19 ICT system are able to provide management with information which is accurate, timely and accurate to manage any resulting risks.

- 3.2.20 The competitiveness of the banking sector is not diminished by the acquisition, amalgamation or merger of the institutions.
- 3.2.21 The transaction aligns with the institutions' strategic plans aligned to their economic, legal and financial operating environment.

PART IV: POST ACQUISITION, MERGER/AMALGAMATION REQUIREMENTS

4.1 Permits, licenses and other approvals

- 4.1.1 Banking license in the name of the new entity will be required.
- 4.1.2 Banking license of the transferor institution will need to be surrendered. It will require a new name which does not use the word bank or its derivatives, and it will cease undertaking banking business.
- 4.1.3 Likewise, all other licenses, permits and approvals will need to be obtained in the name of the new entity.
- 4.1.4 Membership of various trade associations and other similar bodies will have to be in the name of the new entity.
- 4.1.5 For rented premises, the landlord's consent may be necessary.

4.2 Banking and Finance Facilities

- 4.2.1 All facilities enjoyed by the merging/amalgamating companies, including correspondent banking facilities will need to be transferred to the new entity.
- 4.2.2 Any hire purchase or finance leases will need to be assigned or transferred.

4.3. Maintenance of Records

- 4.3.1 It is essential to ensure that the right accounting systems and procedures are in place. Expert advice may be required to ensure proper consolidation of the different accounts and systems used.
- 4.3.2 Books of the entity being absorbed will need to be closed.
- 4.3.3 Closure and/or transfer of all bank accounts, income tax file, Pay As You Earn (PAYE) file, and others.
- 4.3.4 Review/consolidation of policy and procedures manual.

4.4. Miscellaneous Requirements

The following requirements in so far as they are applicable, will need to be attended to:

- 4.4.1 Consolidation of insurance.
- 4.4.2 Transfer of lease agreements in respect of all rented premises, including premises occupied by staff.
- 4.4.3 Transfer of all utility accounts including electricity, water and telephone accounts.
- 4.4.4 Transfer of credit facilities from various suppliers to the new entity.
- 4.4.5 Transfer full authority to the new entity to deal with any litigation by the transferor institution.
- 4.4.6 Payment of any stamp duty, registration fees, Value Added Tax in respect of the transfer of assets and liabilities as may be required by the tax authority from time to time.
- 4.4.7 Communication to customers and other business partners introducing the new entity including its new branding identity, if different.
- 4.4.8 Ensure full system integration of the various ICT systems to ensure a smooth rollover and minimize interruptions in channel delivery.

The following additional requirements will be required to be met:

- 4.4.9 Merger/Amalgamation Governance Framework which should include board composition, leadership structure and change (if any), integration map and risk oversight.
- 4.4.10 Interim Oversight Taskforce should be established at Board and Committees to monitor the integration and effectiveness of governance for at least 6 months.
- 4.4.11 The Board should establish a Transitional Oversight team to monitor integration, governance performance and report to the Central Bank on its findings.
- 4.4.12 The internal audit, compliance and risk heads should remain independent strengthening their reporting

PART V: REMEDIAL MEASURES

Where any provision of this Guideline is breached or not observed, the Central Bank may pursue any or all of the remedial actions and administrative sanctions provided for under the Banking Act.

PART VI: EFFECTIVE DATE

- 6.1 Effective date:** The effective date of this guideline shall be 1st January 2027.
- 6.2 Supersedence** - This Guideline supersedes and replaces the Guideline on mergers, amalgamations, and transfer of assets and liabilities (CBK/PG/12) issued on 1st January 2013.

ENQUIRIES

Enquiries on any aspect of this guideline should be referred to:

The Director

Bank Supervision Department

Central Bank of Kenya

P.O. Box 60000 - 00200

NAIROBI

TEL. 2860000 e-mail: *fin@centralbank.go.ke*

					CBK/IF 12-2
PARTICULARS OF SHAREHOLDERS					
NAME OF INSTITUTION.....					
SHAREHOLDERS' NAME	NUMBER OF SHARES	VALUE SHS'	PERCENTAGE OF SHARE HOLDING	NAMES OF SHAREHOLDING OF CORPORATE PERSONS IN COLUMN "A"	PERCENTAGE OF SHAREHOLDING BY PERSONS IN COLUMN "E"
		"000"			
A	B	C	D	E	F
TOTAL					
TOTAL PAID UP CAPITAL AS PER BSM					
TAKE NOTE OF THE FOLLOWING					
Under ultimate beneficiary, state names of actual individual human persons behind the shareholding					
Indicate separately shareholders with 10% or more of total shareholding or all if they number ten or less					
With Foreign banks incorporated outside Kenya, details of ultimate beneficiary need not be specified					
In case of nominees, names of ultimate beneficiaries could be revealed					
Name.....Designation.....Signature.....					

[illegible]

[illegible]

NAME OF INSTITUTION:
PERIOD ENDING:

NB: The head office should be listed first