

Corporate Governance Disclosure Requirements for Regulated Financial Institutions

November 2022

In August 2017, UT Bank Ltd and Capital Bank's take-over by GCB Bank, heralded the beginning of the infamous Ghanaian banking crisis. This was followed by further insolvencies in the banking and financial sector. One of the major reasons cited for the collapse of these banks and savings and loans companies was poor corporate governance. Since then, the BOG has been focused on ensuring that its regulated entities prioritize and implement proper corporate governance policies and practices.

In December 2018, the Bank of Ghana issued the Corporate Governance

Directive, 2018 ("CGD 2018") for banks, savings and loans companies, finance houses and financial holding companies licensed or registered under the Banks & Specialised Deposit-Taking Institutions Act, 2016 (Act 930) ("regulated financial institutions"). The main premise of CGD 2018 was to require regulated financial institutions to adopt sound corporate governance principles and best practices to enable them undertake their licensed business in a sustainable manner. CGD 2018 highlights, amongst other things, legal requirements for directors, employees and key management personnel and sound corporate governance standards.

To further support the implementation of CGD 2018, BOG issued the Bank of Ghana Corporate Governance Disclosure Directive, 2022 in May 2022 (the “Disclosure Directive”). The objectives of the Disclosure Directive include enhancing transparency and market discipline; and promoting public confidence and trust in regulated financial institutions. The Disclosure Directive also seeks to amend all disclosures required in the regulated financial institution’s Annual Report¹, per the CGD 2018, to disclosures in their Audited Financial Statements.

Disclosure Requirements in Audited Financial Statements

The Disclosure Directive now requires a “Corporate Governance Report” in the regulated financial institution’s Audited Financial Statements. External auditors must review and make comments on the said report in the “Other Matters” section of the Independent Auditors’ report in the Audited Financial Statements.

The following disclosures are required to be made in Corporate Governance Report:



Annual Certification

The Disclosure Directive requires the Board to provide a certification, in the Audited Financial Statements, detailing the company’s compliance or otherwise with the requirements of the CGD 2018. In the event of any non-compliance, the Board must provide further detail including reasons, periods of non-compliance and a remedial plan for compliance. The Board must also disclose whether it conducted an independent assessment of the effectiveness of the corporate governance process of the company.

The Board must disclose certification obtained by directors from the National Banking College, or other institution recognized by the Bank of Ghana, confirming that they have participated in a corporate governance programme on directors’ responsibilities.

¹ “Annual Report” means a company’s yearly report to shareholders, documenting its financial condition and other activities in the previous financial year presented at the annual general meeting of the shareholders whilst “Audited Financial Statements” means the statement of financial position, statement of comprehensive income, statement of cash flows, statement of changes in equity, summary of significant accounting policies and other explanatory notes, a report by the directors and a report of independent auditors attesting to the financial statement’s fairness and compliance with generally accepted accounting principles.

2

Governance Structure

The Board is required to disclose the regulated financial institution's corporate governance code; shareholding structure, voting rights and details of shares held by directors. Details of the Board composition and the profile of directors (including qualifications and experience); induction of new directors and key management personnel, the profile of the executive management committee; resignations, retirements and removal of directors and key management personnel during the financial year must be included.

With respect to size and composition of the Board, the Board must indicate compliance with local participation requirements that is, thirty per cent (30%) Ghanaian membership on the board and audit/risk committees; and thirty per cent (30%) independent directorship. In addition, the certification must also include a summary of training and capacity building programmes provided to the Board; and the performance criteria used to assess the effectiveness of the Board.

3

Remuneration Policies

The Board must provide information on how it oversees the design and operation of the compensation system and how the same is monitored to ensure alignment with prudent risk taking. The Board must also disclose how it ensures the sufficiency of remuneration; approval of compensation of key management personnel; details of share options which are part of executive remuneration; and the remuneration structure.

4

Board Meetings and Committees

The Disclosure Directive requires the Board to disclose the frequency and conduct of Board and Committee meetings and directors' attendance at meetings during the financial year. Disclosure must also include the number and nature of Board committees, terms of reference for the committees, the annual meeting calendar and the summary of work carried out.

5

Other Engagements of Directors

Information on directors' other engagements including all other directorship positions and external professional commitments must also be disclosed in the Corporate Governance Report.

6

Board Evaluation

The Board must disclose information on any external evaluation of the Board, the Board committees and directors, including the areas covered by the external evaluation; how the evaluation was conducted, a summary of key findings from the evaluation, how recommendations from previous assessments have been addressed and whether a detailed report has been submitted to the BOG.

7

Succession Planning

To ensure diversity and continuity, the Board must disclose a description of the appropriate succession plans in place for directors and key management personnel.

8

Succession Planning

The Board is required to disclose in the Corporate Governance Report any key internal control policies; key points concerning its risk exposures and risk management strategies; and internal control over financial reporting. In addition, the Board must disclose how it is responsible for maintenance and review of the effectiveness of the risk management systems.

⁴ While in operation, the company must ensure that its minimum capital remains unimpaired by losses, or risk suspension of its licence and other punitive action by the BoG (section 17(1) of the Payment Systems and Services Act, 2019 (Act 987).

9

Internal Audit

The effectiveness of the company's internal audit function for independent assessment policies and procedures must also be reported. Additionally, the Board must disclose the lines of reporting of the internal audit department, its roles and responsibilities and the scope and nature of audit work.

10

Conflicts of Interest

The Board is mandated to provide information relating to its conflict of interest policy; its compliance or otherwise with the minimum requirements of the policy; and an objective compliance process for implementing the policy.

11

Ethics and Professionalism

The Board must disclose whether it has a code of conduct in place, and must state how the company, its employees, management and the Board commit to the highest standards of professional behavior, business conduct and sustainable business practices. The Board must also report on any policy established to govern trading in the shares of the company by directors, employees and key management personnel.

12

Related Party Transactions

The Board is obliged to disclose the nature and extent of transactions with related parties, including intra-group transactions; and must provide, among others, whether the transactions have been reviewed by the Board to assess risk and whether the transactions are conducted on non-preferential terms/basis.

13

Management Reporting Structures

The Board must also disclose the systems and procedures put in place systems to enable directors keep abreast with the performance of the company against the strategic plan and budget, including frequency of management reports and key developments in the financial system and Directives, Notices, and Guidelines issued by the BOG.

Regulated financial institutions are required to continue to comply with all other governance related disclosures under Act 930, the Companies Act, 2019 (Act 992), directives, notices and guidelines issued by the Bank of Ghana and any other applicable enactments; and other governance-related disclosures required by the International Financial Reporting Standards (IFRS).

** JLD & MB Legal Consultancy is a top-tier corporate and commercial law firm with extensive experience in advising global and local clients on some of Ghana's highest profile transactions. We provide innovative and solution-oriented advisory services across several practice groups and have received international recognition for our lawyers and our work in a number of sectors including Oil, Gas and Petroleum, Energy and Natural Resources, Banking and Finance, Capital Markets and Mergers and Acquisitions.*

Contact:

JLD & MB LEGAL CONSULTANCY

TEL: +233 (0)302 782711/784298

Email:info@jldmblaw.net

Disclaimer: *This publication is for information purposes only and is not intended to constitute legal advice. If you require information on any matter discussed in this article, kindly contact the Firm.*

